2019 IL App (1st) 161749-U

No. 1-16-1749

March 29, 2019

First Division

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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. 15 CR 2996
	)	
DJUAN THOMAS,	)	Honorable
	)	James Michael Obbish,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's convictions for aggravated battery with a firearm and aggravated discharge of a firearm where defendant, a juvenile, who was tried and sentenced in adult criminal court pursuant to the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130 (West 2012)), knowingly and intelligently waived his right to a jury trial. The trial court did not abuse its discretion in sentencing defendant to concurrent Class X terms of 13 years in prison.

¶ 2 Following a bench trial, defendant Djuan Thomas was convicted of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)). He was sentenced to 13 years in prison for each conviction, with those terms to be served concurrently. On appeal, defendant contends his convictions should be reversed and his case remanded for a new trial because, as a teenage offender being tried in adult court for the first time, he did not knowingly and intelligently waive his right to a jury trial. He further contends his sentence is excessive in light of his status as a minor, the circumstances of the crime and his rehabilitative potential. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by indictment with ten counts of attempted first degree murder (720 ILCS 5/8-4(a) (West 2012); 720 ILCS 5/9-1(a)(1) (West 2012)), one count of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)), and three counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)), in connection with the December 6, 2014 shooting of Rayshawn Phillips.

¶ 5 At the time of the offense, defendant was 16 years old; however, he was tried in adult criminal court pursuant to the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130 (West 2012)). When the offense occurred, that provision required that juveniles who were at least 15 years old when the offense was committed and who were charged with one of several enumerated offenses would be prosecuted in adult criminal court rather than in a juvenile proceeding. 705 ILCS 405/5-130(1)(a) (West 2012). Those enumerated offenses included aggravated battery with a firearm where the minor personally discharged the firearm. *Id*. Accordingly, defendant was tried and sentenced as an adult.

¶ 6 At defendant's bench trial, the State presented testimony that defendant shot the victim in the 2200 block of West Adams Street in Chicago. The shooting was recorded on surveillance video that was reviewed by State witnesses during their testimony.

¶ 7 Jajuan Phillips testified that at about 11:30 a.m., he and Rayshawn, his nine-year-old son, were walking to a Subway sandwich shop at Adams Street and Oakley Boulevard when they met a friend, Darryl Franklin.[1] As the trio approached the shop, a car pulled into an alley in front of the sidewalk where they were standing and reversed back into the street. Jajuan heard a shot fired and covered Rayshawn with his body. Rayshawn was shot in the right leg. Jajuan did not see where the shots came from; however, he saw five or six youths standing in a park about 100 feet away.

¶ 8 Rayshawn testified that he heard three shots, and saw two people, one wearing a red jacket and red hat, and the other person wearing a gray jacket and gray hat. He was on the ground when he got shot, and his father picked him up and took him nearby to his aunt's house. Rayshawn was treated at a hospital and was discharged the following day; however, he missed about a month of school due to his injury. He has permanent scars and cannot touch the gunshot wound. The court viewed Rayshawn's wound during his testimony.

¶ 9 Franklin testified that as soon as the car approached and pulled into the alley, one person from a group standing across the street reached into the front pocket of his gray sweatshirt, pulled out a gun and started shooting. As Franklin ran away, he heard six or seven gunshots. Franklin could not see the gunman's face because the gunman wore a hooded sweatshirt. Franklin viewed the video and identified the gunman.

[1] Because Jajuan and Rayshawn share the same last name, we refer to them by their first names.

¶ 10 The State also presented two witnesses, Ikeem Redmond and Charles Barber, who were with defendant when the shooting occurred. Redmond testified he was on probation for possession of a controlled substance but had not been promised anything in exchange for his testimony. On the morning of the shooting, Redmond and Barber met defendant at a store on Western Avenue between Jackson Boulevard and Adams Street, about a block from where the shooting took place.

¶ 11 Redmond knew defendant by the nickname “Number 6” and identified defendant in court. He had known defendant for two or three years but did not know defendant’s name. Redmond was a member of the Traveling Vice Lords gang at the time of the shooting and recognized a car that drove past them on Jackson. Redmond said he noticed the car because it was associated with another gang and someone in that car shot at him a few days earlier.

¶ 12 Redmond told Barber and defendant they should “move around” and keep an eye on the car. They walked to Adams Street, and Barber stopped to tie his shoe. Redmond heard shots as the car drove near them and saw defendant firing a weapon at the car.

¶ 13 When asked where defendant was when he fired the shots, Redmond said he began in a parking lot but “ended up in the middle of the street on Adams.” Redmond said defendant fired more than one shot but he did not know how many. Redmond ran to his girlfriend’s house, which was nearby, and stayed there for about an hour. When Redmond returned outside, he was taken to the police station, where he identified photographs and surveillance video depicting the shooting, and he identified defendant as the shooter.

¶ 14 Barber offered testimony consistent with that of Redmond. At the outset of Barber’s testimony, he acknowledged his prior juvenile adjudication for robbery, a misdemeanor adult

conviction, and his relocation assistance in exchange for his testimony. He stated that defendant stood in the middle of the street and shot at the car. After the shooting, defendant and Redmond ran away. Barber saw a boy on the ground and left when he heard the boy screaming because he knew the boy was alive. Like Redmond, Barber testified he was a member of the Traveling Vice Lords gang. Barber gave a statement to police and identified defendant in a photo array.

¶ 15 Chicago police detective Robert Distasio testified that he responded to the scene of the shooting and obtained video footage from several area businesses. He also located and spoke with Redmond and Barber, who identified defendant as the gunman. An investigative alert was issued for defendant, who was arrested in January 2015.

¶ 16 The parties stipulated Rayshawn was treated at Stroger Hospital for gunshot wounds to his right calf. The defense did not present any evidence.

¶ 17 The trial court found defendant guilty of aggravated battery with a firearm and aggravated discharge of a firearm. The court noted the permanent disfigurement to Rayshawn's leg caused by one or more bullets. Defendant filed a motion for a new trial, which was denied.

¶ 18 At sentencing, the State argued in aggravation that defendant committed a gang-motivated shooting that harmed an innocent bystander. The prosecutor noted defendant had a 2014 adjudication of delinquency for criminal trespass to a vehicle for which he was sentenced to two years of probation. Defendant also committed various rule violations involving violence while housed in juvenile detention. The prosecutor pointed out that even though defendant was 16 years old at the time of the shooting, he nevertheless "decided to arm himself" and was "prepared for this shooting."

¶ 19 The State noted that in the presentence investigation (PSI) report provided to the court, defendant acknowledged spending a lot of time with his friends and a cousin who were members of the Traveling Vice Lords gang. The State asserted that defendant's remarks regarding his affiliation with gang members, their activities, and criminal acts in general demonstrated a lack of remorse or understanding of the effects of his actions.

¶ 20 The State asked that defendant be given consecutive sentences based on his conviction for aggravated battery with a firearm and the court to make the required finding that Rayshawn sustained severe bodily injury. The State further asserted consecutive sentences were warranted because defendant posed a danger to the community. At the close of the State's arguments in aggravation, the court found there was not sufficient proof of a severe bodily injury to warrant consecutive sentences.

¶ 21 In mitigation, defense counsel noted that according to the PSI report, defendant no longer associated with his former friends. Counsel argued that defendant had earned several "A" grades in school, along with a "certificate of achievement for Level 3 satisfactory behavioral management." Counsel observed that defendant's mother, grandmother, brother and sister were present in court. The PSI report stated that defendant's father is incarcerated.

¶ 22 Defense counsel also emphasized that defendant was 16 when this offense occurred and asked the court to consider that age, arguing defendant's brain was not fully developed. Counsel asserted defendant "did not create these circumstances that he was placed in" and requested the minimum Class X term of six years.

¶ 23 Defense counsel read defendant's statement in allocution. Defendant said he played football, was involved with his church, loved construction work, and wanted to continue those

pursuits. He admitted making poor decisions "such as being around negative people and doing drugs," but said he had matured, set goals of completing high school, college, and starting a construction business. Defendant acknowledged the support of his family, and stated he was working on anger management and his academics.

¶ 24 The court noted that for purposes of sentencing, it reviewed hospital records provided by the State, though those records were not admitted into evidence. The court stated it had to "take into consideration multiple factors, which [it] attempted to do in this particular case." The court stated it had listened to the parties' arguments and reviewed the PSI report. The court noted it was required to consider whether defendant's acts caused serious physical harm to another and stated that defendant's act of shooting at the car was not mitigated by his lack of intent to harm Rayshawn as a bystander. The court further noted:

> "This was not one gunshot. This wasn't a celebratory shot into the air. This was multiple bullets fired from a semiautomatic weapon at a vehicle. I think the only reasonable observation one could make [is that the shot was directed] at the occupant of the vehicle."

¶ 25 The court imposed a 13-year sentence for aggravated battery with a firearm and a concurrent 13-year sentence for aggravated discharge of a firearm. Defendant filed a motion to reconsider sentence, which was denied.

¶ 26 ANALYSIS

¶ 27 On appeal, defendant first contends the trial court did not ensure that his waiver of his right to a jury trial was made knowingly and voluntarily and thus, his convictions should be reversed and his case remanded for a new trial. He argues he was 17 years old at the time of this proceeding, which was his first trial, and he asserts the court did not explain the difference

between a jury and bench trial, did not ask if he understood that he had a constitutional right to a jury trial and did not explain the consequences of his waiver.

¶ 28 The record shows that defendant signed a written waiver of his right to a jury trial. On the day the case was set for trial, the following colloquy took place:

> "THE COURT: Mr. Thomas, is this your signature on this document indicating that you want to waive your right to a trial by jury and submit the case to me as a bench trial?
>
> DEFENDANT: Yes, your Honor.
>
> THE COURT: Do you know what a jury trial is?
>
> DEFENDANT: Yes, your Honor.
>
> THE COURT: Has anybody forced you or threatened you in any way to get you to waive your right to a trial by jury?
>
> DEFENDANT: No, your Honor.
>
> THE COURT: Did anybody promise you anything to get you to waive that right?
>
> DEFENDANT: No, your Honor.
>
> THE COURT: Did you do it of your own free will?
>
> DEFENDANT: Yes, your Honor.
>
> THE COURT: Let the record reflect that I find Mr. Thomas has knowingly and voluntarily exercised his constitutional right to waive a jury trial in this particular case and proceed by way of a bench trial."

¶ 29 In setting forth his argument, defendant acknowledges that he did not challenge his jury waiver in the trial court but asserts this issue can be considered as plain error. See *People v. Thompson*, 238 Ill. 2d 598, 611 (2010). The plain-error doctrine provides a limited exception to

forfeiture and allows for review of forfeited issues on appeal if either: (1) the evidence is closely balanced; or (2) the error is of such seriousness that it affected the fairness of the defendant's trial. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The validity of a defendant's jury waiver is reviewed under the second prong of the plain-error doctrine as affecting the defendant's substantial rights. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). However, to establish plain error, the defendant first must show that a clear or obvious error occurred. *People v. Hood*, 2016 IL 118581, ¶ 18. Here, we find no error.

¶ 30 "The right to a trial by jury is a fundamental right guaranteed by our federal and state constitutions." *People v. Bracey*, 213 Ill. 2d 265, 269 (2004); see also U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. While a defendant may waive that right, that waiver is only valid if it is knowingly and voluntarily made. *Id.*; see also 725 ILCS 5/103-6 (West 2012); *People v. Warnock*, 2013 IL App (2d) 120057, ¶ 7.

¶ 31 As reflected in the above colloquy, defendant executed a written jury waiver; however, the existence of a written waiver is not dispositive. See *Bannister*, 232 Ill. 2d at 66 (a written waiver "merely memorializes the defendant's decision, allowing a court to review the record to ascertain whether a defendant's jury waiver was made understandingly"). Still, a signed waiver, in light of other circumstances, can "lessen[] the probability that the waiver was not made knowingly." (Internal quotation marks omitted.) *People v. Stokes*, 281 Ill. App. 3d 972, 978 (1996).

¶ 32 Although the trial court is required to ensure that a defendant waives the right to a jury trial expressly and understandingly, the court is not required to provide a specific admonition or declaration for a jury waiver to be effective. *Bannister,* 232 Ill. 2d at 66. Whether a jury waiver is

valid is dependent on the facts and circumstances of the particular case. *Id.* at 71. A defendant challenging his jury waiver bears the burden of establishing the waiver was invalid. *People v. Parker*, 2016 IL App (1st) 141597, ¶ 47 (citing *People v. Gibson*, 304 Ill. App. 3d 923, 930 (1999)).

¶ 33 In this case, the court asked defendant if the signature on the written jury waiver was his and admonished defendant that his signature on that document indicated he wanted to waive his right to a jury trial and "submit the case to me as a bench trial." Defendant responded yes. The court then asked defendant if he knew what a jury trial was, and defendant responded yes. Although defendant argues this court cannot assume he "knew the nature of the right he waived," defendant expressly indicated to the court that he knew what a jury trial was. Accordingly, we reject defendant's contention that the court was required to explain the difference between a jury trial and a bench trial.

¶ 34 Defendant contends his jury waiver was not knowing and voluntary because he was 17 years old at the time of his trial and had no previous adult criminal court proceedings. In a juvenile proceeding where the minor had no prior experience in adult criminal proceedings, the Illinois Supreme Court held the trial court was not required to provide the minor with specific admonitions prior to an effective jury waiver. See *In re R.A.B.*, 197 Ill. 2d 358, 364 (2001), *abrogated on other grounds by In re Destiny P.*, 2017 IL 120796. The juvenile defendant in *R.A.B.* was found to have not knowingly waived the right to a jury trial because the record did not reflect he was aware of that right and a jury waiver was not discussed or entered into before the trial court. However, neither of those circumstances occurred in this case.

¶ 35 The cases cited by defendant in support of his argument that he did not understand the consequences of his jury waiver are likewise distinguishable. Unlike in *People v. Phuong*, 287 Ill. App. 3d 988, 995-96 (1997), defendant was fluent in English and did not testify through an interpreter such that it was not clear whether he knew the role of a jury. In *People v. Turner*, 80 Ill. App. 2d 146, 150-51 (1967), on which defendant also relies and which is cited in *Phuong*, the defendant was found to be illiterate and to not have understandingly waived his right to a jury trial. In this case, there is no indication that defendant is illiterate such that his jury waiver was not made understandingly. Rather, given the presence of defendant's signed jury waiver and the record on appeal which shows that he expressly stated he knew the meaning of a jury trial, defendant has not met his burden of showing that his jury waiver was invalid. Thus, we find no error and, accordingly, there can be no finding of plain error. See *Hood*, 2016 IL 118581, ¶ 18.

¶ 36 Defendant's remaining contention is that the 13-year sentence imposed by the trial court is excessive in light of his youth, his academic progress and life goals, and the circumstances of the offenses. He argues that he fired the weapon impulsively and bears a lower degree of responsibility due to his age and his upbringing in "a world of poverty and gun violence." Defendant further contends the seriousness of the offense of aggravated battery with a firearm is already reflected in its Class X felony classification and the fact that he must serve 85% of his sentence. He asks this court either to remand this case for resentencing or reduce his sentence "to a term more proportionate to [his] diminished culpability" and his rehabilitative potential.

¶ 37 The Illinois Constitution requires that a trial court impose a sentence that reflects both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. In reaching this

balance, the trial court must consider a number of aggravating and mitigating factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). In reviewing a defendant's sentence, this court will not reweigh the factors and substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20. The trial court's sentencing determination is entitled deference and will not be reversed on appeal absent an abuse of discretion. *People v. Cunningham*, 2018 IL App (4th) 150395, ¶ 48.

¶ 38 Defendant's sentence is within the statutory range for his offense. Defendant was convicted of aggravated battery with a firearm, a Class X felony subject to a sentencing range of six to 30 years in prison. See 720 ILCS 5/12-3.05(e)(1), (h) (West 2012); 730 ILCS 5/5-4.5-25 (West 2012). The 13-year term imposed by the court in this case is within the lower half of that sentencing range.

¶ 39 A sentence that is within the statutory range is usually presumed to be proper and will be deemed excessive only if it varies from the spirit or purpose of the law or is "manifestly disproportionate to the nature of the offense." *Cunningham*, 2018 IL App (4th) 150395, ¶ 48 (quoting *People v. Harris*, 2015 IL App (4th) 140696, ¶ 55); *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 10. A trial court should provide reasons for arriving at a sentence or articulate its consideration of particular mitigating factors, but the court is not required to do so. *People v. Abrams*, 2015 IL App (1st) 133746, ¶ 32.

¶ 40 In arguing his sentence is excessive, defendant emphasizes his youth and rehabilitative potential. As to his age, defendant argues that his youth "was a crucial factor for the trial court to

consider" and asserts, citing *People v. Davis*, 2014 IL 115595, ¶ 19, that teenagers such as himself should receive lower criminal sentences due to their lack of mature development and greater chance at rehabilitation.

¶ 41 In *Davis*, our supreme court discussed a recent line of United States Supreme Court cases holding that statutes mandating life imprisonment without parole or the death penalty for juvenile offenders convicted of murder constituted cruel and unusual punishment under the eighth amendment. *Id.* ¶¶ 19-21 (citing *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012)). Those three decisions noted the characteristics distinguishing juvenile offenders, including an "underdeveloped sense of responsibility," a susceptibility to peer pressure and other negative influences, and juveniles' unformed character, as compared to adults. *Davis*, 2014 IL 115595, ¶ 19. In *Miller*, the Supreme Court noted that mandatory sentences "preclude[] consideration of such mitigating circumstances as the juvenile offender's age and its attendant characteristics" as well as the circumstances of the offense, the juvenile's home environment, and the possibility of rehabilitation. *Miller*, 567 U.S. at 477-78. In this case, the trial court was not bound by a mandatory sentencing scheme.

¶ 42 Although defendant was a teenager when he committed this offense, age is only one factor considered by the trial court at sentencing. See *Alexander*, 239 Ill. 2d at 213. Defendant contends the trial court did not consider his potential to change his course in life. However, the record reflects that defense counsel argued to the court that defendant had removed himself from the influence of his former friends and was earning good grades. The court also heard defendant's statement in allocution describing his future goals. The record shows that the court specifically referenced defendant's age and the nature of the offenses he committed, *i.e.*, firing

multiple bullets from a semi-automatic weapon at an occupied vehicle. The court was not required to give greater weight to a defendant's rehabilitative potential than to the seriousness of the offense. *People v. Pearson*, 2018 IL App (1st) 142819, ¶ 56. Defendant was convicted for firing a weapon at a car and injuring the victim, a child standing nearby with his father.

¶ 43 The court arrived at a sentence of 13 years, which is in the lower half of the applicable range. That sentence did not constitute an abuse of the trial court's discretion. Even if we would have imposed a different sentence, we cannot say that this sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of defendant's offense. *Alexander*, 239 Ill. 2d at 212. Nevertheless, we suggest that when a trial court is sentencing a juvenile offender, the court should consider the differences between juvenile and adult offenders discussed in *Roper*, *Graham* and *Miller*, including the offender's age, family and home environment and the circumstances of the offense; the extent of the juvenile's participation in the crime; the effect of any familial or peer pressure; the juvenile's possible inability to interact with police or attorneys or assist in his or her own defense; and the possibility of rehabilitation. See *Miller*, 567 U.S. at 477-78.

¶ 44 CONCLUSION

¶ 45 Accordingly, the judgment of the trial court is affirmed.

¶ 46 Affirmed.