2013 IL App (4th) 120481-U

NO. 4-12-0481

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 13, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JOSHUA CADDY,	)	No. 11CF397
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion by sentencing defendant to seven years of imprisonment following his guilty plea to criminal sexual assault.

¶ 2 In May 2011, the grand jury of McClean County indicted defendant, Joshua Caddy, with two counts of criminal sexual assault (720 ILCS 5/12-13(a)(2) (West 2010)), a Class 1 felony (720 ILCS 5/12-13(b)(1) (West 2010)), alleging defendant committed an act of sexual penetration upon the vagina of H.M. with his hand (count I) and penis (count II) while H.M. was unable to give knowing consent. In November 2011, pursuant to negotiations, defendant entered a plea of guilty to count I in exchange for dismissal of count II. The trial court accepted defendant's plea and entered a conviction. In February 2012, following a hearing, the court sentenced defendant to seven years of imprisonment.

¶ 3 Defendant appeals, arguing the trial court's sentencing judgment was an abuse of discretion. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 The factual basis offered by the State at the guilty plea hearing provided the following version of events. In May 2011, H.M., H.M.'s boyfriend, and defendant were visiting Illinois State University to celebrate a friend's graduation and attend an art show. At some point in the night, H.M. became very intoxicated and had to be carried to an upstairs bedroom of the apartment where she was staying. H.M. awoke to the feeling of somebody penetrating her vagina. She asked who was in the room, and defendant identified himself. She fled the room and informed her boyfriend that defendant had raped her. Defendant later admitted to police investigators that he put his fingers into H.M.'s vagina while she was sleeping.

¶ 6 A. The State's Charges and Defendant's Guilty Plea

¶ 7 The grand jury of McLean County indicted defendant on two counts of criminal sexual assault (720 ILCS 5/12-13(a)(2) (West 2010)), alleging he committed an act of sexual penetration upon the vagina of H.M. with his hand (count I) and penis (count II) while H.M. was unable to give knowing consent.

¶ 8 In November 2011, defendant pleaded guilty to count I in exchange for dismissal of count II. Before defendant tendered his guilty plea, the court admonished him that the offense of criminal sexual assault is a Class 1 felony, punishable by between 4 and 15 years in the Department of Corrections. The court accepted defendant's guilty plea and entered conviction.

¶ 9 B. Defendant's February 2012 Sentencing Hearing

¶ 10 The following evidence was presented at defendant's February 2012 sentencing

hearing.

¶ 11 The presentence investigation report (PSI) (see 730 ILCS 5/5-3-1 (West 2010)) indicated that in December 2000, when defendant was 14 years old and living in California, he admitted allegations in a juvenile delinquency petition that he committed a lewd and lascivious act upon his 7-year-old half sister, S.C. Defendant was placed with his grandmother until an April 2001 review hearing, after which he was permitted to return home. In July 2002, the original delinquency petition was dismissed with prejudice. The PSI showed a petty traffic offense from August 2003, but no prior criminal history.

¶ 12 The PSI also included a victim impact letter in which H.M. stated, in pertinent part, (1) defendant's actions caused her severe emotional distress, (2) she has not been able to sleep alone following the sexual assault, (3) she has nightmares, (4) she decided to move out of her apartment, where she used to enjoy living alone prior to the sexual assault, (5) she has difficulty with sexual relations with her boyfriend, (6) she is suffering from depression, and (7) she does not have private insurance and the wait for free rape counseling is long.

¶ 13 In mitigation, defendant offered, without objection, letters from: (1) his mother, Alicia Caddy; (2) his stepfather, Eric Caddy; (3) his half sister, S.C.; (4) his step-grandmother, Judy Caddy; (5) his former girlfriend, Samantha Maddox; (6) his former girlfriend, Ana Dobbins; (7) his former bandmate, Kevin Kane; (8) his former bandmate, Bryan Shelton; (9) his former bandmate, Brian Smith; (10) his mother's friend, Theresa Hoff; (11) his friend and former business partner, Alexander Chavez; (12) his former boss, Don Savage; (13) his former coworker at Best Buy, Jenna Lynch; and (14) Keren Garcia, whose relationship with defendant is unclear.

¶ 14 Defendant also offered (1) a computer printout of the MySpace.com profile page

for "Bad City," a band in which defendant performed as lead singer prior to his arrest, and (2) a computer printout of the Wikipedia.com entry for "Bad City."

¶ 15 Defendant called Officer Brian Larimore of the Normal police department, who testified he interviewed defendant during his investigation of the sexual assault upon H.M. Defendant denied any sexual contact with H.M. during his initial interview with Larimore. Larimore later spoke with H.M.'s mother, who told Larimore that she met defendant at a hospital the day after the sexual assault so that defendant could be tested for sexually transmitted diseases. Larimore learned from H.M.'s mother that defendant admitted digitally penetrating H.M. and apologized to H.M.'s mother. Shortly thereafter, Larimore conducted a second interview with defendant in which defendant began crying and apologized for not being truthful during the first interview. Defendant told Larimore that he was extremely intoxicated on the night of the sexual assault, but he took responsibility for his actions. Larimore learned that defendant had also apologized to H.M. and H.M.'s boyfriend through text messages.

¶ 16 Eric Caddy, defendant's stepfather, testified he never experienced any disciplinary problems with defendant. According to Eric, defendant has a wonderful relationship with his daughter, S.C., who was the victim of the lewd and lascivious act perpetrated by defendant in 2000. Eric testified the incident in 2000 was an "adolescent—non-predatory situation." Defendant never drank alcohol or used drugs while living with Eric, and he never showed signs of being aggressive or violent.

¶ 17 Alicia Caddy, defendant's mother, testified that S.C. was responsible for organizing the letter-writing efforts on behalf of defendant. Alicia testified regarding defendant's musical talents, his involvement with the bands "Thee Armada" and "Bad City," his experience

touring with the bands, and his success at marketing his musical talent. Alicia testified defendant was a "beautiful, caring, thoughtful, talented young man."

¶ 18 The State did not present any evidence in aggravation.

¶ 19 Following the presentation of evidence, the State recommended the maximum term of 15 years and defendant recommended the minimum term of 4 years. Defendant exercised his right to make a statement in allocution. The trial court sentenced defendant to a term of seven years in the Department of Corrections, with credit for 272 days served.

¶ 20 In February 2012, defendant filed a motion to reconsider his sentence. Following an April 2012 hearing on the motion, the trial court denied defendant's motion.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant asserts the trial court abused its discretion by sentencing him to seven years of imprisonment for criminal sexual assault (720 ILCS 5/12-13(a)(2) (West 2010)) in light of the mitigating evidence presented at the sentencing hearing. Defendant further contends the court's comments at sentencing indicate a possible bias against those who commit sex offenses. Defendant argues this court should reduce his sentence to the minimum term of four years or, in the alternative, remand for resentencing pursuant to Illinois Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999). We disagree and affirm.

¶ 24 A. Standard of Review

¶ 25 For excessive-sentence claims, this court has explained appellate review of a defendant's sentence as follows:

"A trial court's sentencing determination must be based on the

> particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Generally, the trial court is in a better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case. [Citation.] Thus, the trial court is the proper forum for the determination of a defendant's sentence, and the trial court's decisions in regard to sentencing are entitled to great deference and weight. [Citation.] Absent an abuse of discretion by the trial court, a sentence may not be altered upon review. [Citation.] If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341 (quoting *People v. Hensley*, 354 Ill. App. 3d 224, 234–35, 819 N.E.2d 1274, 1284 (2004)).

¶ 26 B. The Trial Court Did Not Abuse Its Discretion

¶ 27 Defendant argues his sentence was excessive in light of the following factors: (1) defendant has considerable rehabilitative potential; (2) defendant lacks a prior criminal history; (3) defendant acknowledged his guilt and is remorseful for his conduct; and (4) no aggravating

factors justify imposition of anything more than the minimum sentence.

¶ 28 Initially, we note defendant received a sentence on the lower end of the sentencing range—three years above his recommendation but eight years below the State's recommendation.

¶ 29 Prior to announcing its sentencing decision, the trial court stated that it had considered (1) the information in the PSI, (2) the evidence presented at the sentencing hearing, (3) the recommendations of counsel, (4) defendant's statement in allocution, and (5) all relevant statutory factors in aggravation and mitigation. Defendant does not claim the court improperly considered any of these factors or refused to consider any factor it was required to take into account. Rather, the thrust of defendant's argument is that the only reasonable outcome in this case is a minimum sentence, and the court failed to impose the minimum sentence due to a personal bias against those who commit sex offenses.

¶ 30 Accepting defendant's argument and granting him the relief he requests would require disregarding the deferential standard of review, reweighing the aggravating and mitigating factors to his liking, and substituting our judgment for that of the trial court. See *People v. Stacey*, 193 Ill. 2d 203, 209, 737 N.E.2d 626, 629 (2000). We decline to do so.

¶ 31 Defendant's sentence was on the lower end of the sentencing range and several factors could have been considered in aggravation, such as (1) defendant committed prior inappropriate sexual acts against his 7-year-old half sister when he was 14, (2) defendant initially lied to police investigators and denied any sexual contact with H.M., and (3) H.M. has suffered significant negative emotional repercussions as a result of the sexual assault perpetrated by defendant. In light of the evidence presented at the sentencing hearing, and giving due deference to the trial court's superior position to weigh and consider that evidence, we conclude the court's

sentencing determination was not an abuse of discretion.

¶ 32 Defendant further contends the following comments by the trial court indicated an improper bias against those who commit sex offenses:

> "Your attorney has probably told you before that this court takes a very strict view of sex offenses. They are offenses like some few others that the court thinks are probably some of the most serious crimes that could be committed. The violation is so personal and so violent even in a situation like this where I understand and recognize you did not use force in any way but it is still in my view a violent offense. And when the court sentences someone for having committed a violent offense, there is—there is something beyond just what is right and just for the individual being sentenced, there is a component, certainly should not be controlling and it is not controlling in this case or any other, but there is a component of that sentencing that has to take into account what society thinks is appropriate as a punishment.
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> ***
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> But, the crime itself is of such magnitude that the court believes that even despite your not having a prior record, that the minimum sentence is not appropriate, simply because of the severity of the offense."

Because defendant failed to include his claim of bias in his motion to reconsider his sentence,

that issue is forfeited pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). That rule provides, in pertinent part, as follows: "Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived." Ill. S. Ct. R. 604(d)(eff. July 1, 2006). Defendant does not advance an argument to excuse his failure to include his claim of bias in his motion to reconsider his sentence.

¶ 33 We note, however, that even if defendant had not procedurally defaulted his claim of bias, our review of the record indicates the claim is without merit. Defendant fails to persuade us that the trial court's comments indicated an unwillingness to consider the entire range of available sentencing options. This case is distinguishable from *People v. Henry*, 254 Ill. App. 3d 899, 627 N.E.2d 225 (1993), cited by defendant. In *Henry*, the trial court indicated that although the statutory factors had been considered, the basis for the sentence was the trial court's "disgust" regarding the crime committed by the defendant. *Henry*, 254 Ill. App. 3d at 905, 627 N.E.2d at 229. Moreover, in determining whether the trial court improperly imposed a sentence, this court will not focus on isolated statements but instead will consider the entire record. *People v. Ward*, 113 Ill. 2d 516, 526-27, 499 N.E.2d 422, 426 (1986). Viewed in light of all the court's comments regarding defendant's specific actions and their consequences for the victim, the complained-of comments cannot be interpreted as evidence of the court determining defendant's sentence based on a preconceived bias against those who commit sex offenses.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we conclude the trial court did not abuse its discretion by sentencing defendant to seven years' imprisonment for criminal sexual assault (720 ILCS

5/12-13(a)(2) (West 2010)). As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 36 Affirmed.