2012 IL App (1st) 102477-U

FOURTH DIVISION
SEPTEMBER 27, 2012

No. 1-10-2477

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 15211
	)	
MANUEL O'CAMPO,	)	Honorable
	)	Jorge Luis Alonso,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on defendant's second degree murder conviction affirmed over his claim that the trial court abused its discretion in sentencing him to 18 years' imprisonment.

¶ 2 Following a jury trial, defendant Manuel O' Campo was found guilty of second degree murder, then sentenced to 18 years' imprisonment. On appeal, defendant contends that the trial court abused its discretion in imposing an 18-year sentence when it compared his second degree murder conviction to a first degree murder conviction, and failed to consider the appropriate sentencing factors.

¶ 3 The record shows, in relevant part, that sometime in the late evening hours of Saturday, June 30, 2007, and the morning of July 1, defendant went to Caminos DeMichoacan at 1659 West Cullerton Street, in Chicago, armed with a Beretta .25 caliber semi-automatic pistol. After standing at the bar for about 30 minutes, he went to the bathroom in back where Maria Velazquez, Ricardo Velazquez, Mariana Villanueva, and Sean Kenney were playing pool while Victor Velazquez, Salvador Torres Escobedo, and Juan "Monchi" Orozco[1] looked on. The testimony of six eyewitnesses called by the State at trial established that defendant came out of the bathroom, aimed his gun at Monchi, said his name, and shot him in the head and back before fleeing. The evidence further showed that the victim was unarmed and died of multiple gunshot wounds fired at close range.

¶ 4 Defendant testified that he went to Caminos DeMichoacan on the night in question because he "felt like seeing [his] friends and chilling out for a while." He did not go there to kill Monchi, who, he believed, ordered the December 2004 shooting of his son Jorge Terrazas. However, when he came out of the bathroom that night, Monchi lunged at him and said, "I'm going to kill you." Defendant was afraid, noting that Monchi is a "gangbanger" and had possibly "found out I was investigating what happened to my son," so he pulled out his gun and "didn't want to shoot but the bullet came out." He kept shooting because he was afraid, and threw the gun to the ground after he exited the bar.

¶ 5 Following deliberations, the jury returned a verdict finding defendant guilty of second degree murder. At sentencing, the State called Juanita Pagliuca, the younger sister of Juan Orozco, to testify as a witness in aggravation, then argued, *inter alia*, that defendant had sought revenge for the shooting of his son and took the law into his own hands. The State ultimately requested the maximum 20-year sentence and asserted:

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[1] Orozco's nickname is also spelled "Munchie" in the record.

> "Judge, we know the jury found him guilty of second degree murder, self-defense. But this is more than a self-defense case. This is a man who had rage in him, who had alcohol in him, who had a gun. This should have never happened. He should have never brought that gun in this bar, this would have never happened. He should have never went to the bar in that condition, being drunk and being so upset with the person he knew was going to be there. This could clearly be avoided."

¶ 6 In mitigation, the defense presented the testimony of defendant's son, Manuel O' Campo Jr., who testified, *inter alia*, that his dad "was a responsible man, hard working man, loving, great father," as well as a "good husband" to his mother. Defense counsel then argued, *inter alia*, that "the jury rejected the notion that this was a revenge shooting," that this was defendant's first arrest, and that he has been gainfully employed his entire life. Defendant also spoke in allocution and stated that he felt "really bad about this because I deprived somebody of their life."

¶ 7 The trial court ultimately sentenced defendant to 18 years' imprisonment. In doing so, the court noted that it had considered the evidence at trial, the presentence investigation report, the statutory factors in aggravation and mitigation, the arguments of the parties, and defendant's statement in allocution, which the court noted "was appropriate and did appropriately express remorse, based upon what he did in this case." The court also made the following remarks:

> "Miss Washlow [defense counsel] is correct, we are not here for trial. The trial is over. The jury has spoken. This is a second degree case. The sentencing range, both sides have stated, its 4 to 20, and probation is available. Not only is it available, but it is the preferred sentence under our scheme. And in saying that

> I've looked at the factors in aggravation and mitigation, that includes a lack of criminal history, which is the case here. [Defendant] has no prior arrests even in his background. However, his one arrest is a doozy. During that one arrest he took the life of Mr. Orozco. The jury found him guilty of second degree murder. That is appropriate.
>
> However, it is also appropriate for me to point out that the case is much closer to a first degree murder case than it is to a not guilty self-defense case. I believe that it is appropriate for me to view the case that way and that is the way the case should be viewed. So I believe that in this case probation, a sentence of probation would deprecate the serious nature of this offense and that a sentence of probation would not serve the ends of justice. I think that a sentence much closer to the maximum penalty is appropriate, taking into account the public's interest and all of the other factors that I've taken into account, including the nature and circumstances of the offense itself and the character of the offender, which again before this fateful night was a very solid, good father, hard working man, good family man."

¶ 8 In this appeal from that judgment, defendant contends that the trial court abused its discretion in imposing an 18-year sentence on his second degree murder conviction, claiming that such a sentence is excessive. The State responds that the trial court did not abuse its discretion where the sentence imposed was not disproportionate to the crime, or a departure from the spirit and purpose of the law.

¶ 9 It is well-settled that a reviewing court will not disturb the sentence imposed by the trial court absent an abuse of discretion. *People v. Cabrera*, 116 Ill. 2d 474, 494 (1987). Where, as here, the sentence falls within the prescribed statutory limits, it will not be disturbed unless it is greatly at variance with the purpose and spirit of the law or is manifestly disproportionate to the offense. *Cabrera*, 116 Ill. 2d at 493-94. A sentence will not be found disproportionate where it is commensurate with the seriousness of the crime, and adequate consideration was given to any relevant mitigating circumstances, including the rehabilitative potential of defendant. *People v. Perez*, 108 Ill. 2d 70, 93 (1985).

¶ 10 In seeking a reduction in sentence, defendant maintains that his sentence was excessive in light of the statutory factors in aggravation and mitigation, and discusses the applicability, or inapplicability, of each one to his case. However, the record affirmatively shows that the trial court considered these factors when imposing defendant's sentence. Thus, defendant is essentially asking this court to re-balance the appropriate factors and independently conclude that his sentence is excessive, which is not our function. *People v. Burke*, 164 Ill. App. 3d 889, 902 (1987), citing *People v. Cox*, 82 Ill. 2d 268, 280 (1980).

¶ 11 Defendant's conviction of second degree murder was punishable by a sentence of between 4 and 20 years' imprisonment. 730 ILCS 5/5-8-1(a)(1.5) (West 2006). The 18-year sentence imposed by the trial court fell within this prescribed range and was not disproportionate to the offense where defendant carried a loaded gun into a populated bar on a Saturday night and used it to shoot Monchi, whom he suspected had ordered the shooting of his son, twice in the head and once in the back at close range. Under these circumstances, the trial court could properly conclude that the seriousness of the offense warranted a longer sentence, and we find no abuse of discretion in the term imposed to permit any modification by this court. *People v. Almo*, 108 Ill. 2d 54, 70 (1985).

¶ 12 In reaching this conclusion, we have considered defendant's argument that the trial court abused its sentencing discretion by treating his conviction as tantamount to a first degree murder conviction. Although defendant claims that the court was expressing its disagreement with the jury's verdict, this assertion is not borne out by the record which specifically shows that the trial court found the jury's second degree murder verdict to be "appropriate." Defendant's lengthy argument that first and second degree murder are separate offenses is likewise unavailing where the record shows that the trial court clearly understood this distinction, but commented that the case was "much closer to a first degree murder case" than to a "not guilty self-defense case."

¶ 13 We observe that a trial court's statements at sentencing are not to be considered in isolation. *People v. Hendrix*, 250 Ill. App. 3d 88, 105 (1993). Rather, in considering whether the sentence was proper, a reviewing court should consider the record as a whole. *People v. Ward*, 113 Ill. 2d 516, 526-27 (1986).

¶ 14 Doing so here, it is apparent that the court's comments reflected the seriousness of defendant's actions in shooting an unarmed man multiple times at close range in a public place before fleeing. Although defendant had no prior criminal record, a fact acknowledged by the court, it ultimately determined that the circumstances required a substantial sentence. Based on the record before us, we find no abuse of discretion in the term imposed (*People v. Luna*, 409 Ill. App. 3d 45, 53 (2011)), and thus affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.