

No. 1-13-0189

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 10 CR 11999
)	
GILBERTO VARGAS,)	Honorable Vincent M. Gaughan,
)	Judge Presiding.
Defendant-Appellant.)	

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

- ¶1 **Held:** The trial court did not abuse its discretion when it sentenced defendant to a term of 55 years' imprisonment after a jury found him guilty of first degree murder.
- ¶2 Following a jury trial, defendant Gilberto Vargas was convicted of two counts of first degree murder and sentenced to 55 years' imprisonment. On appeal, defendant argues that the trial court committed error by failing to adequately consider his youth and family ties during sentencing. We find no error and affirm.

¶3

BACKGROUND

¶4 Defendant was charged in a multi-count indictment with several counts of first degree murder, (720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2008)), attempted first degree murder, (720 ILCS 5/8-4(a) (West 2008)), and aggravated discharge of a firearm, (720 ILCS 5/24-1.2(a)(2) (West 2008)), stemming from the June 20, 2009 shooting of Jose Galaviz (Galaviz). The State elected to proceed on six counts of first degree murder. At trial, Galaviz's sister Yesenia Galaviz, Danny Olave, Larry Garvin, Erick Alamo, and Jessica Macias testified to the effect that on June 20, 2009, they were driving to the Puerto Rican festival in the Humboldt Park neighborhood in Chicago, Illinois, with Galaviz. While their minivan was stopped in traffic near Hirsch Street and Western Avenue, defendant approached the van on foot and asked if anyone in the car was a gangbanger. The occupants replied that they were not in a gang, and defendant walked away.

¶5 Alarmed by the encounter with defendant, the group decided to turn around and go home. While waiting to make a left turn near North Avenue and Western Avenue, a car facing the wrong direction of traffic pulled up alongside the van. Defendant was seated in the passenger seat. Defendant again asked the occupants about their gang activities. Defendant then pulled out a gun and fired a single shot which struck Galaviz in the left side of his chest. Galaviz died from his injuries that night.

¶6 After the close of evidence and closing arguments, the jury found defendant guilty of two counts of first degree murder. The jury further found that "during the commission of the offense of first-degree murder, the defendant personally discharged a firearm that proximately caused death to another person."

¶7 At the sentencing hearing, the State introduced victim impact statements from Yesenia, who testified live at the hearing, as well as Galaviz's brother Mark Galaviz and Galaviz's girlfriend Denise Urbano. The State also introduced evidence that defendant had been convicted of armed robbery with a firearm and aggravated unlawful use of a weapon (AUUW) for an offense which took place when he was fifteen years old. Defendant was sentenced to six years on the armed robbery conviction and a concurrent prison term of two years on the AUUW conviction. The State further argued that defendant was found delinquent of an arson and burglary which he committed while he was released on bond for the robbery and AUUW charges.

¶8 In addition, the State argued that Jose and his friends "were trying to avoid confrontation" and that defendant was "cocky and arrogant" because he had a loaded gun. The State argued that "there was no reason" for defendant to kill Jose and that "[t]he fact it happened *** tells us *** how dangerous the defendant *** is. The fact that it happened in this manner shows is that he was a danger to society."

¶9 Defendant, through trial counsel, asked for a minimum sentence of 45 years' imprisonment. Trial counsel argued that defendant "was only 22 when this incident occurred" and contended "[t]hese were the acts of a very young and immature person." Trial counsel also highlighted defendant's family ties, the fact that defendant came across as "respectful" in trial counsel's "personal dealings" with defendant, and the fact that defendant "has always been respectful to this Court." Trial counsel argued that defendant would be 67 years old when he left prison if he received a 45 year sentence and that defendant would not be a threat to society upon leaving prison regardless of the sentence the court imposed. Defendant declined the opportunity to speak in allocution.

¶10 The trial court explained that it would “tak[e] in consideration the statutory factors in aggravation, the statutory factors in mitigation and the nonstatutory factors in mitigation, the evidence in this case and the evidence, the proper evidence, that has been presented at the sentencing.” After addressing Galaviz’s family and defendant’s family, the trial court stated “I have to take in consideration what has happened and sentence the appropriate sentence.” The trial court then sentenced defendant to 30 years’ imprisonment on the first degree murder conviction plus 25 additional years for personally discharging a firearm which proximately resulted in the death of a person. The trial court noted that under Illinois law, “[i]t is mandatory that these sentences have to be served consecutively.”

¶11 Defendant filed a motion to reconsider sentence arguing, as relevant here, that his “sentence is excessive in view of defendant’s background.” The trial court denied defendant’s motion. This appeal followed.

¶12 ANALYSIS

¶13 Defendant presents only one issue on appeal. He argues that the trial court committed error by failing to adequately consider his age and family ties as mitigating factors during the sentencing hearing. We begin, however, with the issue of waiver.

¶14 The State contends that defendant waived the issue of whether the trial court gave adequate consideration to his age and family ties by failing to raise those issues in postsentencing motion. “A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed within 30 days following the imposition of sentence.” 730 ILCS 5/5-8-1(c) (West 2008); see *People v. Reed*, 177 Ill. 2d 389, 390 (1997) (sentencing issues must be raised in written postsentencing motion to preserve issue for appellate review). Defendant filed a postsentencing motion in which he argued that his

sentence was excessive in light of his “background.” Defendant’s age and family background are clearly elements of his “background.” We thus find that defendant preserved these issues for appellate review.

¶15 Accordingly, we turn to the merits of defendant’s appeal. The Illinois Constitution provides that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, § 11. Trial courts retain “great discretion” to “fashion an appropriate sentence within the statutory limits.” *People v. Fern*, 189 Ill. 2d 48, 53 (1999). Defendant’s 30 year sentence for the first degree murder conviction fell well inside the statutory sentencing guidelines for his offense. See 730 ILCS 5/5-8-1(a) (West 2008). When this is the case, our standard of review is abuse of discretion. *People v. Gutierrez*, 402 Ill. App. 3d 866, 900 (2010).

¶16 “A trial court need not articulate the process by which it determines the appropriateness of a given sentence.” *People v. Wright*, 272 Ill. App. 3d 1033, 1045-46 (1995). Similarly, a trial court “need not expressly indicate its consideration of mitigating factors.” *Id.* at 1046. In addition, the trial court may consider the weight to give mitigating evidence. *People v. Markiewicz*, 246 Ill. App. 3d 31, 55 (1993). Moreover, it is well established that “[w]here mitigating evidence is before the court, it is presumed the court considered that evidence absent some contrary indication other than the sentence imposed.” *Id.*; see also *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010); *People v. Phippen*, 324 Ill. App. 3d 649, 652 (2001); *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998); *Wright*, 272 Ill. App. 3d at 1046. “A lengthy sentence does not mean mitigating factors were ignored.” *People v. Parker*, 288 Ill. App. 3d 417, 423 (1997).

¶17 At the sentencing hearing, trial counsel directly argued that defendant should receive a minimum sentence based on his youth and family ties. It is thus presumed that the trial court considered these mitigating factors when it sentenced defendant. Defendant has presented no evidence to rebut this presumption. Accordingly, defendant's suggestion that the trial court failed to adequately consider his youth and family ties is without legal merit.

¶18 Defendant also argues that the trial court failed to give adequate consideration to his potential for rehabilitation. While the trial court should consider a defendant's potential for rehabilitation, that factor is not entitled to greater weight than the seriousness of the offense. See *People v. Gomez*, 2011 IL App (1st) 092186, ¶ 87; *People v. Govea*, 299 Ill. App. 3d 76, 91 (1998). To the contrary, "the most important factor a court considers when deciding a sentence is the seriousness of the offense." *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). Here the trial court explained that it would consider all aggravating and mitigating factors and "take in consideration what has happened." When viewed in light of the defendant's extensive criminal record, we can find no abuse of discretion on this record.

CONCLUSION

¶19 Accordingly, we affirm the sentence imposed below.

¶20 Affirmed.