2017 IL App (1st) 151140-U

No. 1-15-1140

Order filed November 17, 2017

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 4678
	)	
ERIKA BEDOLLA,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** Defendant's sentence of 18 years' imprisonment for attempt first degree murder is affirmed over her contention that the trial court erred in not considering her mental health in mitigation. Defendant's conviction for aggravated domestic battery is vacated based upon violating the one-act, one-crime rule. The order assessing fines, fees and costs is modified.

¶ 2 Following a bench trial, defendant Erika Bedolla was convicted of attempt first degree murder (720 ILCS 5/8-4(a) (West 2012); 720 ILCS 5/9-1 (a)(1)(West 2012)) and aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2012)), and sentenced to concurrent terms of 18

and 7 years' imprisonment, respectively. On appeal defendant contends that: (1) during sentencing, the court erred by failing to consider her mental health in mitigation; (2) her convictions for attempt first degree murder and aggravated domestic battery violate the one-act, one-crime rule because the State treated her conduct as a single physical act; and (3) the court erroneously assessed her a $5 court system fee (55 ILCS 5/5-1101(a) (West 2012)). We affirm defendant's sentence for attempted murder, vacate her aggravated domestic battery conviction, and modify the order assessing fines, fees and costs.

¶ 3 On February 14, 2013, defendant was arrested in her home at 4235 South Fairfield Avenue in Chicago for stabbing Yoselin[1] Ortiz. Defendant was charged by indictment with one count of attempt first degree murder and one count of aggravated domestic battery. The attempt murder count alleged that defendant, without lawful justification and with intent to kill, stabbed Ortiz about the body, which constituted a substantial step towards the commission of first degree murder. The aggravated domestic battery count alleged that defendant, intentionally or knowingly, without legal justification, caused great bodily harm to Ortiz, a household member, by stabbing her about the body.

¶ 4 Before trial, a fitness evaluation was ordered for defendant. The parties stipulated that Dr. Susan Messina, a licensed clinical psychologist employed by Forensic Clinical Services, found that defendant had the ability to understand her *Miranda* rights at the time of her arrest and that she was fit to stand trial. The issue of defendant's sanity at the time of the offense was deferred. After obtaining additional treatment records, Dr. Messina reevaluated defendant and found her to be legally sane at the time of the offense.

[1] The indictment used the name Joslyn Ortiz. The indictment, however, was amended pretrial to reflect the correct name Yoselin Ortiz.

¶ 5 A fitness hearing was conducted regarding a second evaluation performed on defendant. Dr. Nishad Nadkarni, a licensed psychiatrist employed by Forensic Clinical Services, testified that he evaluated defendant on the issues of fitness to stand trial, sanity at the time of the offense, and ability to comprehend *Miranda* warnings. The court and the parties possessed Dr. Nadkarni's psychiatric summaries and opinions at the time of the hearing. Dr. Nadkarni reviewed Dr. Messina's prior evaluation of defendant, and defendant's psychosocial history, police reports, and defendant's medical history from both Cermak Health Services and Stroger Hospital.

¶ 6 Dr. Nadkarni interviewed defendant twice. While in pretrial detention, defendant was prescribed Celexa, an antidepressant; Zyprexa, an antipsychotic; and Benadryl. Dr. Nadkarni noted that his records did not reflect that defendant had any inpatient psychiatric hospitalizations or received any outpatient treatment. Defendant was not diagnosed with schizophrenia, and she denied any auditory or visual hallucinations. Defendant evidenced no acute psychiatric or cognitive impairments. Defendant understood the nature of the charges against her and was able to understand the court proceedings and roles of the court personnel. Dr. Nadkarni found defendant's affect to be strange in that she showed no emotional attachment when talking about the stabbing incident. Dr. Nadkarni found defendant had some form of mental illness that required the medications she was taking to maintain stability. In sum, Dr. Nadkarni's opined that defendant was fit to stand trial with medication.

¶ 7 Because defendant does not challenge the sufficiency of the evidence to sustain her convictions, we recount the facts here only to the extent necessary to resolve the issue raised on appeal.

¶ 8 The trial evidence showed that on February 14, 2013, Yoselin Ortiz was a high school student living with defendant, defendant's brother, sister, mother, and father at 4235 South Fairfield. Ortiz testified that she was in a relationship with Balente Bedolla, defendant's younger brother, and resided in the basement of the home. On the date in question, at about 3:15 p.m., Ortiz arrived home from school. Balente was in the basement and defendant was upstairs. It was unusual for defendant to be home at that time since she usually arrived home after 5:00 p.m. Ortiz went upstairs to take a shower. The bathroom was directly across from the basement door. Ortiz heard a knock on the door while she was in the shower. Ortiz asked who was there but received no response. After a few moments, Ortiz heard a second knock. Ortiz shut off the water and inquired again. Defendant responded, "Oh[,] my bad." Ortiz waited in the bathroom for about 20 minutes to give defendant a chance to go to her room. When Ortiz opened the bathroom door, defendant was standing in the doorway. Ortiz noticed that the basement door was locked, and she asked defendant if she could open the basement door to drop her things off on the stairs leading into the basement. Defendant allowed Ortiz to unlock the basement door.

¶ 9 After dropping off her clothes, Ortiz walked to the kitchen table to make a meal for herself. Defendant followed Ortiz to the kitchen. As Ortiz was standing by the kitchen table, she heard footsteps behind her. She then felt a stabbing pain in her back and heard defendant say "you killed my brother." Ortiz turned and saw defendant holding a large kitchen knife. Ortiz felt the knife go into her back a second time. She cried out defendant's name and tried to remove the knife from her assailant's hand. As she did so, defendant stabbed Ortiz a third time in the stomach. Ortiz tried to get to the basement, but fell by the bathroom door. Defendant knelt beside Ortiz and stabbed her five more times. Ortiz screamed out for help. Balente came up the stairs from the basement and pushed defendant away from Ortiz and took the knife out of her

hand. While Ortiz was lying on the floor bleeding and waiting for the ambulance to arrive, she saw defendant go to the kitchen for a glass of water.

¶ 10 Balente Bedolla, defendant's younger brother, testified that he is 19 years old and resided at the Fairfield address in February 2013 with defendant, his mother and father, his other sister, and Ortiz. On February 14, 2013, Balente was in the basement listening to music on headphones. Ortiz came home after 3:00 p.m. and Balente informed her that defendant was home. Ortiz went upstairs and Balente continued to listen to music. At some point later, he heard loud noises and his dog barking. He went upstairs to see what was going on. As he reached the top of the stairs, he heard Ortiz say "she's killing me." Balente opened the basement door and saw defendant stab Ortiz three or four times. He grabbed the knife from defendant and put it on the countertop. He then phoned the police and waited with Ortiz until they arrived. As he did so, Balente saw defendant take the knife off the countertop and put it in the utensil drawer. When the police arrived, Balente informed the officers that defendant stabbed Ortiz and directed the officers to the knife.

¶ 11 Detective Alice Casanova testified that, on February 15, 2013 at approximately 2:00 a.m., as she was escorting defendant to the lockup, defendant blurted out "[Y]ou know, it wasn't as hard to stick the knife into Yoselin as I thought it would be."

¶ 12 After closing arguments, defendant filed a memorandum of law arguing the State failed to prove her guilty of attempt murder beyond a reasonable doubt. During arguments, counsel inferred that defendant may not have been mentally stable at the time of the incident. In rejecting counsel's argument, the court stated:

> "--and I know there has been a belief or statement on the stand or the idea of the defense that Ms. Bedolla may be suffering from some mental deficiency. She has been found fit.
>
> And what the evidence shows is it correlates to her fitness. Her logical thinking. Her premeditation in locking that door, getting the knife and stabbing her when the police arrive. Discarding the knife or trying to hide the knife. All of that shows into the logical nature and thought process of Ms. Bedolla now."

¶ 13 The court found defendant guilty of attempt first degree murder and aggravated domestic battery. Defendant's motion for new trial was denied.

¶ 14 At sentencing the court heard arguments in aggravation and mitigation. In aggravation, the State presented Ortiz's victim impact statement, detailing how defendant's actions have affected her life. In reading the statement, the State informed the court how Ortiz may no longer participate in sports and has to be careful doing normal activities such as walking and lifting objects. Ortiz must also watch what she eats because food has an impact on her breathing. Ortiz suffers from chronic back pain and may not be able to have children.

¶ 15 In mitigation, defendant called her mother Maria Bedolla, who testified that defendant was a good person and never caused a problem. Maria could not explain what caused defendant to stab Ortiz. Maria stated that, when defendant is taking medication, defendant is the person that she remembers her to be.

¶ 16 In allocution, defendant stated that she would not have stabbed Ortiz if she was taking medication. The court responded:

> "Well, I can say that with your fitness you were found fit, and there was no reason to think there was any claim of insanity, so this is not a situation in which mental

> health will be interjected. We have litigated that extensively. Whatever you decided on that day, I truly believe that you are sorry for what happened."

Defendant expressed that she was sorry for her actions.

¶ 17 During argument, defense counsel highlighted certain aspects of defendant's presentence investigation (PSI) report, including her educational background, employment history, and lack of criminal background. The PSI report reflects that defendant was diagnosed with depression and anxiety disorder while incarcerated, and was prescribed various medications, including an anti-psychotic, to treat her illness.

¶ 18 Before imposing sentence, the court addressed the issue of defendant's mental health, noting:

> "In this case there had been—there is not a mental health issue. I can't reiterate that enough. Whether being incarcerated brought on something, but at the time of this event there was no mental health issue. There was not. How do we know that? By the steps that were taken on this particular day about coming home at a particular time, about locking the door, about all the events that were thought out. This is not what a person who has malingering issues or mental health issues does. This was a planned and orchestrated event showing sanity and intelligence, albeit the wrong way, but it is what [defendant] decided on that day."

¶ 19 The court rejected the State's request for the maximum of 30 years' imprisonment and defendant's request for the minimum of 6 years. In doing so the court noted that, based on her PSI, defendant was a "rarity" who had a loving family, a high school degree and was "moving forward with her life." However, the court pointed out that defendant's actions required planning and cost Ortiz her health, with unknown long-term effects. The court had "no doubt"

that defendant could be rehabilitated, but stated it also had to take into consideration the harm she caused to the Ortiz. The court then sentenced defendant to 18 years' imprisonment.

¶ 20 Defendant filed a motion to reconsider her sentence. In denying the motion, the court again addressed the allegation of defendant's fitness and noted that it took her lack of background into consideration. The court also pointed out that, contrary to counsel's argument, it did not find any "mental issues" and that defendant failed to present any evidence that required to court to reconsider its sentence.

¶ 21 On appeal, defendant first contends that the trial court erred, during sentencing, by refusing to consider her mental health in mitigation. She argues that there was significant evidence to show that she suffered from mental health problems that would explain her unprovoked attack on the victim. Defendant requests that this court vacate her sentence and remand the matter to the trial court to consider her mental health before imposing sentence.

¶ 22 A trial court's sentencing decisions are entitled to great deference on review and a reviewing court will only reverse a sentence when it has been demonstrated that the trial court abused its discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A trial court has broad discretionary powers in imposing a sentence because it has a superior opportunity "to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 23 In reviewing a defendant's sentence, this court will not reweigh these factors and substitute its judgment for that of the trial court merely because it would have weighed these

factors differently. *People* v. *Busse*, 2016 IL App (1st) 142941, ¶ 20. Moreover, a sentence which falls within the statutory range is presumed to be proper and " '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.' " *People v. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill.2d 48, 54 (1999)).

¶ 24 Here, the circuit court did not abuse its discretion in sentencing defendant to 18 years' imprisonment. Attempt first degree murder is a Class X felony (720 ILCS 5/8-4(a) (West 2012); 720 ILCS 5/9-1(a)(1) (West 2012)) and has a sentencing range of 6 to 30 years' imprisonment (730 ILCS 5/5-4.5-25(a) (West 2012)). Accordingly, defendant's 18-year sentence was within the permissible statutory range and thus it is presumed proper. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 25 Defendant does not dispute that her 18-year sentence fell within the applicable sentencing range. Rather, she argues that the trial court erred by refusing to consider her mental health in mitigation. Defendant relies on section 5-5-3.1(a)(4) of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-3.1(a)(4) (West 2014)), which provides:

> "Factors in Mitigation.
>
> (a) The following grounds shall be accorded weight, in favor of withholding or minimizing a sentence of imprisonment:
>
> * * *
>
> (4) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense." 730 ILCS 5/5-5-3.1(a)(4) (West 2014).

Defendant argues that, although her mental health was insufficiently diminished to justify an insanity defense, it did excuse or justify her actions in repeatedly stabbing the victim, and thus the trial court should have considered her mental health issues in mitigation.

¶ 26 The record affirmatively shows that this mitigation evidence was presented to the court before it imposed its sentence. As noted above, we presume that the court properly considered all mitigation evidence. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. "To rebut this presumption, defendant must make an affirmative showing that sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Defendant has failed to make such a showing.

¶ 27 The record shows that the court considered defendant's mental health in mitigation, but simply did not give it much weight, in light of the seriousness of the offense and defendant's conduct during the offense. See *People v. Coleman*, 183 Ill. 2d 366, 406 (1998) (information about a defendant's mental or psychological impairment is not inherently mitigating). The question of defendant's mental health was an ongoing issue throughout the court proceedings, including a pretrial fitness hearing, post trial motions, and sentencing. Defendant's psychological history was outlined in defendant's PSI report and defense counsel's argument in mitigation. The trial court was presented with defendant's PSI report and expressly considered the information therein. However, given that "this was a planned and orchestrated event showing sanity and intelligence, albeit the wrong way," the court rejected defendant's mental health as a mitigating factor. In doing so, the court noted "this is not what a person, who has malingering issues or mental health issues does." In denying defendant's motion to reconsider sentence, the court again noted that it did not find that there were any mental issues which would require it to reconsider sentence. Given this record, defendant essentially asks us to reweigh the

sentencing factors and substitute our judgment for that of the trial court. This we cannot do. See *Busse*, 2016 IL App (1st) 142941, ¶ 20 (a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently).

¶ 28 Moreover, this court has stated that "[i]n fashioning the appropriate sentence, the most important factor to consider is the seriousness of the crime." *Busse*, 2016 IL App (1st) 142941, ¶ 28. Here, as pointed out by the court, the evidence showed that defendant's attacked required planning. Defendant stabbed Ortiz in the back and stomach, and, when Ortiz fell to the ground, she knelt beside Ortiz and stabbed her multiple times. As a result of the stabbing, Ortiz was in the hospital for almost a month, where she had surgery. As noted by the trial court, the extent of Ortiz's injury, in the long-term, is unknown. As such, we cannot say that the trial court abused its discretion in sentencing defendant to 18 years' imprisonment, a term exactly in the middle of the required sentencing range.

¶ 29 In reaching this conclusion, we are not persuaded by defendant's reliance on *People v. Robinson*, 221 Ill. App. 3d 1045 (1991). Here, unlike in *Robinson*, the defendant was not previously diagnosed with any type of mental health problem and the trial court did not improperly consider the criminal acts of others when imposing sentence. *Robinson*, 221 Ill. App. 3d at 1052.

¶ 30 Defendant next contends that her conviction for aggravated domestic battery should be vacated under the one-act, one-crime rule because the State failed to separately apportion the multiple stab wounds, either in the indictment or at trial, and instead treated her conduct as a single act. In setting forth this argument, defendant acknowledges that she failed to preserve the issue for appeal but argues that it is reviewable under the second prong of the plain error doctrine because the error affects her substantial rights.

¶ 31 The State concedes that point, and we agree that the alleged violation of the one-act, one-crime rule affects the integrity of the judicial process and thus it is reviewable under the second prong of the plain error doctrine. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010). Whether a conviction should be vacated under the one-act, one-crime rule is a question of law that is reviewed *de novo*. *People v Johnson*, 237 Ill. 2d 81, 97 (2010).

¶ 32 The one-act, one-crime rule prohibits a defendant from being convicted of multiple offenses based on the same physical act. *People v. King*, 66 Ill. 2d 551, 566 (1977). An "act" has been defined as "any overt or outward manifestation that will support a separate conviction." *Id.* It is well established that, when multiple convictions are obtained for offenses arising out of a single act, sentence is imposed on the most serious offense. *People v. Cardona*, 158 Ill. 2d 403, 411 (1994). "To sustain multiple convictions, the charging instrument must indicate that the State intends to treat the defendant's conduct as separate and multiple acts." *People v. Crespo*, 203 Ill. 2d 335, 345 (2001).

¶ 33 Here, the State concedes that defendant was charged with the same conduct for each offense *i.e.*, stabbing Ortiz about the body. Defendant was charged with one count of attempt first degree murder and one count of aggravated domestic battery with both counts stemming from the same incident. The record shows that the State did not treat defendant's conduct as separate acts. The attempt murder count alleged that defendant, without lawful justification and with intent to kill, stabbed Ortiz about the body, which constituted a substantial step towards the commission of first degree murder. The aggravated domestic battery count alleged that defendant, intentionally or knowingly, without legal justification, caused great bodily harm to Ortiz, a household member, by stabbing her about the body. As such, defendant's conviction for aggravated domestic battery cannot stand because it is a less culpable offense than attempted

murder. See *Cardona*, 158 Ill. 2d at 411; 720 ILCS 5/8-4(c)(1) (West 2012) (attempted first degree murder is a Class X felony); 720 ILCS 5/12-3.3(b) (West 2012) (aggravated domestic battery is a Class 2 felony).

¶ 34 Lastly, defendant contends that we should vacate a $5 court system fee 55 ILCS 5/5-1101(a) (West 2013). Again, defendant did not preserve this issue for appellate review, but argues that it is reviewable under the second prong of the plain error doctrine. We will address the merits of defendant's claim because the State does not argue forfeiture on appeal. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13.

¶ 35 We review this issue *de novo*. *People v. Glass*, 2017 IL App (1st) 143551, ¶ 21. The State concedes, and we agree, that the $5 court system fee assessed against her was improper. This fee is assessed when a defendant is found guilty of violating the Illinois Vehicle Code or similar provision in a county or municipal ordinance. 55 ILCS 5/5-1101(a) (West 2014). Defendant was not found guilty of violating the Illinois Vehicle Code or similar provision. Therefore, the fee was incorrectly assessed against her. Accordingly, we vacate the $5 court system fee and modify the order assessing fines, fees and costs. See Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967)); see also *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995) (holding that remand to the circuit court is unnecessary because this court may directly order the circuit clerk to correct the mittimus).

¶ 36 Affirmed in part; vacated in part; fines, fees, and costs order modified.