2024 IL App (4th) 230247-U

NO. 4-23-0247

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 14, 2024
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
CHARLES L. WALKER,	)	No. 18CF4
Defendant-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney III,
	)	Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part, vacated in part, and remanded for resentencing, concluding (1) the State's evidence was sufficient to convict defendant of predatory criminal sexual assault of a child and (2) defendant was entitled to a new sentencing hearing based on ineffective assistance of counsel.

¶ 2 Defendant, Charles L. Walker, appeals his conviction for predatory criminal sexual assault of a child (count II) (720 ILCS 5/11-1.40(a)(1) (West 2018)), arguing the State failed to prove beyond a reasonable doubt the alleged victim was under the age of 13 at the time of the offense. Defendant further argues he is entitled to a new sentencing hearing on his two additional convictions for predatory criminal sexual assault of a child (counts I and IV) (*id.*) because defense counsel was ineffective for submitting a psychological evaluation as evidence in mitigation despite the aggravating nature of its contents. The State responds the evidence was

sufficient to support defendant's conviction and he is not entitled to a new sentencing hearing based on ineffective assistance of trial counsel. We affirm defendant's conviction on count II, vacate his sentences on counts I, II, and IV, and remand for a new sentencing hearing.

¶ 3 I. BACKGROUND

¶ 4 In January 2018, defendant was charged by grand jury indictment with four counts of predatory criminal sexual assault of a child (*id.*). Count I alleged defendant committed an act of sexual penetration with H.K., who was under 13 years old, in that he placed his penis in the vagina of H.K. Count II alleged defendant committed an act of sexual penetration with H.K., who was under 13 years old, in that he placed his penis in the mouth of H.K. *Id.* Count III alleged defendant committed an act of sexual penetration with H.K., who was under 13 years old, in that he placed his mouth in the vagina of H.K. Count IV alleged defendant committed an act of sexual penetration with H.K., who was under 13 years old, in that he placed his finger in the vagina of H.K.

¶ 5 A. Bench Trial

¶ 6 The trial court conducted defendant's bench trial over two dates in August and October 2022. A summary of the State's evidence follows.

¶ 7 Assistant Chief of Police Kim Jones testified she worked for the Woodford County Sheriff's Office, where has been employed for over 13 years. On August 22, 2017, H.K. and her mother, Valary Ritter, met with Jones to report a sexual assault. H.K.'s birthday was July 21, 2004, and she was therefore 13 years old when she and Ritter met Jones. Ritter informed Jones that she believed H.K. had been sexually assaulted by defendant, who was Ritter's boyfriend at the time. H.K. and Ritter told Jones about an assault that occurred around the first week of July 2017. H.K. told Jones that during that incident, defendant undressed her and forced

himself upon her. Defendant also placed his penis in her vagina and mouth and placed his fingers and mouth on her vagina.

¶ 8 Based on their report, Jones set up an interview for H.K. at the Children's Advocacy Center (CAC), which occurred on August 25, 2017. The trial court later allowed the admission of a videotaped recording of H.K.'s CAC interview into evidence. During her interview, H.K. explained that "Charles"—*i.e.*, defendant—was her mother's ex-boyfriend, and an officer had told her he would be charged with sexual assault. H.K. described several sexual encounters with defendant, including, *inter alia*, that defendant forced his penis inside her mouth on multiple occasions.

¶ 9 After the interview, Woodford County law enforcement attempted to contact defendant but learned he had moved to Florida. In March 2021, in Hillsborough County, Florida, defendant pleaded guilty to five counts of unlawful sexual activity with a minor and one count of lewd or lascivious battery. The trial court later admitted into evidence a certified copy of the convictions.

¶ 10 Ritter testified she and defendant had dated in high school in the early 1990s and reconnected in the spring of 2017 over Facebook. Ritter lived with H.K. in Eureka, Illinois, while defendant lived with his stepdaughter in Iowa. Over the spring and summer of 2017, defendant and his stepdaughter visited Ritter and H.K. on several occasions. Ritter worked evenings, and while she was working, defendant was often left alone with H.K. in Ritter's mobile home if he was visiting. By early August, Ritter and defendant had plans to move in together. On August 7, the two rented and loaded a truck with Ritter and H.K.'s belongings in anticipation of the move. The same date, after Ritter came out of the shower, she observed defendant on top of H.K. in her bedroom. The two were fully clothed and kissing on Ritter's bed. After defendant jumped off the

bed, Ritter ordered defendant to leave and told him the move was off. Following the August 7 incident, H.K. told Ritter about defendant assaulting her in early July. After talking to their pastor about what happened, Ritter and H.K. reported the assaults to law enforcement.

¶ 11 H.K. testified she was currently 18 years old and was a senior in high school. According to H.K., defendant first sexually assaulted her around May 2017, when defendant touched her vagina with his fingers. She was 12 years old at the time. Just after July 4, 2017, while defendant was visiting from Iowa, he "took [her] into [her] bedroom." The two removed their clothes, defendant put on a condom, and he put his penis into her vagina. H.K. testified she did not tell her mother about this because she was afraid. The same thing happened again the next day. Defendant also put his fingers and mouth on her vagina. Some events occurred before, and some events occurred after her thirteenth birthday on July 21. She explained that "some of the times that [she was] thinking of" when she testified occurred after her thirteenth birthday. When asked if "anything else sexually [happened] at any point in time while [she was] 12," H.K. replied that defendant had pushed her mouth onto his penis for roughly five seconds before she told him to stop. When asked again how old she was when that occurred, H.K. responded she was 12.

¶ 12 H.K. was unsure how many times defendant had visited Eureka between the Fourth of July and August 7, but she estimated it was about five times and that she saw him "[q]uite often." On cross-examination, H.K. remembered that when defendant placed "his mouth to [her] vagina or [her] mouth to his penis," it was not the week of the Fourth of July. Instead, it happened "at some point, but [she didn't] know exactly when," but she believed it was before her birthday "[b]ecause [her] birthday is in July, and it was hot out."

¶ 13 After the State rested, defendant testified on his own behalf. Defendant denied that he and H.K. had ever been alone together given that Ritter's mobile home was very small. Additionally, Ritter's other daughter and his own stepdaughter were often present. When asked about his convictions in Florida, defendant explained he had pleaded guilty to the charges, which involved a minor who was 17 years old at the time and was "a family friend" that "stayed with [him] periodically."

¶ 14 The trial court found defendant guilty on counts I, II, and IV and not guilty on count III. In making its determination, the court stated it found H.K. was credible and defendant was not. Regarding count II specifically, the court stated it had "no doubt" defendant committed the acts charged in the indictment. The court also found H.K. had been clear that "these events *** occurred when she was 12 years old," and she was unequivocal that defendant had placed his penis inside her mouth.

¶ 15 B. Sentencing Hearing

¶ 16 On January 5, 2023, the trial court conducted defendant's sentencing hearing. At the beginning of the hearing, the court allowed the admission of (1) the presentence investigation (PSI) report prepared by the State, (2) H.K.'s victim impact statement, and (3) defendant's statement in allocution, in which he maintained his innocence.

¶ 17 Following the State's argument, in which it recommended an aggregate sentence of 120 years in prison, defense counsel informed the trial court that defendant had provided him with additional evidence he wanted the court to consider, stating as follows:

> "Judge, while [the assistant state's attorney] was speaking[,] [defendant] provided me with a sex offender evaluation that, apparently, was done out of Florida by a Peter Bursten, [Ph.D.], that I think is something the court should have

to consider. It may well inform the court additionally on [defendant]. So I would be asking to open the evidence portion of the sentencing so that I can present that for the court to consider."

The court allowed defendant's oral motion to reopen evidence over the State's objection and admitted the evaluation as defendant's exhibit No. 1. The court then took a brief recess to allow the State to review the evaluation. The State then continued its arguments as follows:

"Based upon Defendant's Exhibit 1 that was admitted today, the evaluation took into account that there were two girls in these six counts that are in Florida ages 15 to 17. The defendant provided them alcohol, had sex with them at the same time and got them to touch each other. He also used Facebook messages to send topless nude photos of his step-daughter to these other girls. Interestingly, he denies ever doing any of that. But he was either found guilty or pled guilty to these charges [o]n March 15th, 2021. These girls 15 to 17 years old very similar in age. I mean, they're older, but [H.K.] in this case was 12 years old at the time that this started.

Your Honor, I think—although I don't think this evaluator had—certainly didn't have any indication about this case that was actually pending. I don't recall seeing that as I went through this relatively quickly. But it does state that one pathway to sexual re-offending is sexual deviance. I would say based upon this case and the information we have about the Florida cases that he is a sexual deviant as far as he enjoys having sex with people that are under the age of 17.

***

I think, quite honestly, this doesn't help his case any, and I would ask that—I'm going to ask for the same thing. I do believe my—I was taking into account that he had sex with at least one other individual minor at the time. Should probably—at least—so the total I had was 120 years. And it could be more than that, even, with this, Judge. It could be bumped up to 55, 50, and 45. I—I think this does not help his case at all."

¶ 18 Following defense counsel's arguments, the trial court sentenced defendant to consecutive terms of 50, 40, and 30 years in prison on counts I, II, and IV, respectively. When announcing defendant's sentence, the court noted it had considered the PSI and addendum, the evidence submitted by the parties, defendant's statement, and the arguments and recommendations of the parties. The court also found defendant's exhibit No. 1 to be "exceptionally aggravating." It discussed the contents of the evaluation as follows:

"Now, in looking at Defense Exhibit 1, [it] appears to have been written prior to adjudication. But now we know because of the [PSI] that the defendant was convicted of these offenses. So he was guilty, and he was sentenced for them. And what we see is that while the victims in that case in Florida were older, they were young, and he groomed them just like he groomed the victim in this case. Maybe in a—different techniques but grooming nevertheless sending naked pictures and providing alcohol.

And the interesting thing that the evaluator does here, this Dr. Bursten, is he looks at risk factors. And in looking at the defendant he says that the defendant—that the defendant does suffer from a paraphiliac condition. In other words, he has a sexual attraction to young females. Post-pubescent adolescent

females, to be exact. And in looking at this he does talk about the two pathways on page 5. But I—but you go to the paragraph preceding the two pathways paragraph at the top of the page on page 5, and it says, 'Although the case-related facts indicate that the sexual misbehavior occurred persistently over at least a two-year period of time, it is important to keep in mind that [defendant] cannot be identified as being a sexual recidivist.' Simply not true.

And, in fact, we now know he was a sexual recidivist. It goes on, 'That is to say at age 48 years [defendant] has never previously been charged with'—wrong, not true—'or convicted of'—he wasn't convicted at the time—'a sexual offense. Thus, there is no pattern of re-offending post-detection conviction.' And there is a pattern of re-offending.

And it goes on, 'Due to the repetitive nature of [defendant's] sexual offending and due to a pattern that appears to reflect some escalation in sexual offending, [defendant's] paraphiliac propensities initially serve to increase sexual recidivism risk.' And then we get to the two pathways paragraph. 'The second pathway identified at least a sexual re-offense including the presence of persistent anti-sociality slash criminality.' Of course that's exactly what we have. We have a—we have a sexual re-offense. That was actually a sexual re-offense to the crimes that occurred here.

But the evaluator was denied the opportunity—just like [defendant] didn't want to cooperate with the PSI initially. And that's fine. And he wants to not provide [defense counsel] with anything regarding Defense Exhibit 1 until here in the midst of the sentencing hearing—not even in the midst. At the end of the

sentencing hearing. He didn't tell anybody about what was going on in Illinois. It says, 'There is no formal history of adult criminal activity.' Again, wrong. So '[Defendant] has never been convicted of a sexual offense, a violent offense.' That was true as to not being a conviction, not true as to not committing those crimes.

So when you get to the ultimate determination in this case the court can put no weight into it. Or in this evaluation, not this case. But '[Defendant] does not maintain a history of criminality.' Simply not true. This department—or, 'This defendant,' rather, 'presents as being a good risk in reference to adhering to community-based probationary sanctions.' And, in fact, that's really not true.

In looking at this case it is quite clear that the defendant is, in fact, a sexual predator. And it is worth noting in the *** Dr. Bursten's report that he commented on the victims in that case. Both were not at full intellectual capacity, and the defendant took advantage of that. In this case we have an individual who was testified to—and watching her testimony on the stand, for instance, when she said she left her medication at school and she—he took advantage of someone who has learning disabilities. So the court is gravely concerned for society that should the defendant be permitted to be free into society."

¶ 19 Defendant filed a motion to reconsider his sentence, arguing it was excessive, which the trial court denied after a hearing.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Defendant presents two contentions of error on appeal. First, defendant argues the State's evidence was insufficient to convict him of count II because it failed to prove beyond a reasonable doubt that H.K. was under the age of 13 at the time the alleged conduct occurred. Second, defendant contends he is entitled to a new sentencing hearing based on ineffective assistance of counsel. Specifically, defendant claims that but for defense counsel's inept submission of the sex offender evaluation, which was more aggravating than mitigating, there is a reasonable likelihood he would have received a more lenient sentence. We conclude the State's evidence was sufficient to convict defendant on count II and that defendant is entitled to a new sentencing hearing based on ineffective assistance of trial counsel.

¶ 23 A. Sufficiency of the Evidence

¶ 24 We first address defendant's claim the evidence was insufficient to convict him on count II, which alleged defendant committed predatory criminal sexual assault (720 ILCS 5/11-1.40(a)(1) (West 2018) in that he committed an act of sexual penetration with H.K., who was under 13 years old, in that he placed his penis in the mouth of H.K. We note defendant does not challenge the sufficiency of the State's evidence on counts I or IV. The State responds its evidence was sufficient to convict defendant on count II. We agree with the State.

¶ 25 To convict defendant of predatory criminal sexual assault of a child under section 11-1.40(a)(1) of the Criminal Code of 2012 (*id.*), the State was required to prove beyond a reasonable doubt that H.K. was under the age of 13 at the time the alleged conduct occurred. " 'When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *People v. Dat Tan Ngo*, 388 Ill. App. 3d 1048, 1052 (2008) (quoting *People v.*

Singleton, 367 Ill. App. 3d 182, 187 (2006)). It is within the province of the trier of fact to determine the credibility of witnesses and the weight assigned to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). "[T]he testimony of a single witness, if positive and credible, is sufficient to convict." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). On appeal, the reviewing court does not retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). Rather, this court will only reverse a conviction if the evidence was "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 26 Defendant contends the State failed to prove beyond a reasonable doubt that H.K. was 12 when the conduct alleged in count II occurred. Defendant emphasizes H.K. admitted on the stand at trial that the sexual encounters between her and defendant happened both before and after she turned 13 on July 21 and that "[s]ome of the times that [H.K. was] thinking of" occurred after her thirteenth birthday. H.K. also testified she did not know exactly when the conduct alleged in count II occurred, but she stated it was not the first week of July. In contrast with her CAC interview, in which she stated it happened a couple of times, H.K. testified at trial that the conduct only happened once. Furthermore, defendant insists that while H.K. believed it occurred before her birthday, "the only reason she identified it happening before her birthday was '[b]ecause [her] birthday is in July, and it was hot out.' "

¶ 27 Here, the State's evidence was sufficient to convict defendant on count II because H.K. testified the conduct occurred when she was 12 and the trial court found that testimony to be credible. Defendant correctly notes H.K. stated on cross-examination that her belief she was 12 when the conduct occurred was based on the fact her birthday was in July and it was hot

outside when it occurred. Although it was likely also hot in the weeks after her birthday leading up to August 7, when drawing all inferences and presumptions in the light most favorable to the State, H.K. unequivocally testified on direct examination that the conduct occurred when she was 12, and the court accepted H.K.'s reasoning. As stated above, the trial court is in the best position to make credibility determinations, and this court affords such determinations great deference. See *Jackson*, 232 Ill. 2d at 280-81. While H.K.'s testimony was not precise regarding the exact date, the basis for her belief she was 12 at the time was not so improbable or unsatisfactory that it justifies a reasonable doubt of defendant's guilt.

¶ 28 B. Ineffective Assistance of Counsel

¶ 29 Defendant also argues he is entitled to a new sentencing hearing on grounds of ineffective assistance of counsel. Specifically, defendant asserts that but for defense counsel's submission of a sex offender evaluation that was more aggravating than mitigating, there is a reasonable likelihood he would have received a more lenient sentence. The State responds counsel was not ineffective and defendant is not entitled to a new sentencing hearing.

¶ 30 The United States and Illinois Constitutions guarantee criminal defendants the right to the effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. On review of an ineffective assistance of counsel claim, this court applies the familiar two-part framework established in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on such a claim, a criminal defendant must show both deficiency and prejudice, *i.e.*, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* The defendant must satisfy both prongs of the *Strickland* test, meaning that a "failure to establish either proposition will be fatal to the claim." *People v. Sanchez*, 169 Ill. 2d 472, 487 (1996). This

court reviews claims of ineffective assistance of counsel *de novo*. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25.

¶ 31 To establish deficiency, the defendant must show that counsel's performance fell below an objective standard of reasonableness. *People v. Henderson*, 2013 IL 114040, ¶ 11. Furthermore, this court will indulge a strong presumption that counsel's decisions were a result of sound legal strategy. *People v. Houston*, 226 Ill. 2d 135, 144 (2007).

¶ 32 To establish prejudice in the sentencing context, the defendant must show a reasonable likelihood counsel's deficient performance affected the sentence. See *People v. Steidl*, 177 Ill. 2d 239, 257 (1997). "[A] reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome," meaning the result of the proceeding was "unreliable or fundamentally unfair." *People v. Evans*, 209 Ill. 2d 194, 220 (2004). A reasonable probability of a different result may exist even when there is "ample" evidence in support of the outcome that occurred. See *People v. Simpson*, 2015 IL 116512, ¶¶ 35, 37, 39, 41.

¶ 33 First, we conclude defense counsel's submission of the sex offender evaluation was objectively unreasonable, as it contained no mitigating value whatsoever. The record shows defense counsel had only become aware of the evaluation after evidence was closed and the State had essentially concluded its sentencing arguments. Both the State and the trial court commented on this lack of mitigating value, concluding it "didn't help [defendant's] case any," and was "exceptionally aggravating," respectively. While defendant's certified convictions from Florida had been previously admitted, the PSI did not contain details about those convictions and the State had not presented any evidence of the same. Defense counsel stated in his own arguments that this information "certainly isn't helpful." The evaluation directly impeached defendant's

trial testimony—where he claimed the charges involved *one* 17-year-old alleged victim—and instead revealed there were actually *two* alleged victims. It further showed both of those victims were developmentally disabled and that he had provided them alcohol. Although defense counsel argued that based on the evaluation, "a shorter sentence, potentially, should be considered here because [defendant] is likely to be able to conform himself to society with—with some help," even a cursory review of the evaluation showed the evaluator's conclusions were all based on faulty assumptions regarding defendant's purported lack of criminal history, which was wholly inaccurate. The State, by its own comments, was unaware of the existence of the evaluation prior to sentencing, and it did not appear elsewhere in the record.

¶ 34 While the State argues on appeal that defendant's decision to provide the evaluation to counsel essentially at the end of the proceedings "revealed a lack of trust by defendant toward his counsel," and was "the only evidence available with which to argue for a reduced sentence," it was ultimately defense counsel—not defendant—who chose to offer the evaluation into evidence. In discussing defendant's last-minute disclosure of the sex offender evaluation, the trial court noted "it inhibits [defense counsel] from doing his job and thoroughly analyzing this and reading this because [defendant] doesn't want to be forthright." The court's statement appears to suggest the court questioned whether defense counsel had read or analyzed the evaluation before moving to admit it. The court's concern that defendant might attempt to argue counsel's ineffectiveness in the future does not negate the fact that counsel was solely responsible for determining at the sentencing hearing whether certain evidence should be presented based on its potentially mitigating value, or in this instance, lack thereof. Defense counsel either (1) offered this evaluation without full knowledge of its aggravating contents or (2) knew the evaluation contained aggravating evidence and offered it anyway. The record rebuts

any presumption the submission of this evaluation was part of a sound trial strategy, and we conclude the decision to do so was objectively unreasonable.

¶ 35 Next, we find there is a reasonable likelihood that defense counsel's submission of the evaluation affected defendant's sentence. The record shows the trial court found the evaluation to be "exceptionally aggravating." While it also commented that it could afford it "no weight," when considered in context, the court meant it gave the evaluation no weight *in mitigation*. The court discussed each of the conclusions contained in the evaluation and how they were either inapplicable or simply untrue. The court also discussed at length the facts involved in defendant's Florida convictions, commenting that they involved two intellectually disabled victims and comparing that to the fact H.K. also had a learning disability. The court commented on the evaluation's conclusion defendant was sexually deviant based on his attraction to young girls. Immediately after comparing the facts of the two cases, the court commented it was "gravely concerned for society that should the defendant be permitted to be free into society." While the court also considered other factors when fashioning its sentence—none of which are alleged to have been inappropriate—its consideration of the evaluation dominated its decision. Its discussion of the evaluation spans five of the eight pages encompassing its sentencing decision as reflected in the report of proceedings. Furthermore, the court ultimately imposed an aggregate sentence of 120 years in prison, which was towards the upper end of the applicable sentencing range. Based on the court's apparent significant reliance on the evaluation and imposition of a 120-year sentence based on its contents, there is a reasonable likelihood defense counsel's decision to submit it negatively affected defendant's sentence.

¶ 36 Because defendant has established both deficiency and prejudice, we conclude he is entitled to a new sentencing hearing. See, *e.g.*, *People v. Billups*, 2016 IL App (1st) 134006,

¶ 18 (holding the proper remedy for ineffective assistance of counsel at sentencing was remand for a new sentencing hearing). In addition to arguing he is entitled to a new sentencing hearing, defendant further claims the case should be assigned to a different judge and the State should be barred from introducing the evaluation as evidence in aggravation on remand. We disagree. Although the trial judge reviewed and considered the aggravating report in this case due to defense counsel's ineffective assistance, defendant does not otherwise allege an abuse of the trial court's discretion, and he has not established the judge would be unable to render an impartial sentencing decision on remand. However, the trial judge may consider whether his recusal is necessary for defendant to receive a fair sentencing hearing on remand. See, *e.g.*, *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 45 ("All judges in Illinois are expected to consider, *sua sponte*, whether recusal is warranted as a matter of ethics under the Judicial Code."). If on remand, the trial judge concludes recusal is necessary, we would certainly understand such a finding given the aggravating nature of the report. Additionally, the State may seek to introduce the evaluation as aggravating evidence and defendant may argue for its exclusion, with the trial court to make the ultimate determination as to its admissibility.

¶ 37 Accordingly, we vacate defendant's sentences and remand this case for a new sentencing hearing on counts I, II, and IV.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm defendant's convictions for predatory criminal sexual assault of a child (counts I, II, and IV), vacate defendant's sentences, and remand for a new sentencing hearing.

¶ 40 Affirmed in part; vacated in part; cause remanded.