

No. 1-09-3589

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 22758
	)	
TYJUANA GIBSON,	)	Honorable
	)	John J. Moran, Jr.
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE QUINN 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 in sentencing defendant to 15 years' imprisonment for aggravated battery of a child. The court did not improperly conclude that defendant sexually abused the victim, and the evidence regarding the victim's behavior was relevant to defendant's care for the minor, an issue raised by defendant in mitigation.

¶ 2 Pursuant to an open guilty plea, defendant Tyjuana Gibson was convicted of aggravated battery of a child and sentenced to 15 years' imprisonment. On appeal, defendant contends that her sentence is erroneous where the court relied upon the State's unsubstantiated allegations of sexual abuse against the victim, her five-year-old son.

¶ 3 Defendant was charged with aggravated battery of a child and aggravated domestic

battery against her son Antonio Parker, five years' old at the time of the alleged attack on or about November 9, 2008. She allegedly caused great bodily harm and permanent disfigurement by striking him about the body.

¶ 4 A plea conference was held, at which the court suggested that 15 years' imprisonment would be appropriate. When defense counsel asked why the court was not suggesting the statutory minimum of six years, the court replied that its decision was based upon the severity of Parker's injuries as documented in photographs. After consulting with counsel, defendant decided to plead guilty to one count of aggravated battery of a child with the opportunity to present evidence and arguments in mitigation. The court stated that it would "keep an open mind" but warned defendant that she could receive up to 15 years as the court had already concluded that to be "fair and appropriate" on the record presented thus far.

¶ 5 At the plea hearing, the parties stipulated that the "charging documents and police reports \*\*\* are a sufficient factual basis to support a plea of guilty." The preliminary complaint alleged that Parker had been hit "about his head, neck, face, back [and] legs with a belt," and a police report stated that Parker was hospitalized from November 9<sup>th</sup> through 14<sup>th</sup> at Children's Memorial Hospital and had "rhabdomyolysis" or muscle deterioration. The photographs taken at the hospital showed lacerations throughout Parker's head, front and back of his upper body, arms, and legs. He had deep gashes or scars on his back, right arm, back of his head, and an ear.

¶ 6 The presentence investigation report (PSI) showed that defendant's criminal record included two convictions for retail theft accompanied by battery and a conviction for disorderly conduct. Defendant described a "fair" childhood, although two of her siblings were "involved with" the Department of Children and Family Services because they were born with drugs in their systems. She was never married and had two children by two different fathers. She was expelled from high school due to fighting and then left another high school at the 10<sup>th</sup> grade when she became pregnant. She attempted further education but quit after less than two months

because it was "too difficult and too structured." She had last been employed in 1999. She admitted to having "no friends" and having an "anger problem that 'comes and goes.' " At the sentencing hearing, the parties accepted the PSI without changes.

¶ 7 Molly Samson, a nurse, testified that defendant was brought to the emergency room of Northwestern Memorial Hospital on the evening of November 9, 2008, to give birth. Parker accompanied her to the hospital, and Nurse Samson noticed "some swelling and abrasions on his face." He kept his coat and hat on, explaining that defendant did not want him to take his coat off. When Nurse Samson asked defendant about this, she professed that Parker was "fine" and "didn't want us to touch him or to examine him at all." Parker was nonetheless examined, and the photographs in the police file were taken at that time. Parker was then sent to Children's Memorial Hospital.

¶ 8 Pediatrician Dr. Sarah Monahan-Estes testified that she treated Parker at Children's Memorial Hospital. She believed from Parker's visible injuries that he had muscle damage, and a blood test confirmed high levels of enzymes indicative of rhabdomyolysis. In that illness, the breakdown or deterioration of muscles releases enzymes into the bloodstream that can overwhelm the kidneys to the point of causing kidney failure. Parker was treated with intravenous fluids for four days and thus avoided kidney failure.

¶ 9 When Dr. Monahan-Estes interviewed Parker on November 10, he was evasive, first failing to answer and then attempting to distract her to other subjects. He gave differing explanations for his injuries, first claiming that he was attacked by three older boys and then by only one. When Dr. Monahan-Estes asked questions to determine if Parker knew the difference between truth and a lie, he would answer with "the opposite of fact" while laughing, so that she could not reach a conclusion. In answering Dr. Monahan-Estes' questions, Parker kept repeating "It's me, my mom, and the baby. My mom loves me" and that he was "not supposed to tell." When asked what happened when he would get into trouble, Parker replied that he would "get a

whooping" with a belt and defendant's hand. Dr. Monahan-Estes examined Parker and saw "over 200 loop and linear marks on his face, chest, abdomen, and back" including oozing wounds, deep bruising, and ear swelling.

¶ 10 Parker made sexually inappropriate remarks and gestures to Dr. Monahan-Estes and other hospital staff. He told a nurse that she had "nice titties" and wanted to suck them, described wanting to have sex with a girl, and "humped" the air and hospital staff. When a nurse was bathing him, he asked her to "suck my dick," although he later apologized to her. When asked how he would help in the care of his newborn brother, Parker replied that he would feed him but also that he would hit him with cooking pots and a stick. Dr. Monahan-Estes explained that such behavior was abnormal for a child Parker's age and had been learned rather than being innate. Parker told a hospital psychiatrist that he learned this language and behavior when he "watched sex movies on TV."

¶ 11 Social worker Jeanine Washington testified that she supervised Parker's foster care placement from December 2008 onward. Parker was, as of trial, receiving weekly therapy sessions. He had been referred for a psycho-sexual assessment because of sexually inappropriate comments during his treatment, and the assessment was inconclusive and ongoing because "when certain questions were asked, he would shut down and not answer or become guarded." Parker's foster mother reported to Washington that "she was having a lot of trouble with him in regards to mannerisms [*sic*] and listening to her" and with his "adjustment into the home." He had commenced kindergarten during foster care, his adjustment in school was "poor," in that he fights with other students, does not pay attention in class, and acts disruptively, and he would be repeating kindergarten due to poor grades. When Washington last saw Parker, a week before the hearing in late July 2009, he still had visible scarring.

¶ 12 Catherine Moore, an acquaintance and former co-worker of defendant for over two years, described her as "outgoing, hard-working, and \*\*\* productive, and she likes taking care of and

being around her son." Defendant was "very playful" with Parker. Moore did not see any marks of abuse on Parker and Parker did not tell her that he had been abused. Defendant helped Moore when she was pregnant and then baby-sat for her while she worked; defendant was "happy, smiling \*\*\* enjoying her time with my son" and she did not see defendant try to strike her son. On cross-examination, Moore admitted that her contact with defendant during the time she knew her was infrequent.

¶ 13 Vicky, Semaj, Bertha, and Ronnie Peterson, defendant's mother, brother, aunt, and uncle respectively, testified. Mary Agee, defendant's aunt, also testified. Defendant and Parker had lived with Vicky, and defendant "began to be more responsible" once Parker was born. They all saw defendant caring for Parker and opined that Parker was happy and well-behaved. None of them saw marks on Parker, and they neither saw nor heard of defendant striking Parker before the instant case. They all testified that they were shocked upon learning of defendant's arrest for the instant offense. However, Vicky suggested that defendant needed "parenting classes, anger management, possibly" alcohol treatment because she "needs learned behavior on how to" be an effective parent. Vicky explained that she (Vicky) had problems, including drug addiction, that "probably trickled down on" defendant.

¶ 14 Defendant addressed the court, apologizing to Parker and his brother "for what I have put you all through," admitting that she abused Parker, "failed" him as a parent, and deserved punishment, but asking for "a fresh start with my boys" because she loves them.

¶ 15 Following arguments in aggravation and mitigation, the court found that Parker suffered great bodily harm and sentenced defendant to 15 years' imprisonment. The court found that there was no direct evidence of sexual abuse by defendant and stated that it "would consider that for the limited purpose of the indirect evidence of the quality of child care that the defendant provided to the victim and the lack of proper supervision and care."

¶ 16 In her motion to reconsider her sentence, defendant argued that only two statutory

aggravating factors were present (prior criminal record and need for deterrence), her sentence was increased for causing bodily harm inherent to the offense, Dr. Monahan-Estes' testimony was improperly admitted and considered, and the State made improper arguments. The court denied the motion to reconsider, asking that on appeal "the Justices there not consider anything involving the sentence until you view the photos." This appeal timely followed.

¶ 17 On appeal, defendant contends that the trial court improperly relied upon the State's unsubstantiated allegations of sexual abuse against Parker.

¶ 18 A person commits aggravated battery of a child when she intentionally or knowingly without legal justification "causes great bodily harm or permanent disability or disfigurement to any child under the age of 13 years." 720 ILCS 5/12-4.3(a) (West 2008). Aggravated battery of a child is a Class X felony punishable by 6 to 30 years' imprisonment. 720 ILCS 5/12-4.3(b); 730 ILCS 5/5-8-1(a)(3) (West 2008).

¶ 19 A sentence within the statutory limits is reviewed on an abuse of discretion standard, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). So long as the trial court does not consider incompetent evidence or improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 20 In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Alexander*, 239 Ill. 2d at 213. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Alexander*, 239 Ill. 2d at 213. The court does not need to expressly outline its reasoning for

sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *Perkins*, 408 Ill. App. 3d at 763. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Alexander*, 239 Ill. 2d at 214; *People v. Flores*, 404 Ill. App. 3d 155, 158-59 (2010).

¶ 21 Here, it is readily apparent from the beginning of the case (when the court offered 15 years' imprisonment based on the photographs of Parker's injuries) to the end (when the court asked us to consider the sentence in light of the same photographs) that the most significant factor in the court's sentencing decision was the set of injuries to Parker to which defendant pled guilty. As stated above, it is wholly proper to give the severity of the offense such controlling weight. In conducting the sentencing hearing, the court properly considered the evidence in mitigation but concluded that its initial evaluation of the sentencing factors was correct, imposing the same sentence that it had initially suggested upon the plea conference.

¶ 22 The court made it clear that it was not concluding that defendant sexually abused Parker but considering the evidence in question in relation to the broader issue of defendant's care for and raising of Parker, and we find that the court did not err in doing so. Defendant presented several witnesses in mitigation whose testimony was to the effect that she was a good mother, properly raising and caring for a happy and well-behaved Parker with the exception of the instant attack. Defendant placed into dispute her general care for Parker by raising it as a mitigating factor. The State presented credible evidence of Parker's behavioral issues during foster care but more importantly that Parker made remarks and gestures inappropriate to his age in the days immediately after his injury; that is, when his learned behavior may be reasonably attributed to defendant as his primary care-giver. We conclude from the foregoing that the court did not find

that defendant's offense should be aggravated because she may have sexually abused Parker, but instead that her mitigation argument – that she was a good mother with a single, albeit spectacular, instance of parental failure – was at least partially impeached by Parker's behavior. In sum, the court did not improperly consider the evidence in question as aggravating the instant offense but properly considered it as impeachment of defendant's case in mitigation.

¶ 23 Taking the record as a whole, we conclude that the court did not abuse its discretion in imposing a sentence of 15 years' imprisonment, half of the maximum sentence. Accordingly, the judgment of the circuit court is affirmed.

¶ 24 Affirmed.