2017 IL App (1st) 150315-U

No. 1-15-0315

Order filed March 27, 2017

First Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 19716
	)	
ALBERT ALLEN,	)	Honorable
	)	Tommy Brewer,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in imposing a sentence of 60 years' imprisonment for first-degree murder.

¶ 2 Following a jury trial, defendant was found guilty of first-degree murder and was sentenced to 60 years in prison. On appeal, defendant contends that his sentence is excessive. For the reasons below, we affirm.

¶ 3 Defendant's conviction arose from an incident that took place on October 23, 2011, in Dolton, Illinois, which led to the shooting death of the victim, Eric Denman. Denman was the boyfriend of Faye Brown, with whom defendant had previously had a romantic relationship.

¶ 4 At trial, Patrick Thompson testified that on the night in question, he, Denman, Brown, and Micah Charles met up in Dolton. While the group was together that night, and prior to the shooting, Denman and Brown had argued, fought, and damaged each other's cars. At one point, outside a bar that the group had been patronizing and after Denman had left the bar driving Brown's car, Brown smashed Denman's car's window and kicked, punched, and walked on top of his car. Eventually, Brown stopped and went into the bar. When Brown came back outside, she beat and kicked Denman's car again. While this was happening, defendant, whom Thompson knew from the neighborhood, came outside from the bar. Brown started "cursing [defendant] out," saying to him, "You supposed to be a boss. You supposed to be fucking me, but you letting mother fuckers take my shit." Defendant responded, "Get out [of] my face with that shit."

¶ 5 Thereafter, Brown walked away from the bar. Not long after that, she came back driving her car, and Denman came back walking. When Denman saw what had happened to his car, he grabbed a crowbar, and threw it at Brown's car, hitting her car as she drove away from the bar. After that, Denman left in his car and Thompson walked to his mother's house.

¶ 6 Shortly thereafter, Denman picked Thompson up in his car, and they met Brown and Charles at Charles's grandmother's house. While Denman and Brown were talking on the street in front of the house, defendant "came out the cut" between two houses across the street, walked towards Brown and Denman, pulled a gun from his pocket, and started shooting at Denman. Thompson ran from the scene. As he ran, he heard eight more gunshots. When the shooting

stopped, Thompson went back to the scene and saw Denman lying on the ground, bleeding and spitting up blood. Thompson stayed with Denman until the police and ambulance arrived at the scene.

¶ 7 Micah Charles testified that on the night in question, she went to the bar with Denman, Brown, and Thompson. During the night, Denman and Brown argued and fought. At one point, after Denman had driven off in Brown's car, Brown started smashing Denman's car's windows. Brown eventually stopped and went inside the bar. After about two minutes, Brown came back outside, and shortly thereafter, defendant came to the back door of the bar. Brown started "cursing [defendant] out," yelling "So you just gone [*sic*] let somebody take my shit[?]" Brown left the area, but about five minutes later, she returned in her car. When Denman came back to the bar and saw what had happened to his car, he threw a crowbar at Brown's car as she was driving away. Thereafter, Brown, Denman, Charles, and Thompson each left the area separately.

¶ 8 While Charles was walking to her grandmother's house, she met up with Brown, and then a car stopped, picked them up, and drove them the rest of the way. Defendant was the passenger in the car, which was driven by a man named "Scooney." After Scooney dropped off defendant, Brown, and Charles at Charles's grandmother's house and drove off, defendant and Brown talked near Brown's car, which she had parked nearby. Brown was crying about her car window, and Charles heard defendant say, "Well, what do you want me do[?]" While Brown and defendant were talking, Charles briefly went inside her grandmother's house, and, when she came back outside, defendant was gone.

¶ 9 A short time later, Denman and Thompson arrived at Charles's grandmother's house. Brown and Denman started "bickering" about the window. Because they were loud, Charles

asked them to move away from the front of the house. They continued their argument in the street. Then, when Denman and Brown were in the street, Charles saw defendant come out from the side of an abandoned house across the street, walk towards them, pull out a gun, and point it at Denman. When he pointed the gun, Charles ran away. As she was running, she heard about five or six gunshots. After the gunshots stopped, she went back to the scene and saw that Denman had been shot. Eventually, police and ambulance arrived at the scene.

¶ 10 Pete Rose, Jr., testified that he lived next door to Charles's grandmother. On the night in question, Rose, who was 11 years old, heard about one to four gunshots coming from the front of his house. After turning the lights off and alerting his sister, he looked through the window and saw a man standing right in front of, and over, another man who was lying on the street. He saw the first man shoot the man who was lying on the street about five times. The shooter then got into the passenger seat of a car parked on a side street and drove away. When the police, who were going door-to-door, came to Rose's house that night, he told them what he had seen.

¶ 11 Desiree Nicole Albright testified that she was tending the bar on the subject day. Albright saw Brown walk into the bar and approach defendant, "fussing and screaming." Defendant calmly asked her to leave him alone and said that he did not want to be bothered. After Brown exited the bar, someone told Albright that Brown was breaking Denman's car's windows. Albright looked out a window and saw Brown on top of Denman's car and heard screaming outside. After the "commotion" ended, defendant left the bar with some other people, who said "they were going out to get something to eat." Defendant returned to the bar about 30 minutes later and did not have food with him.

¶ 12 A medical examiner testified that Denman suffered at least nine gunshot wounds and that the cause of death was multiple gunshot wounds. A Cedar Rapids, Iowa police detective testified that, about two days after the shooting, he took defendant into custody in Cedar Rapids. A Dolton detective testified that when he interviewed defendant in Cedar Rapids, defendant denied being involved in the homicide and denied being in Dolton on the night in question. Defendant told the detectives that the last time he was in the Dolton or Chicago area was "a long, long time ago" and that, on the subject day, he was in Cedar Rapids "chilling," watching football, and doing yard work. A U.S. Secret service agent testified that cell phone records indicated defendant's phone was accessing cell towers in the neighborhood of the Dolton bar on the night in question.

¶ 13 Defendant's cousin, Reginald Bailey, testified on defendant's behalf. On the night in question, Bailey arrived at the bar at 3 p.m., and defendant arrived between 4 p.m. and 5 p.m. According to Bailey, defendant and Bailey were at the bar from the time they arrived to about 1:00 a.m. Bailey testified that, during this time, defendant only left the bar one time for a few minutes when he stepped outside on the bar patio. Bailey also testified that defendant never went to Charles's house that night and that Albright and Denman had a relationship.

¶ 14 Defendant testified on his own behalf. He testified that he had a relationship with Brown in 2009 but did not have a relationship with her in October of 2011. On the subject day, defendant and his brother arrived at the bar at about 6 p.m. At some point that evening, Brown, who was mad and upset, approached him in the bar and said, "You just going to let a mother fucker take off with my car and what the fuck is you going to do about it." Defendant told her, "I don't have nothing to do with that." About eight minutes after Brown left the inside of the bar,

defendant stepped outside for three or four minutes. Brown came over to him, put her hand in his face, and said, "You ain't going to do shit about him taking my car." Defendant waved her off, calmly told her, "I don't got nothing to do with that. That's not my business, you know," and then went back into the bar. Defendant testified that he left the bar with his cousin when it closed at about 1 a.m. Defendant denied shooting Denman and testified that that he did not know Denman prior to the incident and that he never saw him on the subject day. Defendant also testified that he lied to the police about his whereabouts on the night in question because he was on probation and was not supposed to leave Iowa.

¶ 15 Following closing argument, the jury found defendant guilty of the offense of first-degree murder "in that he personally discharged a firearm that proximately caused the death of Eric [Denman]." Defendant filed a motion for a new trial, which the trial court denied.

¶ 16 At the sentencing hearing, the State called Denman's wife, Shakkara Stewart Denman, as a witness. She advised the trial court that she and Denman had three children together and then read a victim impact statement. Thereafter, the State presented a certified copy of defendant's 2010 conviction from Iowa for the offense of possession with intent to deliver, and noted that defendant was serving his sentence of three years felony probation on that conviction when he committed the instant offense. In mitigation, defense counsel noted that, as reflected in the presentence investigation report (PSI), defendant had only one prior criminal conviction. Defense counsel requested that the trial court give defendant the minimum sentence of 45 years in prison and stated that it "essentially is a life sentence." In aggravation, the State argued that this case was not "a one-time shooting," that it was an "execution," that Denman was unarmed, and that defendant shot him nine times. The State further argued that defendant's motive was "a

girl," that defendant "had to be the man, show that he was superior, and then go shoot Eric 9 times and then flee the State [to] Iowa and leave the state." The State reiterated that, at the time of the incident, defendant was on felony probation and was not allowed to leave Iowa, but came to Illinois with a firearm. In conclusion, the State argued that defendant should not get the minimum sentence and requested that the trial court sentence him to 85 years in prison.

¶ 17 The trial court sentenced defendant to 60 years in prison. In doing so, the trial court stated, among other things, as follows:

> "The Court has listened to the evidence in this case. This was a very cowardly and callous murder by the defendant of Mr. Denman.
>
> The evidence showed that you walked up on him and shot him at least 9 times without saying a word, and really the evidence only showed that you were requested to do this by an alleged girlfriend or former girlfriend whose feelings were allegedly bruised or hurt by words spoken by Mr. Denman."

The trial court indicated that the minimum sentence should not be imposed, and when issuing its sentence, the trial court stated, "Considering everything in aggravation and mitigation, it is the sentence of this Court that the defendant is sentenced to***60 years." The trial court denied defendant's motion to reconsider sentence.

¶ 18 On appeal, defendant acknowledges that his offense "warrants significant punishment," but argues his sentence of 60 years in prison does not account for several mitigating factors. Defendant asserts that his criminal history involved only one non-violent drug offense, that he made an irrational and impulsive mistake, and that he was acting at Brown's request "who had urged him to avenge the perceived insults that had been inflicted on her by Denman." Defendant

submits that this offense would not recur, as it was a crime of passion involving romantic motivations. He requests that we remand for a new sentencing hearing with instructions to sentence defendant to the minimum sentence, or, in the alternative, reduce defendant's sentence to 45 years in prison.

¶ 19 A reviewing court should give great deference to the trial court's sentencing decision because the trial court is in a better position to consider the relevant sentencing factors, including the particular circumstances of the case and the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). To determine an appropriate sentence, other relevant sentencing factors "include the nature of the crime, the protection of the public, deterrence and punishment, as well as the defendant's rehabilitative prospects." *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 14. The trial court is in the best position to find an appropriate balance between protecting society and rehabilitating the defendant. *People v. Risley*, 359 Ill. App. 3d 918, 920 (2005). The reviewing court "must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently." *Fern*, 189 Ill. 2d at 53.

¶ 20 The trial court is given great discretion to determine an appropriate sentence within the statutory limits (*Fern*, 189 Ill. 2d at 53), and on review, we will not alter a sentencing decision absent an abuse of discretion (*People v. Jones*, 265 Ill. App. 3d 627, 639 (1994)). A trial court abuses its discretion when no reasonable person could agree with the trial court's position. *People v. Sven*, 365 Ill. App. 3d 226, 241 (2006). "A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Fern*, 189 Ill. 2d at 54.

¶ 21 The sentencing range for first-degree murder is 20 to 60 years. 730 ILCS 5/5-4.5-20(a) (West 2010). However, because the jury found that defendant "personally discharged a firearm that proximately caused" Denman's death, the mandatory firearm enhancements statute required the trial court to add "25 years or up to a term of nature life" to defendant's prison term. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010). Therefore, the sentencing range for defendant's offense was 45 years to a term of natural life in prison. *Id.* Here, the trial court sentenced defendant to 60 years' imprisonment, a term well within the permissible statutory range.

¶ 22 The record indicates that the trial court was well aware of the mitigating factors identified by defendant on appeal. The PSI, which the trial court had in its possession, included information regarding defendant's criminal and family history. Further, at sentencing, defense counsel orally advised the trial court that defendant had a single prior conviction, for which he received probation. Moreover, the record indicates that the trial court expressly stated that it had considered the mitigating factors. Accordingly, there is nothing in the record to support that the trial court did not consider any of the applicable mitigating factors that defendant has identified. *People v. Dominguez*, 255 Ill. App. 3d 995, 1004 (1994) ("Where relevant mitigating evidence is before the court, it is presumed that the court considered it absent some indication in the record to the contrary other than the sentence itself.").

¶ 23 Furthermore, when fashioning a sentence, the trial court may consider the manner of the victim's death and "the *seriousness, nature,* and *circumstances* of the offense." (Emphasis in original.) *People v. Dowding*, 388 Ill App. 3d 936, 943 (2009). Here, the trial court expressly stated that it "listened to the evidence in this case," that "[t]his was a very cowardly and callous murder by the defendant of Mr. Denman," and that "[t]he evidence showed that you walked up

on him and shot him at least 9 times without saying a word[.]" Thus, the record indicates that the trial court properly considered the facts of the case and the manner of Denman's death when it imposed its sentence. *People v. Costello*, 224 Ill. App. 3d 500, 510 (1992) ("A defendant's lack of a prior record is not necessarily the most persuasive consideration at sentencing, and the seriousness of the crime has been called the most important factor to be considered in imposing the sentence."). Finally, the trial court was not required to "make an express finding that the defendant lacked rehabilitative potential," or required to give more weight to defendant's "potential for rehabilitation than to the seriousness of the crime." *People v. Boclair*, 225 Ill. App. 3d 331, 335 (1992).

¶ 24 We conclude that there is nothing in the record to indicate that the trial court did not consider the applicable mitigating factors or defendant's rehabilitative potential. Given the trial court's consideration of the facts of this case as well as the factors in aggravation and mitigation, we cannot find that defendant's sentence is "greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Fern*, 189 Ill. 2d at 54. Accordingly, we find no abuse of discretion in the length of defendant's sentence.

¶ 25 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 26 Affirmed.