

No. 1-11-1720

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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. 09 CR 14946
)	
JASON RANGE,)	Honorable
)	Maura Slattery-Boyle,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

ORDER

¶ 1 **Held:** No abuse of discretion by the trial court in ordering consecutive sentences, and imposing a 14-year term on defendant's involuntary manslaughter conviction; four-year term of MSR imposed on defendant's aggravated domestic battery conviction reduced to two years.

¶ 2 Following a bench trial, defendant Jason Range was convicted of involuntary manslaughter of a household member and aggravated domestic battery, then sentenced to respective, consecutive terms of 14 and 3 years' imprisonment. On appeal, he contends that the trial court abused its discretion in imposing consecutive sentences, that the 14-year term for involuntary manslaughter was excessive, and that the four-year mandatory supervised release

(MSR) term imposed on his aggravated domestic battery conviction should be reduced to two years.

¶ 3 Defendant was charged, in relevant part, with the aggravated domestic battery of his then wife, Tara Williams, and the murder of five-week-old Jeremiah Williams. Jeremiah was the biological son of Williams and D'Angelo Smith, whom Williams had an affair with while married to, but separated from, defendant. The incident giving rise to the criminal charges filed in this case occurred in the late evening hours of July 26, 2009, when defendant attacked Williams, stabbed her with a knife, and ultimately kicked her down an outside staircase as she carried Jeremiah which resulted in Jeremiah falling three stories to his death.

¶ 4 The evidence adduced at trial revealed that Tara Williams and defendant were married, and had two children, David and Angel. They lived in the third floor apartment of a building owned by defendant's mother, Monica Range, at 249 South Maryland Avenue in Chicago. They separated in 2008, and in the fall of that year, Williams became pregnant by D'Angelo Smith. She immediately told defendant of this, he still wanted to try to work it out, but she ended her relationship with Smith in November 2008. In February 2009, Williams decided that she no longer wanted to be married to defendant, who was then incarcerated, and gave birth to Jeremiah in June 2009.

¶ 5 The evidence further showed that defendant planned a birthday party for his son David on July 26, 2009, at Monica's home. Williams dropped off David, Angel and Jeremiah there, then went to the home of Lee Fountain, whom she was dating. While there, defendant called to have her pick up the children.

¶ 6 During the evening of July 26, 2009, defendant called Williams again. He was upset and angry because she had not picked up the children, and threatened her. When she finally had access to a car, Williams and Fountain picked up Smith for further protection, and arrived at

Monica's around 10 p.m. Williams exited the car with Smith and Fountain, and as they were walking up the outside stairs to defendant's third-floor back porch, Williams heard defendant ask from the top of the stairwell, why she brought these men with her.

¶ 7 Williams entered the home while Smith and Fountain stayed on the porch, and defendant confronted her in the back bedroom angry. He asked her why she brought the two men over, then placed her in a choke hold. As he held her, he asked her why she did not come to the birthday party. About 15 minutes after defendant entered the room, defendant's sister, Tamika, knocked on the door, and told him that Smith and Fountain wanted Williams to hurry up. Williams then went to the bathroom, and when she exited, defendant pulled out a knife, and swung it at her. As she tried to block it, she was stabbed in the arms, and screamed. Smith and Fountain entered the home, and defendant told them to leave, but they would not do so. At that point, Monica and Tamika were in the kitchen with Smith, Fountain, and defendant. Smith told Monica and Tamika that Jeremiah was his son, and they acted "[s]urprised." Defendant then tried to stab Fountain, and Smith wrestled him for the knife. While the fight continued, Monica told Williams to call police.

¶ 8 Williams did so, and when she returned to the kitchen, she noticed that Smith and Fountain were no longer there. Williams grabbed the baby who was in a car seat, but not strapped in. As she began to walk down the outside stairwell, defendant kicked her in the back and she "roll[e]d" down eight steps. When she looked up, she saw Jeremiah in midair falling down three flights of stairs then landed "[o]n the concrete in the grass." Defendant ran down the stairs, handed the baby to Williams, then left. Jeremiah was taken to the hospital and pronounced dead later that day.

¶ 9 Defendant called police several times, and repeatedly told them he would turn himself in, but then failed to do so. On July 29, 2009, an "alert issued with probable cause," and he was arrested later that day.

¶ 10 During closing arguments, defense counsel maintained that when Smith told defendant on July 26, 2009, that he was the father of Jeremiah, it was "a complete surprise" to him. Counsel argued that emotions escalated when a strange man in defendant's home told him that he was the father of the child that defendant had thought was his own.

¶ 11 The court found defendant guilty of aggravated domestic battery of Williams and the second degree murder of Jeremiah. In entering its findings, the court noted that this was a "very emotional case," where intense feelings had "escalated," when defendant and his family found out that he was not the father of Jeremiah. The court determined, however, that the evidence showed that defendant kicked Williams down the stairs, and that he was proved guilty of second degree murder.

¶ 12 Defendant filed a motion for a new trial, and prior to hearing arguments on that motion, the court reversed its prior ruling of second degree murder and entered a finding of involuntary manslaughter of a household member. In doing so, the court noted that defendant believed Jeremiah was his own child and had lived with him for a period of time. The court subsequently found that its rulings were correct, and denied defendant's motion.

¶ 13 At sentencing, Williams' victim impact statement was read in court, and defendant presented three mitigation witnesses. Madaree Eiland and Tanisha King testified that defendant was a loving and supportive father, and defendant's mother testified that defendant took care of all three of his children.

¶ 14 Defendant spoke in allocution, stating that this incident has been "real hard on me, sleepless nights, and I'm just -- I've been scared and I've been going through a whole lot." He

further stated that the whole situation could have been a lot worse. The court then interrupted defendant, stating that it could not fathom how the situation could be any worse. Defendant then apologized for his wrongdoing.

¶ 15 The court stated that it had no doubt that defendant was sorry, and at the time may have been discovering that he was not the father. The court noted, however, that although defendant does not have a repeated pattern of continuous violence, he has a history of anger and domestic violence issues. The court further noted that defendant did not intend the crime.

¶ 16 In aggravation, the State pointed out that after the baby fell three flights of stairs, defendant fled. The State maintained that this showed that he thought of himself instead of calling police, and did so again during allocution.

¶ 17 Defense counsel informed the court that defendant was a good father, and has worked in the past and is trying to go to culinary school to get a job to support his family. Counsel also indicated that defendant now has mental problems including depression.

¶ 18 The court sentenced defendant to 14 years' imprisonment for involuntary manslaughter and 7 years' imprisonment for aggravated domestic battery. In doing so, the court stated that defendant had a lot of good and bad qualities. The court noted that it took into account who defendant was, what happened and the end result of the baby "being taken from this world," and the pain this has caused everyone involved.

¶ 19 The mittimus that issued indicated that the sentences were concurrent, but the court corrected it the next day to reflect consecutive sentences. Defendant filed a motion to correct the mittimus to reflect concurrent sentences, alleging that the court did not indicate at sentencing that the sentences were consecutive, and that consecutive sentences are not necessary in his case as there is no need to protect the public because this case was an isolated incident. He further maintained that the court did not adequately consider his rehabilitative potential, and that he was

dealing with an extremely emotional situation when he first learned from Smith that he was the biological father of Jeremiah.

¶ 20 The court found that consecutive sentencing was appropriate, and noted that it had considered defendant's rehabilitative potential and that he was a caring father in setting the terms. The court explained that consecutive sentencing was appropriate because defendant's rage posed a public safety issue, and that his rage "transpired" from one person, Williams, to another, the baby. The court, however, reduced the sentence on the domestic battery offense to three years.

¶ 21 Defendant filed a motion to reconsider his sentence alleging that the 14-year term for the involuntary manslaughter offense does not adequately take into account his "bereavement" for the offense, that he has no prior felony convictions, his work history, and his character. Defendant also noted that his actions were provoked by Smith and Fountain barging into his home, and without this factor, the whole array of events could have been avoided.

¶ 22 The court denied the motion to reconsider sentence. In doing so, the court noted that it had taken "rehabilitative nature" into account, and that he was an involved father and loved the baby, but that defendant has this never ending rage that does not seem to be contained.

¶ 23 In this appeal from that judgment, defendant first contends that the trial court abused its discretion in imposing consecutive sentences. He maintains that the unique circumstances of the incident did not support the finding that consecutive sentencing was necessary to protect the public.

¶ 24 Section 5-8-4(c)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(c)(1) (West 2010)) allows the trial court to impose consecutive sentences where, considering the nature and circumstances of the offense and the history and character of defendant, it finds consecutive sentences necessary to protect the public from further criminal conduct by defendant. Although consecutive sentences are to be imposed sparingly (*People v. O'Neal*, 125 Ill. 2d 291, 298

(1988)), the trial court has wide discretion to impose a consecutive sentence, and a reviewing court will not interfere with its decision absent an abuse of discretion (*People v. Carroll*, 260 Ill. App. 3d 319, 350 (1992)).

¶ 25 In this case, defendant maintains that consecutive sentencing is unwarranted because the underlying facts from which the offenses arose was unique, and does not demonstrate that society needs protection from him. He claims that the court ignored that his conduct was a singular occurrence, and that the emotionally charged incident was the culmination of a number of humiliating events, including the "continuous cuckoldry" of Williams, who had affairs with the two men she brought to his residence, and where Smith identified himself as the father of Jeremiah in front of defendant's mother and sister, who were unaware of this.

¶ 26 Our review discloses no abuse of discretion by the trial court in sentencing defendant to consecutive terms of imprisonment. The record clearly showed that the court considered the appropriate factors, noted defendant's propensity for domestic violence, and his easy rage, which led to the violent nature of the offense perpetuated against Williams, that, in turn, led to the baby's death. These factors support the court's determination that defendant's conduct posed a public safety issue, requiring a consecutive term to protect the public from further conduct by defendant. *Carroll*, 260 Ill. App. 3d at 350-55. Accordingly, we cannot say that the court abused its discretion in imposing consecutive sentences. *People v. Kyle*, 194 Ill. App. 3d 827, 829 (1990); *People v. Sanders*, 168 Ill. App. 3d 295, 312 (1988).

¶ 27 Defendant maintains, nonetheless, that the court failed to consider his bipolar disorder, and spotless criminal history when imposing consecutive sentences. In the absence of evidence to the contrary, we generally presume that the trial court considered mitigating evidence before it. *People v. Burnette*, 325 Ill. App. 3d 792, 808 (2001), citing *People v. Burton*, 184 Ill. 2d 1, 34

(1998). We find no exception here where there is nothing in the record to show that the court failed to consider the mitigating factors before it. *Burnette*, 325 Ill. App. 3d at 808.

¶ 28 To the contrary, the court specifically noted that it had considered defendant's rehabilitative potential, and that he was a caring father. The record also shows, however, defendant's history of domestic violence, including punching Williams, poking her with a knife, and dragging her by the hair, and although his bipolar disorder is noted in the interview of him for the presentence investigation report, defendant did not particularly argue this factor to the court as a possible explanation for his behavior. Thus, his assertion is unfounded.

¶ 29 Defendant further maintains that the court could not properly consider his prior acts of domestic violence because it granted his motion to exclude other crimes evidence at the start of trial, and it was thus *de hors* the record. The granting of the motion to exclude other crimes evidence pertained to what can be admitted at trial, but not at sentencing where the ordinary rules of evidence are relaxed, the source and type of admissible evidence is virtually without limits, and may include the manner in which the victim's death was brought about, as well as the seriousness, nature and circumstances of the offense. *People v. Sims*, 403 Ill. App. 3d 9, 23 (2010). Defendant's commission of other crimes or acts of misconduct even though he was not prosecuted or convicted of such may also be included. *People v. Hudson*, 157 Ill. 2d 401, 452-53 (1993); *People v. Blanck*, 263 Ill. App. 3d 224, 234 (1994). Accordingly, we find defendant's contention without merit.

¶ 30 Defendant also maintains that the court incorrectly recalled that he first learned that he was not the biological father of Jeremiah during the incident, and thus wrongly concluded that his inability to accept this showed that he was "given to rages." We observe that the court indicated that it was unsure as to whether defendant learned then, for the first time, that he was not the biological father of Jeremiah. At trial, defendant particularly defended on the fact that he

first learned that he was not the baby's father during the incident, and that the incident happened in the heat of the moment, with no intent to harm. The court partly based its findings on this defense presented by defendant, and he cannot now claim that it was in error. *People v. Abston*, 263 Ill. App. 3d 665, 671 (1994); *People v. White*, 25 Ill. App. 3d 391, 395 (1974).

¶ 31 In reaching this conclusion, we have reviewed the cases cited by defendant, *People v. Gray*, 121 Ill. App. 3d 867 (1984), *People v. Powell*, 159 Ill. App. 3d 1005 (1987), *People v. Berry*, 175 Ill. App. 3d 420 (1988), and *People v. Rucker*, 260 Ill. App. 3d 659 (1994), and find them distinguishable. In *Gray*, defendant's consecutive sentences were modified to run concurrently where he had no criminal record, and an "excellent past record." *Gray*, 121 Ill. App. 3d at 872-73. In *Powell*, defendant's consecutive sentences were modified where he had no prior criminal conduct and a "very good" personal record. *Powell*, 159 Ill. App. 3d at 1012. Here, unlike *Gray* and *Powell*, defendant does not have an excellent or even a "very good" past personal record where he committed numerous acts of violence against Williams, and had a myriad of prior arrests.

¶ 32 In *Berry*, defendant was convicted of voluntary manslaughter based on serious provocation from the victim, who confronted him and told his girlfriend details of their affair, and the trial court imposed consecutive sentences for voluntary manslaughter and an unrelated theft offense. The reviewing court reversed noting that the nature and circumstances of the crime, did not indicate a need to protect the public. *Berry*, 175 Ill. App. 3d at 423-24, 428, 431. This case, unlike *Berry*, was based on defendant's history of domestic violence and propensity to rage, which was manifest in his actions transferred from Williams to the baby in her arms. Under these circumstances, we cannot say that the court's determination that defendants' conduct posed a public safety issue requiring a consecutive term was erroneous, and thus find *Berry* distinguishable.

¶ 33 In *Rucker*, defendant was convicted of two counts of armed robbery and sentenced to consecutive prison terms, which were modified on appeal to run concurrently where defendant was 17 years old, had no juvenile history, and was cajoled to participate in the offenses planned by his co-offender. *Rucker*, 260 Ill. App. 3d at 660, 662-63. Here, where unlike *Rucker*, defendant has a history of domestic violence, a violent juvenile record (battery) and was the sole participant of the instant crime, we find no abuse of discretion in the imposition of consecutive sentences. *People v. Sanders*, 356 Ill. App. 3d 998, 1009-10 (2005).

¶ 34 Defendant next contends that the court abused its discretion in imposing a 14-year sentence for involuntary manslaughter. He maintains that this sentence was excessive, brutally harsh, and did not reflect his rehabilitative potential.

¶ 35 There is no dispute that the 14-year sentence imposed fell within the statutory range for this offense of involuntary manslaughter of a household member. 720 ILCS 5/9-3(a), (f) (West 2010). As a result, we may not disturb that sentence absent an abuse of discretion. *People v. Bennett*, 329 Ill. App. 3d 502, 517 (2002).

¶ 36 Although defendant claims that the court failed to adequately consider a number of mitigating factors, in the absence of evidence to the contrary, we presume that the trial court considered the mitigating evidence before it. *Burnette*, 325 Ill. App. 3d at 808. As noted above, defendant's claim is belied by the record where the court specifically noted consideration of defendant's rehabilitative potential, lack of an adult criminal history, and that he was a caring father. The court was not required to give greater weight to defendant's rehabilitative potential than to the seriousness of the offense (*People v. Phillips*, 265 Ill. App. 3d 438, 450 (1994)), and, here, we are satisfied that the court considered the factors presented. Accordingly, we find no abuse of discretion in the sentence imposed for the involuntary manslaughter conviction, and

thus have no cause for interfering with the sentencing determination entered by the court. *People v. Almo*, 108 Ill. 2d 54, 70 (1985).

¶ 37 Defendant also contends that the discord between his 3-year sentence for domestic battery and his 14-year sentence for involuntary manslaughter suggests an abuse of discretion where domestic battery has a more culpable *mens rea*. In addition, he claims that the court wrongly considered as a sentencing factor the loss of life involved, which is implicit in every homicide.

¶ 38 We observe that the severity of a sentence depends upon the degree of harm to the victim which may be considered as an aggravating factor in determining the length of a sentence, even in cases where death is arguably implicit in the offense. *People v. Saldivar*, 113 Ill. 2d 256, 269 (1986). Here, any reference to the baby's death was minimal, and there is no indication that a harsher sentence was imposed because it was mentioned. *People v. Luna*, 409 Ill. App. 3d 45, 51 (2011). Rather, the sentence reflected proper consideration of the aggravating and mitigating factors, and we find no abuse of discretion in the term imposed. *Luna*, 409 Ill. App. 3d at 53.

¶ 39 Defendant finally contends, the State concedes, and we agree that his MSR term for aggravated domestic battery should be reduced from four-years to two-years. Public Act 96-282 increased the two-year MSR term for aggravated domestic battery to four years, effective January 1, 2010 (730 ILCS 5/5-8-1 (d)(6) (West 2010)). The offense at bar took place in 2009, and defendant is therefore entitled to be sentenced under the law as it existed at the time it was committed. *People v. Mescall*, 403 Ill. App. 3d 956, 964 (2010). Accordingly, we reduce the MSR term for his aggravated domestic battery offense to two years.

¶ 40 In light of the foregoing, we affirm the judgment of the circuit court of Cook County, and order his MSR term for aggravated domestic battery offense to be reduced to two years.

¶ 41 Affirmed, as modified.