SIXTH DIVISION
November 8, 2013

No. 1-12-0381

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. 08 CR 12598
	)	
DENILO SOLIS,	)	Honorable
	)	Thomas V. Gainer,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice REYES concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on defendant's convictions of first degree murder, aggravated criminal sexual assault, and aggravated cruelty to animals, affirmed over claims that sentence was excessive, that court mistakenly believed that he was eligible for an extended sentence on certain counts, and that the evidence was insufficient to sustain his conviction for aggravated cruelty to animals.

¶ 2 Following a bench trial, defendant Denilo Solis was found guilty of seven counts of first degree murder, four counts of aggravated criminal sexual assault, and one count of aggravated cruelty to animals, then sentenced to an aggregate term of 120 years' imprisonment. On appeal,

defendant contends that his sentence is excessive in light of the mitigating factors presented, and that he was denied his right to a fair sentencing hearing when the trial court mistakenly believed that he was eligible for an extended term on his aggravated criminal sexual assault convictions. He also challenges the sufficiency of the evidence to sustain his conviction for aggravated cruelty to animals.

¶ 3 The evidence adduced at trial showed that, on June 16, 2008, defendant and Victor Sinchi were renovating the basement apartment of the three-flat building at 7232 South Coles Avenue in Chicago. The 71-year-old victim, Dorothy Brown Taylor, lived in the first-floor apartment of that building with her small dog.

¶ 4 Taylor's goddaughter, Sandra Lane, testified that she came to Taylor's apartment about 9 a.m. to borrow her car. After having coffee with Taylor, Lane went outside and attempted to start the car, but was unable to do so. Defendant offered to help, but Lane declined and opted to call her brother instead. When Lane went inside to call her brother, she saw defendant in the apartment engaged in what appeared to be a civil conversation with Taylor, who was showing him photographs of her son.

¶ 5 Lane's brother arrived just before noon, and was able to jump-start the car. Gerald Floyd, the owner of the property, also arrived, and approached Lane with a pair of eyeglasses and asked if they belonged to Taylor. Lane recognized the eyeglasses as those worn by Taylor that morning, and went into the apartment to look for her, but could not find Taylor or her dog.

¶ 6 Thinking that Taylor might have taken her dog for a walk, Lane decided to drive around the neighborhood and look for her. When she was a few blocks away, Floyd pulled up alongside Lane and told her to return to the apartment. She followed Floyd back to the building, where they found Taylor's body in the basement apartment. Taylor was lying on the floor with her dress around her waist and her underwear around her knees, and her dog was lying nearby in a

pool of blood. Lane observed that Taylor was not breathing, and checked for, but could not find, a pulse. She called 911, and emergency personnel came to the apartment and pronounced Taylor dead at the scene.

¶ 7 Sinchi testified that, in 2008, he and defendant worked for "Precision Construction," a company owned by defendant's brother-in law, Miguel Solis. On June 16, 2008, he and defendant were renovating the basement apartment at 7232 South Coles Avenue. When he arrived there that morning, he saw defendant, who appeared to be drunk, sitting in a chair outside the apartment smoking a cigarette and drinking from a silver flask. Thereafter, Sinchi received a phone call from Mercy Solis, his boss's wife, who told him he was fired. Sinchi gathered his tools, and left the worksite about 11:30 a.m. As he was leaving, he saw defendant and Taylor inside the basement apartment where defendant was showing Taylor the cabinets that were being installed.

¶ 8 Gloria Nunez testified that, at the time of the incident, she and defendant were in a relationship and living together. On Monday afternoon, June 16, 2008, defendant came to her workplace and told her that he needed to speak to her. She could not talk to him at that time so defendant left, but returned within an hour, again indicating that he needed to speak to her. Nunez got permission to leave, and went out to her car to talk to defendant. She observed scratches on his face and neck, and saw that he was crying, and was "very distressed." When she asked him what happened, defendant replied that he had done "something bad" and that the police were "probably after him."

¶ 9 Over the next three days, Nunez repeatedly asked defendant what had happened but he refused to provide more detail. On June 19, 2008, defendant finally told her that he had raped, strangled, and "killed a lady[,]" who he described as about 60 years old. He explained that, before killing her, he accidentally stepped on the woman's dog, and she became upset and

scratched him. Defendant said that he was having suicidal thoughts that morning, and thought that "by doing what he did it was going to be easier for him to kill himself." He also told Nunez that he wanted to turn himself in to police, but did not know how to do it.

¶ 10 The next day, Nunez spoke to her family about the situation, and her brother called the police. Nunez met with two police officers, told them what she had learned, and took them to defendant, who was in the van he and Nunez had been staying in since the incident. The officers arrested defendant, but he did not confess to them at that time.

¶ 11 The parties stipulated to the testimony given by Chicago police officer Steven Lipkin at the hearing on defendant's motion to suppress statements. Officer Lipkin testified therein that he and another officer spoke to Nunez, who told them that defendant had killed someone. Nunez brought the officers to the van, and the officers ordered defendant out. Upon exiting, defendant was placed in handcuffs and briefly conversed with Nunez, who told him that he had to tell the officer that he was "the person wanted on this case[.]" Officer Lipkin then told either defendant or Nunez that he had "to hear it from him," and defendant stated "I killed her." The officers placed defendant under arrest and read him his *Miranda* rights.

¶ 12 Doctor Ponni Arunkumar testified that she was the assistant medical examiner who performed the post-mortem examination on the victim. The State introduced various photographs of Taylor's body and Dr. Arunkumar identified internal and external injuries, including abrasions and tears to Taylor's vaginal and anal areas, a neck fracture, dislocated and fractured vertebrae, and abrasions on her fingers that she described as consistent with defensive wounds. She also noted that the color of the injuries to Taylor's vaginal and anal areas indicated that they had been sustained prior to her death. Dr. Arunkumar further testified that when she received Taylor's body, her dog was also inside the body bag. She identified a photograph of the dog introduced by the State, and stated that the dog had blood in its "head area[,]" and that X-

rays revealed that it had sustained skull fractures.

¶ 13 Meredith Misker testified as an expert in forensic biology and DNA analysis. She identified the presence of semen on vaginal and anal swabs taken from Taylor's body. She also conducted a DNA analysis and developed DNA profiles of Taylor, Sinchi, and defendant, and concluded that the DNA identified on the vaginal and anal swabs matched defendant's DNA profile, but did not match Sinchi's. She testified that the profile identified would be expected to occur in approximately one in 24 quadrillion black, one in 4.1 quadrillion white, or one in 1.8 quadrillion Hispanic unrelated individuals.

¶ 14 In closing, the defense argued that the murder was not premeditated, and that defendant "was in a very bad state" and "lost it." The defense contended that defendant had accidentally stepped on Taylor's dog, she attacked him, and he "reacted." The trial court, however, disagreed and found defendant guilty of the charged offenses. In doing so, the court stated:

> "It has been suggested to the court that the defendant accidentally stepped on the dog which caused the victim to strike out at the defendant and scratch him on the face. The picture of the scratch on the face is [depicted in] Defense Exhibit 4 and Defense Exhibit 5. This scratch, if you will, is a very minor scratch. ***
>
> The key to this case is rage. This defendant didn't accidentally step on this dog. This defendant crushed the dog's skull. He fractured the dog's skull and killed the dog. He then turned his rage for whatever reason on Ms. Taylor or he did so simultaneously. This beating that Ms. Taylor suffered was extremely brutal, exceptionally brutal. ***

> I reviewed all the pictures that were identified by Dr. Arunkumar. And this was a savage, savage, brutal beating. *** The beating that she suffered must have been horrendous.
>
> So this is not the action of someone who is trying to defend himself to [sic] an injury inflicted on him by this five-foot three-inch, 114-pound, 71 year old woman. This was an act of rage. For whatever reason he engaged in it, he did so knowingly and intentionally. He beat this woman to death. He raped her anally and vaginally. He killed her dog. He is guilty of all counts in this indictment."

¶ 15 At sentencing, Lane read a victim impact statement written by Derrick Taylor, the victim's son. In that letter, Derrick expressed the different ways in which the defendant's "senseless crime" had affected him and his family.

¶ 16 In mitigation, the defense called Diana Fernandez, a "mitigation specialist" hired when the State was seeking the death penalty before its abolishment in Illinois. Fernandez stated that she had traveled to Ecuador and prepared a report based on interviews with defendant, members of defendant's family, and others who knew him. She stated that defendant had suffered extensive abuse and neglect as a child, had a history of alcohol abuse and self-harm, and was fearful of dogs because his father had forced him to shoot his pet dog when he was a child.

¶ 17 Defendant reported to Fernandez that the first time he came to the United States, he traveled by boat with 300 people, some of whom died on the trip. After arriving in the United States, defendant sent money home to his family for their support and to help them purchase a plot of land. Thereafter, his father died, and defendant returned to Ecuador. While in Ecuador, defendant observed that a family member had squandered the money he had been sending. He

also reported receiving a head injury during this trip after he was beaten by a mob for coming to the defense of "the town drunk." After the beating, family members reported that defendant started exhibiting bizarre behavior, including multiple incidents in which he was found asleep naked near a creek behind his uncle's home. Defendant also told Fernandez that during his return trip to the United States, he protected a young woman who was crossing over with him from being raped by older men.

¶ 18 In aggravation, the State requested a sentence of natural life imprisonment, arguing that the murder "was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty." It asserted that the age of the victim, the fact that the murder occurred during the course of another felony, and "the brutalizing or torture of humans or animals[,]" dictated a severe sentence. The State also noted that much of the mitigation testimony provided by Fernandez was unconfirmed, as it had been "self-reported" during interviews with defendant.

¶ 19 The defense asked the court not to sentence defendant to natural life imprisonment. Counsel stated that defendant had suffered years of abuse, and that he had no prior history of delinquency or criminal activity. Counsel argued that the murder was caused by "a spontaneous, sudden and intense passion" and was unlikely to recur. In allocution, defendant stated that he wished Taylor's son were there so he could "apologize to him for all of the damage that I caused him."

¶ 20 In announcing its sentencing decision, the court noted that defendant had no prior criminal history, and that the conduct was unlikely to recur. It found, however, that the nature of the injuries was "such that he was obviously enraged at the time he was performing the acts he was performing." The court noted Lane's testimony that defendant was interacting with the victim in her apartment, and stated, "I think that when he found the opportunity, he took Ms. Taylor into the basement, forced himself upon her and murdered her viciously. *** He not only

choked her to death. He broke her neck. He snapped her neck. This was a very, very violent attack."

¶ 21 The court acknowledged that defendant "had a difficult childhood[,]" but noted that many young people who grew up in similarly difficult circumstances "grabbed themselves up by the bootstraps and made something of their lives without resorting to the type of outrageous, despicable behavior that has [been] evidenced in this case." The court further observed that "there are times according to the report and the testimony of Ms. Fernandez where the defendant was able to right the ship, if you will. This defendant apparently at some point after working in the United States was sober enough, diligent enough and hard working enough to amass a sum of money that he sent home to his family[.] *** The picture that is painted of him while bleak is not quite as bleak as [Fernandez] and the defense and [defendant] would have us believe. He was obviously capable of compassion when for days he sheltered a 21-year-old woman [during the border crossing]."

¶ 22 The court explicitly noted that, in making its sentencing decision, it considered all the factors in aggravation and mitigation, the testimony at sentencing, the Presentencing investigation report, the "brutality of the crime[,]" the age of the victim, and defendant's statements in allocution. The court stated that it considered defendant's lack of prior delinquency or criminal activity as a factor in mitigation, and that it "looked at everything in the [mitigation] report[.] *** I read it cover to cover."

¶ 23 The court declined the State's request to sentence defendant to natural life, and imposed a term of 70 years' imprisonment on the murder counts, consecutive 25-year terms on each of the two aggravated criminal sexual assault counts, and a concurrent three-year term on the animal cruelty count, for an aggregate term of 120 years' imprisonment. The court denied defendant's motion to reconsider that sentence, and defendant appealed.

¶ 24 In this court, defendant contends that his sentence should be reduced to "something closer to the minimum[,]" or, in the alternative, that this court should remand for resentencing. He asserts that the 120-year sentence was excessive because the court failed to adequately consider certain factors in mitigation, including his abusive childhood, his lack of a prior criminal history, and the low likelihood that his conduct would recur.

¶ 25 The imposition of sentence is a matter of judicial discretion, and the trial court's sentencing decision is entitled to great deference and weight. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). Where a sentence falls within the statutory range for the offense of which defendant was convicted, a reviewing court may not modify that sentence absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). These principles recognize the trial court's superior position to determine the appropriate sentence based on its personal observation of defendant and the proceedings, and its opportunity to weigh the relevant sentencing factors including defendant's credibility, demeanor, moral character, mentality, social environment, habits and age. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). Where mitigation evidence is before the court, it is presumed the court considered that evidence absent some contrary indication other than the sentence imposed. *People v. Smith*, 214 Ill. App. 3d 327, 339 (1991) (citing *People v. Willis*, 210 Ill. App. 3d 379 (1991)).

¶ 26 Here, the sentences imposed by the court clearly fall within the sentencing ranges provided for the offenses committed. 730 ILCS 5/5-8-2 (West 2008); 720 ILCS 5/9-1(a) (West 2008); 720 ILCS 5/12-14 (West 2008); 510 ILCS 70/3.02 (West 2008). Although defendant claims that the aggregate sentence was imposed without proper consideration of certain mitigating factors, the record reveals otherwise. *People v. Burke*, 164 Ill. App. 3d 889, 890 (1987). The transcript of the sentencing hearing clearly shows that the court specifically considered the PSI, the mitigation report, and the factors in aggravation and mitigation. It also

spoke to defendant's "difficult childhood," his lack of criminal history, and the fact that his conduct was unlikely to recur. The court also noted, however, the victim's age and the extreme brutality of the crime. It is not our prerogative to rebalance the same factors differently and independently conclude that the sentence imposed by the court is excessive. *Burke*, 164 Ill. App. 3d at 902. Under the circumstances revealed in the record, we find no abuse of discretion in the sentence imposed, and thus have no basis to disturb it. *People v. Almo,* 108 Ill. 2d 54, 70 (1985).

¶ 27 Defendant disagrees, and contends that the court considered the evidence of defendant's difficult childhood and his prior efforts in maintaining a productive life as aggravating instead of mitigating factors. He argues that the court's comments about other young people with difficult upbringings who were able to pull "themselves up by the bootstraps" and refrain from "the type of outrageous despicable behavior that was evidenced in this case" showed that the court "held it against" defendant that he was not able to compensate for his difficult childhood. He similarly claims that the court's comments regarding the times defendant had been able to "right the ship" show that the court thought that, "because he was able to do some things right, it makes it that much worse that he failed to do so in this case." We find defendant's arguments unpersuasive.

¶ 28 The court's comments were not improper, and reflect the serious consideration it was giving to the factors presented in mitigation. The court acknowledged defendant's difficult childhood and prior good conduct in deciding the proper sentence, but found that those factors did not excuse the extreme and brutal conduct he exhibited in this case. As such, the comments reflected the court's consideration of the seriousness of the crimes perpetrated by defendant, an important and proper factor in fashioning a sentence. *People v. Gutierrez*, 402 Ill. App. 3d 866, 902 (2010).

¶ 29 Defendant next challenges the 25-year sentences imposed on each of his aggravated criminal sexual assault convictions. He claims that the sentences were based on a mistaken

belief that he was eligible for an extended sentence on those counts. He concedes that the 25-year sentences imposed "fall within the non-extended sentencing range for those offenses[,]" but claims that "even if a sentence imposed under a wrong sentencing range fits within a correct sentencing range, the sentence must be vacated due to the trial court's reliance on the wrong sentencing range in imposing the sentence." *People v. Owens*, 377 Ill. App. 3d 302, 305-06 (2007). The State agrees that the trial judge incorrectly indicated the range of sentences for the aggravated criminal sexual assault convictions, but asserts that the ultimate sentences imposed did not include extended terms, and there is no evidence in the record to demonstrate that the court relied on the mistaken belief or used it as a reference point in fashioning defendant's sentence.

¶ 30 Defendant acknowledges his forfeiture of this issue by failing to include it in his motion to reconsider sentence, but requests that we review it under the second prong of the plain error rule. The plain error rule is a narrow exception to the forfeiture rule which allows a reviewing court to consider unpreserved claims of error where defendant shows either that the evidence is closely balanced, or the error is so serious that it affected the fairness of his trial and challenged the integrity of the judicial process. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Under both prongs, defendant bears the burden of persuasion, and he must first show that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. If defendant fails to meet his burden, his procedural default will be honored. *Hillier*, 237 Ill. 2d at 545.

¶ 31 A trial court's misstatement of the minimum sentence necessitates a new sentencing hearing only when it appears that the mistaken belief arguably influenced the sentencing decision. *People v. Eddington,* 77 Ill. 2d 41, 48 (1979). This standard also applies to cases in which the trial court mistakenly believes that defendant is eligible for an extended-term sentence. *People v. Hill,* 294 Ill. App. 3d 962, 970 (1998). In considering whether a mistaken

belief influenced the trial court's sentencing decision, we look to whether the trial court's comments show that the court relied on the mistaken belief or used the mistaken belief as a reference point in fashioning the sentence. *People v. Quinones,* 362 Ill. App. 3d 385, 398 (2005). A trial judge is presumed to know the law and apply it properly, and this presumption may be overcome only by an affirmative showing to the contrary in the record. *People v. Howery*, 178 Ill. 2d 1, 32 (1997).

¶ 32 During sentencing, the court engaged in a colloquy with the State regarding which of defendant's 12 convictions would merge, which he would be sentenced on, and what was the possible sentencing ranges for those convictions. The State noted that the death penalty was no longer available in Illinois, and addressed the possibilities for natural life imprisonment, or an extended term sentence on the murder conviction. Regarding the aggravated criminal sexual assault convictions, the court and the State then discussed defendant's eligibility for extended term sentences because of the age of the victim, which would increase the maximum sentence to 60 years.

¶ 33 Defendant claims here that this was incorrect because he was not eligible for extended term sentences on these counts where the victim's age served as the aggravating factor that elevated the charge from simple to aggravated criminal sexual assault, and because he was sentenced to an extended term for first degree murder. He contends that the above-referenced colloquy shows that the court relied on a misapprehension of the available sentences when sentencing him, and that accordingly, he must be awarded a new sentencing hearing.

¶ 34 When these comments are analyzed in context, it is apparent that the court was merely exploring the available sentencing options for the crimes of which defendant was convicted, and misstated defendant's extended term eligibility for aggravated criminal sexual assault under the facts of this case. However, when the court pronounced its sentencing determination, it did not

refer to, nor is there any indication that it relied on or otherwise used, the extended-term range as a reference point in deciding the term for these offenses, and, as defendant concedes, the court actually imposed a sentence within the proper non-extended range for the two Class X felonies. We thus have no reason to believe that the court's misstatement arguably influenced its sentencing decision (*Quinones,* 362 Ill. App. 3d at 399), or that it adversely effected defendant's sentence (*People v. Martinez*, 371 Ill. App. 3d 363, 382 (2007)). Accordingly, we find no error rising to the level of plain error to excuse defendant's forfeiture of this issue. *People v. Bair*, 379 Ill. App. 3d 51, 60 (2008).

¶ 35 Defendant finally contends that the evidence was insufficient to sustain his conviction for aggravated cruelty to animals because the State did not present any evidence that he had intentionally harmed the dog. The State asserts that the circumstantial evidence showed defendant's intent, and that the evidence showing Taylor's "violent and horrific" murder leads to a reasonable inference that defendant's rage was similarly directed at her dog.

¶ 36 When a defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). The trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Ross*, 229 Ill. 2d 255 (2008). Whether defendant had the requisite intent for the offense is a question for the trier of fact and its determination will not be disturbed on review unless a reasonable doubt exists as to defendant's guilt. *People v. Maggette*, 195 Ill. 2d 336, 354 (2001).

¶ 37 To sustain a conviction for aggravated cruelty to animals in this case, the State was required to prove beyond a reasonable doubt that defendant intentionally committed an act that

caused Taylor's dog to suffer serious injury or death. 510 ILCS 70/3.02 (West 2008). Intent can rarely be proved by direct evidence, but may be demonstrated through circumstantial evidence inferred from the surrounding circumstances (*People v. Witherspoon*, 379 Ill. App. 3d 298, 307 (2008)), or the character of defendant's acts (*People v. Foster*, 168 Ill. 2d 465, 484 (1995)).

¶ 38 Based on the circumstances of this offense, we find that the trial court could reasonably infer that defendant intentionally killed Taylor's dog. Although he claims that the dog's death was "accidental[,]" this version of events was explicitly found incredible by the trial court, which noted that the injuries to the dog were not minor. "He didn't kick the dog and break a rib. He crushed the dog's skull." This evidence was consistent with the rage defendant exhibited in the brutal rape and murder of Taylor. From this evidence, the court could reasonably infer that defendant intentionally killed the dog. We thus find that the evidence was sufficient for the trier of fact to conclude that defendant was proved guilty beyond a reasonable doubt of aggravated cruelty to animals. *People v. Primbas*, 404 Ill. App. 3d 297, 303 (2010).

¶ 39 Finally, we note that the court imposed a three year concurrent sentence on the aggravated cruelty to animals conviction. In a footnote to his brief, defendant acknowledges that this sentence should be consecutive, and the State agrees. Section 5-8-4(d) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d) (West 2008)) provides that the court shall impose consecutive sentences where one of the offenses of which defendant was convicted is first degree murder. Here, defendant was convicted of first degree murder, and accordingly, his sentence for aggravated cruelty to animals conviction must be served consecutively. Pursuant to our authority to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we instruct the clerk of the circuit court to correct defendant's mittimus to reflect a consecutive term on this count.

¶ 40 In light of the foregoing, we correct defendant's mittimus and affirm the judgment of the

circuit court of Cook County in all other respects.

¶ 41 Affirmed; mittimus corrected.