FIFTH DIVISION
March 27, 2015

No. 1-13-0397

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 1902
	)	
LATRONDA HARRIS,	)	Honorable
	)	Frank G. Zelezinski,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court did not abuse its discretion by sentencing defendant to 50 years' imprisonment for the murder of a 17-month-old child.

¶ 2 Following a bench trial, defendant Latronda Harris was convicted of the first degree murder of a 17-month-old child and sentenced to 50 years' imprisonment. On appeal, defendant contends that her 50-year sentence was excessive, arguing that the trial court did not accord sufficient weight to the mitigating evidence presented. We affirm.

¶ 3 The evidence at trial showed that on December 23, 2007, at approximately 1:20 a.m., Harvey police received a call to respond to defendant's apartment, where a baby was unresponsive in a bathtub. Upon entering the bathroom, officers observed an unresponsive naked baby lying face up on his back in a bathtub filled with approximately four to five inches of water. The baby was handed over to paramedics and rushed to a hospital where he was later pronounced dead.

¶ 4 Although 34-year-old defendant is not the baby's mother, defendant agreed to be the full-time caretaker of the baby because his mother, defendant's cousin, was unable to take care of the baby on her own. Defendant told the responding officers she placed the baby in the bathtub and then noticed he wasn't breathing when she went to check on him approximately 15 minutes later. The responding officers smelled alcohol on defendant's breath and later retrieved a bottle of brandy from defendant's residence that appeared to be three-quarters full. Despite the alcohol found at defendant's residence, officers testified that defendant did not appear to be intoxicated.

¶ 5 The medical examiner that performed the postmortem examination confirmed the cause of death was multiple injuries from child abuse. The victim's body had several small round bruises around his spine indicative of knuckle marks. The examiner also found several liver lacerations, tearing of the mesentery, hemorrhage in the pancreas and the duodenum, laceration of the right adrenal gland and hemorrhaging around both kidneys, the right side of his colon, and in the coverings of his right testicle. The medical examiner concluded the only way the victim could have received this injury to his testicle was if someone squeezed the testicle or it was caught in something. There was also evidence of a pulmonary contusion on the victim's right lung suggesting blunt trauma to the area and ecchymosis of the medial aspect of the upper and lower eyelids of both eyes indicative of head injury. Finally, the victim had approximately 500

milliliters of blood in his abdominal cavity – enough to fill an individual size water bottle. The medical examiner concluded the trauma to the victim's abdomen ultimately caused his death and there was no evidence to suggest the child drowned.

¶ 6 The trial court found defendant guilty of first degree murder committed against a victim under the age of 12. The court also found defendant's conduct to be exceptionally brutal and heinous and indicative of wanton cruelty.

¶ 7 At sentencing, the court, in aggravation, heard the victim impact statement from the victim's mother. In mitigation, the court also considered the pre-sentence report which showed defendant had no significant criminal history, read two letters from defendant's family outlining defendant's prior good deeds, and heard defendant's statement in allocution where she expressed extreme remorse for her actions and blamed her conduct on a bad ecstasy pill. After considering all evidence in mitigation and in aggravation, the court declined to impose a natural life sentence and instead sentenced defendant to 50 years' imprisonment with credit for time previously served.

¶ 8 On appeal, defendant contends that her sentence, which she argues is the functional equivalent of a natural life sentence, is excessive given her minor criminal record, steady employment history, good character, background of childhood physical abuse, and sincere remorse. She requests this court reduce her sentence or remand the cause for a new sentencing hearing pursuant to its authority under Illinois Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999).

¶ 9 The trial court has broad discretion in sentencing and a reviewing court may only alter a defendant's sentence if the trial court abused its discretion. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010). A sentence within the statutory range will only be deemed an abuse of discretion

where the sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 10 It is well established that a reviewing court will give great deference to the trial court's judgment because the trial judge is in a better position to determine the punishment than the reviewing court. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). The sentencing court should not substitute its judgment for that of the trial court simply because it would have balanced the appropriate sentencing factors differently. *Alexander*, 239 Ill. 2d at 213. A defendant's rehabilitative potential and other mitigating factors are not entitled to greater weight than the seriousness of the offense. *People v. Coleman*, 166 Ill. 2d 247, 261 (1995). When mitigating factors are presented to the trial court, it is presumed these factors were considered, absent some contrary indication other than the sentence itself. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004).

¶ 11 Sentencing guidelines mandate a term of imprisonment "not less than 20 years and not more than 60 years" for first degree murder. 730 ILCS 5/5-4.5-20(a)(1) (West 2010). However, if the fact finder finds beyond a reasonable doubt that the murder was accompanied by "exceptionally brutal or heinous behavior indicative of wanton cruelty" or the defendant at the time of the murder was over the age of 17 and is found guilty of murdering an individual under the age of 12 then the court may sentence the defendant to a term of natural life imprisonment if the death sentence is not imposed. 730 ILCS 5/5-8-1(b), (c)(ii) (West 2010).

¶ 12 Here, there is no evidence the trial court failed to consider the mitigating evidence presented. At sentencing the trial court stated:

> "I have heard all witnesses testify, and I have heard the evidence presented in aggravation and in mitigation. I have reviewed the

> pre-sentence investigation report, and I've heard the allocution made by Ms. Harris. Certainly, in this case there are aspects of mitigation, which the Court does consider. Mainly, but for a minor type of misdemeanor offense *** [defendant] has led a law-abiding life. She's done good things, according to the letters I've received and *** all other aspects which I've read in the pre-sentence investigation report. And the Court does note that, and the Court does consider all aspects presented in mitigation."

¶ 13 In fact, although the defendant was eligible for an extended term due to the nature of her crime, the trial court refused to impose a natural life sentence given the mitigating factors presented and instead imposed a sentence well within the permissible sentencing range for first degree murder. The trial court stated:

> "Definitely, the evidence is here regarding the brutal and heinous conduct committed upon the little boy by [defendant]. However, I have to consider the mitigating factors here. In light of that, I do not feel *** an extended term type of sentence is appropriate."

Rather, the trial court clearly weighed the mitigating factors in light of the seriousness of the offense.

¶ 14 Defendant relies on *People v. Treadway*, 138 Ill. App. 3d 899, 905 (1985), and similar cases to identify situations where the sentence imposed on a similar person with similar mitigating factors was found to be an abuse of discretion. In *Treadway*, this court held that the trial court abused its discretion in sentencing the defendant to three concurrent 60-year terms for convictions of attempted murder, aggravated battery, and aggravated assault, where although the

defendant's conduct was heinous, brutal, and indicative of wanton cruelty, the record showed that defendant was a 24-year-old high school dropout, was physically abused as a child, suffered from a drug and alcohol problem since age 14 and had a minor criminal history prior to the current conviction. Accordingly, the sentence was reduced to a 30-year term. *See People v. Treadway*, 138 Ill. 3d 899, 905 (1985).

¶ 15 However, in *Treadway*, this court also found the crime was "perpetrated in a fleeting moment of intoxicated rage upon a stranger." *Id.* at 905. As such, we are unable to consider the individual circumstances of the defendant in a vacuum without according proper weight to the nature of the offense.

¶ 16 The Illinois Supreme Court has expressly declined to compare a sentence to sentences imposed in unrelated cases. *People v. Fern*, 189 Ill. 2d 48, 62 (1999). However, even if we were to consider *Treadway,* we find defendant's case distinguishable. Here, although defendant presents several mitigating factors similar to *Treadway*, including the claim she was high on ecstasy, there is no evidence in the record to confirm this other than her own statement. The record does state, however, that defendant consumed alcohol around the time of the murder. Furthermore, the record shows that defendant showed no signs of intoxication and had enough presence of mind to place the victim in a bathtub filled with a small amount of water before the police arrived on scene in order to, what we can only assume, make the victim's death appear to be accidental drowning. Finally, the crime was committed upon a 17-month-old child in the custody and care of defendant. Taken together, this could hardly be considered a "fleeting act of intoxicated rage upon a stranger" and thus, the facts of this case must be distinguished from *Treadway*. *Id.*

¶ 17 In conclusion, we cannot find that the trial court abused its discretion when sentencing defendant to a term of 50 years in prison and we decline to reduce defendant's sentence or to remand the cause for a new sentencing hearing.

¶ 18 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.