2018 IL App (1st) 152615-U

SIXTH DIVISION
August 10, 2018

No. 1-15-2615

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. 13 CR 21426
	)	
JUAN ROSALES,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's sentence of 17 years' imprisonment for armed robbery with a dangerous weapon is affirmed over his contention that his sentence is excessive in light of certain mitigating factors.

¶ 2 Following a bench trial, defendant Juan Rosales was convicted of armed robbery with a dangerous weapon (720 ILCS 5/18-2 (a)(1) (West 2012)) and sentenced to 17 years' imprisonment. On appeal, defendant contends that his sentence is excessive. We affirm.

¶ 3 Defendant was charged by indictment with armed robbery (720 ILCS 5/18-2 (a)(1) (West 2012)), two counts of aggravated kidnapping (720 ILCS 5/10-2 (a)(4) and (a)(5) (West 2012)), and one count of aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2012)). Defendant waived his right to a jury trial and the case proceeded to a bench trial. Because defendant does not challenge the sufficiency of the evidence to sustain his conviction we recount the facts to the extent necessary to resolve the issue raised on appeal.

¶ 4 The facts adduced at trial showed that on October 9, 2013, Daisy Carrasquillo, the assistant manager of the Family Dollar Store located at 5050 South Pulaski Road, was working at the store with Timothy Rowden. About 8:30 p.m., as Carrasquillo pushed a cart through the double doors leading to the back room of the store, she saw defendant, who was wearing a mask, squatting down between the merchandise. Carrasquillo screamed and tried to run out of the room, but defendant grabbed her from behind, pulled her sweater and then placed his right arm around her neck. Carrasquillo felt something sharp on her neck and believed that it was a knife. Defendant asked her who the manager was and if she had anything in her pockets. Carrasquillo informed defendant that she was the assistant manager and that she had a cell phone in her pocket. Defendant reached into her sweater pocket and removed the cell phone. Defendant instructed her to call the store and tell whoever answered the phone to lock the doors. Carrasquillo called the store and, when Rowden answered, he asked her what was wrong. She told him nothing was wrong and repeatedly told him to lock the doors. After Carrasquillo ended the call, defendant took her cell phone.

¶ 5 Defendant told her to put her left arm behind her back and then grabbed her left arm and held it behind her back while keeping his right arm around her neck with the knife pressed to her

neck. Defendant walked Carrasquillo through the double doors and into the store. As they were proceeding slowly down an aisle, Carrasquillo saw two police officers with their guns drawn. The police officers started yelling at defendant to drop his knife and to let Carrasquillo go. Defendant held Carrasquillo tighter and began walking her toward the door of the store. Defendant told the police to stay back or he "would slice her throat." As defendant walked Carrasquillo out of the front door, he asked her for her car keys. Carrasquillo told defendant that she did not know how to drive. As defendant tried to walk Carrasquillo back into the store, a police car pulled up and a police sergeant exited the car. The sergeant drew his gun drawn and told defendant to let Carrasquillo go or he would shoot him. Defendant let Carrasquillo go and she ran back into the store. Defendant dropped the mask and the knife.

¶ 6 Once inside the store, Carrasquillo saw defendant on the ground in the parking lot. She also saw the mask and a box cutter on the ground. After Carrasquillo told the police officers that defendant had her phone, the officers searched defendant, and retrieved her cell phone. Carrasquillo identified a video from the store's surveillance camera as depicting the events of that evening. Carrasquillo did not notice the smell of alcohol on defendant nor was his speech slurred or his balance unsteady.

¶ 7 On cross-examination, Carrasquillo acknowledged that the blade of the knife left a mark on her neck. Carrasquillo admitted that, when the police asked her if she was okay, she told them she was, but did go to see her doctor a few days later.

¶ 8 Timothy Rowden testified that, when Carrasquillo pushed through the double doors leading to the back room, he heard a scream. He became nervous, pushed the "panic button" and then went to the front of the store. Rowden then called the police from his cell phone. A few

moments later, he received a phone call on the store phone. When he picked up the phone he recognized Carrasquillo on the other end. Rowden asked Carrasquillo what was wrong. She told him to lock the front doors. Rowden locked the doors, but opened them when he saw the police arrive. He allowed the two police officers into the store and explained where Carrasquillo was located. As the officers were making their way to the back of the store, Rowden saw Carrasquillo and defendant walking through the doors heading into the store. Rowden saw that defendant was behind Carrasquillo holding a knife to her throat. Defendant was wearing a "Friday the 13th Jason mask" and a gray sweatshirt. Rowden testified that the store sold both the mask and the sweatshirt. The police officers told Rowden to go outside and hide. When Rowden exited the store, he stayed by the front door and was able to look inside. Rowden saw defendant and Carrasquillo exit the store and officers order him to let Carrasquillo go. Rowden identified a video captured by the store's surveillance camera, showing that, about 5:30 p.m., defendant entered the store and spoke to Rowden. Defendant was not wearing the gray sweatshirt at that time.

¶ 9 Chicago police officer Israel Roa testified that he and his partner were working in plain clothes when they responded to a panic alarm at the Family Dollar Store. When Roa arrived at the store he was met by Rowden, who opened the door for the officers. As Roa entered the store, he saw a person "peeking" out from behind the back aisle. Roa made his way toward the back of the store and heard his partner repeatedly yelling "drop the knife." Roa saw defendant, who was wearing a mask, with his arm around Carrasquillo's neck holding a knife to her throat. Roa ordered defendant to drop the knife. Defendant walked slowly toward the front of the store and eventually exited the store. Defendant tried to reenter the store while still holding Carrasquillo.

Roa saw Sergeant Richard Moravec point his gun at defendant and order him to drop the knife. Defendant dropped the knife and released Carrasquillo. Defendant laid down on the ground and Moravec ordered Roa to handcuff defendant. Roa spoke to Carrasquillo, who told him that defendant had her cell phone. Roa searched defendant and recovered Carrasquillo's cell phone from defendant's sweatshirt pocket. Roa inventoried the cell phone and returned it to Carrasquillo.

¶ 10 Sergeant Moravec testified that he responded to a panic alarm at the Family Dollar Store and parked his squad car in front of the store. Moravec saw defendant, exiting the store, with his arm around Carrasquillo's neck and holding a knife to her throat. Moravec withdrew his gun, pointed it at defendant, and "assertively" told him to "drop the knife." Defendant complied and Carrasquillo was able to move away from defendant. Moravec ordered defendant to get on the ground and he instructed one of the other officers to handcuff him.

¶ 11 On cross-examination, Moravec acknowledged that he had to take action because Carrasquillo was in "distress and fearful."

¶ 12 The State rested after the video and photos were admitted into evidence.

¶ 13 Defendant testified that on October 9, 2013, he was living with his wife and four children on 26th and Spaulding Avenue. After arguing with his wife, defendant left the house and walked "down the block" to meet some of his friends. He had about 10 to 12 beers and shared two "blunts." Defendant testified that drank beer in which one of his friends had placed an unknown type of pill. After about an hour, defendant left his friends and decided that he should not go home because he was drunk. He decided to walk to his sister's home on 59th and Spaulding. Defendant walked the 33 blocks in about a half hour to 45 minutes. When he arrived at his

sister's home, he found out that she had moved so he decided to go to the Family Dollar Store to see if he could sleep. Defendant arrived at the store about 5:30 p.m. and went into the back room to sleep. He woke up about 8:00 p.m., when Carrasquillo walked into the back room. Defendant testified he grabbed Carrasquillo and put a box cutter to her throat. He told Carrasquillo that he was asleep and wanted to leave the store. Defendant asked Carrasquillo if she had a cell phone. Defendant wanted her to call the store and to tell whoever answered to lock the front doors because "he was in a mess and didn't want anyone else involved." Defendant told Carrasquillo he was "strong and scared and just wanted to go home." He testified he had no interest in Carrasquillo's cell phone. Defendant just grabbed Carrasquillo to walk out of the store. He did not want to take "Miss Daisy" anywhere.

¶ 14 On cross-examination, defendant acknowledged he took Carrasquillo's phone. Defendant explained that the "mess" he was referring to was him sleeping in the store room. Defendant admitted that he pulled the box cutter out of his pocket after Carrasquillo screamed.

¶ 15 After hearing closing arguments, the trial court found defendant guilty of the armed robbery and aggravated unlawful restraint counts and not guilty of the aggravated kidnapping counts. Defendant's motion for new trial was denied.

¶ 16 At sentencing, the trial court heard arguments in aggravation and mitigation. In arguing for a 25 year sentence, the State referenced the premeditated nature of the crime and that defendant used Carrasquillo as a "human shield" to make good his escape. In arguing for the minimum six year sentence, defense counsel emphasized defendant's lack of criminal history and gang involvement. Counsel also pointed out that defendant was a high school graduate and had steady employment for seven years prior to his arrest. Counsel further pointed out that

defendant had strong familial support and that no one was hurt by defendant's actions. In allocution defendant said that he was sorry.

¶ 17 In announcing sentence, the court noted that it reviewed defendant's presentence investigation report (PSI) and "heard matters in aggravation and mitigation." The court noted defendant's lack of criminal background. In reviewing the facts of the case the court noted "the absolute terror that woman (Carrasquillo) went through and the surprise that she received when she went to the back of the store, placing the knife to her throat, taking the phone, all of that and escorting her out to the front, all of that in front of these officers with their weapons drawn. Fortunately, the officers used restraint; but it could have been a very bad situation." The court ultimately sentenced defendant to 17 years' imprisonment and merged the aggravated unlawful restraint charge into the armed robbery charge for the purposes of sentencing.

¶ 18 On appeal defendant solely contends that his 17-year sentence is excessive because the court failed to consider certain mitigating factors, including his supportive family, his lack of criminal history, the fact that he was a high school graduate, that he was remorseful, and that he was working steadily for seven years at the time of the offense. He asks this court to reduce his sentence to the minimum statutory term of six years' imprisonment or remand the matter for a new sentencing hearing.

¶ 19 In setting forth this argument, defendant acknowledges that he failed to object to the sentence imposed at the time of sentencing and that he did not file a posttrial motion to reconsider his sentence. Defendant requests that we review the issue under the plain error doctrine or in the alternative that his trial counsel was ineffective for failing to raise the issue in a postsentencing motion. The State responds that defendant has waived his sentencing argument

by not objecting at sentencing and not raising the issue in a written posttrial motion to reconsider sentence, there is no error to review under the plain error doctrine, and his trial counsel was not ineffective.

¶ 20 "It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required." *People v. Hillier*, 237 Ill. 2d 539, 544 (2010); *People v. Bannister*, 232 Ill. 2d 52, 76 (2008). Here, the record shows that, after the court imposed sentence, trial counsel failed to file a written motion to reconsider his sentence. As such, defendant has waived his appeal rights regarding sentencing. However, defendant argues that we may review the issue under the plain error doctrine. "To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred." *Hillier*, at 545; *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). For sentencing purposes, defendant must show either "(1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Hillier*, at 545; *People v. Hall*, 195 Ill. 2d 1, 18 (2000). "Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion" *Hillier*, at 545. Based on our thorough review of the sentencing record, we do not find any error and thus no plain error. See *People v. Walker*, 232 Ill. 2d 113, 124 (2009) (plain error rule does not apply if a clear and obvious error did not occur.).

¶ 21 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.

¶ 22 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)).

¶ 23 Here, we find that the trial court did not abuse its discretion in sentencing defendant to 17 years' imprisonment. Defendant's armed robbery with a dangerous weapon conviction is a Class X felony (720 ILCS 5/18-2 (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 17-year sentence was within the permissible statutory range and thus it is presumed proper. *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.

¶ 24 Defendant does not dispute that his 17-year sentence fell within the applicable sentencing range. Rather, he argues that the trial court did not consider his lack of criminal history, that he

had a supportive family, that he showed remorse and that he was working for seven years prior to this offense.

¶ 25 Contrary to defendant's argument, the record shows that this mitigation evidence was presented to the trial court before it imposed its sentence. As noted above, we presume that the trial court properly considered all mitigation evidence. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. While a defendant's potential for rehabilitation must be considered, the trial court is not required to give more weight to a defendant's chance of rehabilitation than to the nature of the crime (*People v. Evans,* 373 Ill. App. 3d 948, 968 (2007)) or to explain the value the court assigned to each factor in mitigation and aggravation (*People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). The sentencing court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factor either require a minimum sentence or preclude a maximum sentence. *People v. Harmon,* 2015 IL App (1st) 122345, ¶ 123.

¶ 26 The record clearly demonstrates that, in imposing sentence, the trial court considered the factors in aggravation and mitigation, and ultimately determined that the seriousness of the offense outweighed the mitigating factors and warranted a 17-year sentence. At sentencing, the court was presented with defendant's PSI report, which included his age, family and educational history, and criminal history. The court expressly noted that it considered the PSI report. Defense counsel emphasized defendant's family history and lack of criminal background. Counsel also emphasized defendant's work history and educational achievements. The court noted that it considered the matters in mitigation. However, the court also considered the nature of the armed robbery, including that defendant held a knife to the victim's throat and the terror that the victim suffered. See *Harmon,* at ¶ 123; *People v. Weatherspoon*, 394 Ill. App. 3d 839, 862 (2008) (the

seriousness of the offense is the most significant factor in imposing sentence). The court pointed out the premeditated nature of the offense and that defendant had "some type of objective" that was never achieved because the police officers' rapid response ended what could have been a much more serious situation. 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).

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.