2017 IL App (1st) 161996-U

SIXTH DIVISION
MAY 12, 2017

No. 1-16-1996

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 10265
	)	
BONNIE LILTZ,	)	Honorable
	)	Joel L. Greenblatt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the judgment of the trial court, which did not abuse its discretion in imposing a term of imprisonment on the defendant, who entered a negotiated plea of guilty to involuntary manslaughter of a family member in exchange for the State's recommendation that the trial court sentence her to probation.

¶ 2 The defendant, Bonnie Liltz, entered a negotiated plea of guilty to one count of involuntary manslaughter of a family member (720 ILCS 5/9-3(f) (West 2014)). Pursuant to the negotiated plea, the State recommended a sentence of four years' probation with mental health counseling. The trial court sentenced the defendant to four years' imprisonment. On appeal, the

defendant argues, and the State agrees, that the trial court abused its discretion in imposing a term of imprisonment rather than probation. For the reasons which follow, we reject the State's confession of error and affirm the judgment and sentence of the trial court.

¶ 3 On June 30, 2015, the defendant was charged with two counts of first-degree murder for killing her daughter, Courtney Liltz (Courtney), who had severe developmental disabilities and cerebral palsy. On May 10, 2016, at a plea hearing attended by the defendant, her counsel, and the State, the State amended one of the counts to allege that the defendant committed involuntary manslaughter of a family member. Following admonishments by the trial court, the defendant entered a negotiated plea of guilty to that charge.[1]

¶ 4 The State presented the following factual basis for the defendant's plea. On May 27, 2015, the defendant's sister discovered the defendant and Courtney unconscious and unresponsive in their Schaumburg apartment. Both women were taken to the hospital, where Courtney died on June 3, 2015. A post-mortem examination revealed that her death resulted from ingesting a combination of four medications, empty capsules of which were found in the apartment. When the defendant regained consciousness, she voluntarily admitted to investigators that she caused Courtney to ingest the medications and that she had also taken medication at that time.

¶ 5 The trial court accepted the defendant's guilty plea and the matter proceeded to a sentencing hearing. The State presented no evidence or argument in aggravation but, pursuant to the negotiated plea of guilty, recommended a sentence of four years' probation with mental health counseling. The defense's case in mitigation consisted of the defendant's allocutory

[1] The trial court granted the State's motion to *nolle prosequi* the remaining count of first-degree murder.

statement, testimony from nine witnesses, letters of support, medical records, and a presentence investigation report (PSI).

¶ 6 The defendant, in allocution, stated that she was 56 years old and recently underwent colostomy bag surgery due to complications from an ongoing struggle with cancer, which began when she was diagnosed with Stage 3 ovarian cancer at age 19. As a result of her cancer and radiation treatment, she lost her ovaries and part of her intestines and was unable to retain nutrition, gain weight, or bear children. She adopted Courtney in 1992, when Courtney was five years old, and, throughout Courtney's life, cared for her by changing her diapers, feeding her through a G-tube, bathing and dressing her, lifting her in and out of her wheelchair, administering seizure medications, and going to medical appointments.

¶ 7 In 2012, the defendant was again diagnosed with cancer and required surgery, compelling her to leave Courtney in a nursing home. Family and friends who visited Courtney at the nursing home told the defendant that Courtney was left in a wet diaper, had soiled clothes, and received inadequate care. When the defendant brought Courtney home, Courtney "was not herself" and exhibited "anger that lasted for a long time."

¶ 8 On May 27, 2015, at 3:30 a.m., the defendant awoke with a rapid heartbeat, severe abdominal pain, and uncontrollable diarrhea. Her stomach was "indented," which, according to her gastroenterologist, was a sign that her intestines were failing. The defendant believed that she was dying. She did not call emergency services or her family because her elderly parents and sister could not care for Courtney and "the thought of her having to live in an institution for the rest of her life was more than [the defendant] could bear." She explained that "the only place I knew [Courtney] would be safe and happy would be in heaven with me," and that she "didn't know what else to do" but pray for forgiveness and kill herself and Courtney. She stated that she

missed Courtney "immensely" and wished that she could "turn the clock back and have the ability to care for her again."

¶ 9 The defense's witnesses included the defendant's mother, father, and sister; three friends; the father of a disabled child who participated in a church group with Courtney; a woman for whom the defendant had provided childcare services; and the woman's son. Each witness testified regarding the defendant's love for Courtney and her dedication to Courtney's physical and emotional needs despite her own medical conditions. Several of the witnesses stated that the defendant feared what would happen to Courtney if she were no longer able to care for her, as she lacked a support system and knew that Courtney suffered during her temporary stay at the nursing home. The witnesses agreed that the circumstances leading to the offense were unlikely to recur and that the defendant was unlikely to break the law again. Additionally, they believed that she would comply with the terms of probation and that, due to her medical conditions, prison would be a significant hardship for her.

¶ 10 The defense produced letters of support from an additional 17 individuals, including family members, neighbors, clergy, care providers, and the parents of other disabled children. These individuals, like the witnesses who testified at the sentencing hearing, stated that the defendant provided for all of Courtney's needs and feared placing her in an institution.

¶ 11 The defendant's medical records from 1979 through 2012 were entered into evidence. The PSI indicated that, in addition to the medical conditions that the defendant described in her allocutory statement, she suffered from urinary and bowel incontinence, skin cancer, cancer of the vulva, high blood pressure, and weight loss. In the months preceding the sentencing hearing, she had been hospitalized on multiple occasions for dehydration, rapid heart rate, and colostomy bag surgery. She required multiple daily medications and had been prescribed a "Total Parental

Nutrition *** pic-line for feedings for nutrition and calories," but the procedure was not authorized by her insurance.

¶ 12 Arguing in mitigation, defense counsel submitted that no witness had requested justice for Courtney, or suggested that the defendant killed her with malice, because the defendant's actions in fact represented "compassion and care and unconditional love." According to defense counsel, the defendant "did not try and get away with anything," but, instead, thought that she was dying and "believed reasonably or unreasonably that she had no other choice" because she could not rely on her family or an institution to care for Courtney. Defense counsel stated that the defendant would likely die in prison due to her medical conditions and that, as the State recognized, her circumstances merited probation.

¶ 13 The trial court sentenced the defendant to four years' imprisonment. In imposing sentence, the trial court stated that it "[did] not and cannot consider that the defendant was originally charged with first-degree murder," and explained that, although it was "reluctant" to impose probation in a case involving a killing, its consideration of probation was required by law and "each case and each defendant stands on its own evidence." Regarding the factors in mitigation, the trial court observed that the defendant lacked a prior criminal history, was unlikely to commit another crime, would likely comply with the terms of probation, and her health would be endangered in prison. As to the factors in aggravation, the trial court found that the defendant's conduct caused serious harm, the victim was physically handicapped, the defendant was a family member in a position of trust, and a term of imprisonment was necessary to deter others from committing the same crime. The trial court stated that it gave "equal consideration" to the factors in mitigation and aggravation, and also considered the defendant's

allocutory statement and exhibits, the PSI, defense counsel's argument, and the State's recommendation of probation.

¶ 14 The defendant filed a motion to reconsider sentence that indicated, *inter alia*, that her condition deteriorated soon after she was remanded to Cook County Jail and, as a result, she had been hospitalized "for continuing care and treatment and was never transported to [the] general population." The State did not file a response to the defendant's motion and, at a hearing on the motion, did not respond to defense counsel's argument. The trial court denied the defendant's motion to reconsider sentence and this appeal followed.

¶ 15 On appeal, the defendant contends that the trial court abused its discretion in sentencing her to a term of imprisonment and requests that this court reduce her sentence to four years' probation with mental health counseling, as recommended by the State, pursuant to our authority under Illinois Supreme Court Rule 615(b)(4). Ill. S. Ct. R. 615(b)(4) (eff. Aug. 27, 1999) (providing that a reviewing court may reduce the punishment imposed by the trial court). The State, in its brief on appeal, agrees that sentencing error occurred and submits that the "unique and tragic facts" of this case merit the relief that the defendant requests.

¶ 16 Although the State confesses error, a reviewing court is not bound by a party's concession. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010). In this case, the alleged error that the State concedes implicates the trial court's sentencing decision—a matter over which the trial court has "broad discretionary powers ***." *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A reviewing court considers a trial court's sentencing decision under an abuse-of-discretion standard, and will find error only where a sentence is " 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Id.* (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)). The trial court's sentencing decision is entitled to

substantial deference because the trial judge, "having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36.

¶ 17 A sentence should reflect both the "seriousness of the offense" and "the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11; *People v. Jones*, 2015 IL App (1st) 142597, ¶ 38. However, "[b]ecause the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense ***." *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123. A reviewing court " 'must not substitute its judgment for that of the trial court merely because it would have weighed [the mitigating and aggravating] factors differently.' " *Alexander*, 239 Ill. 2d at 213 (quoting *Stacey*, 193 Ill. 2d at 209).

¶ 18 Involuntary manslaughter of a family member is a Class 2 felony subject to a sentence of no more than four years' probation or 3 to 14 years' imprisonment. 720 ILCS 5/9-3(f) (West 2014); 730 ILCS 5/5-4.5-35(d) (West 2014). In this case, the defendant's sentence of four years' imprisonment is well within the sentencing range and, therefore, is presumed proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. Section 5-6-1(a) of the Unified Code of Corrections, however, provides, in relevant part, that "the court shall impose a sentence of probation *** upon an offender unless, having regard to the nature and circumstance of the offense, and to the history, character and condition of the offender," the court finds that imprisonment is necessary to protect the public, or that probation would "deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice ***." 730 ILCS 5/5-6-1(a) (West Supp. 2015).

¶ 19 Turning to the present case, the defendant argues that the trial court, in sentencing her to a term of imprisonment rather than probation, failed to consider that the State recommended a sentence of probation and ignored the evidence in mitigation, including: her lack of a criminal history; her dedication to caring for Courtney; her medical conditions; her remorse; the unique circumstances that led to the offense; the likelihood that she would comply with the terms of probation; and the hardship that would result from her imprisonment. These factors, according to the defendant, mandate a sentence of probation because they demonstrate that her imprisonment is unnecessary to protect the public and that probation would not deprecate the seriousness of her offense. We disagree.

¶ 20 Where probation is available as a possible sentence, it "is not an inherent nor statutory right, but rather a discretionary matter for the court." *People v. Brown*, 218 Ill. App. 3d 890, 900 (1991). Moreover, in formulating a sentence, the trial court "has no obligation to recite and assign value to each factor presented at a sentencing hearing." *People v. Perkins*, 408 Ill. App. 3d 752, 763 (2011). Rather, "[w]here mitigating evidence is presented to the trial court during the sentencing hearing, we may presume that the trial court considered it, absent some indication, other than the sentence itself, to the contrary." *People v. Hill*, 408 Ill. App. 3d 23, 30 (2011).

¶ 21 Based on the record before us, the defendant has not demonstrated that the trial court failed to consider either the State's sentencing recommendation or the factors in mitigation. Rather, the trial court expressly stated that it "considered" the State's recommendation of probation and proceeded to review, in detail, both the factors in mitigation and aggravation. As to the factors in mitigation, the trial court found that the defendant lacked a prior criminal history, was unlikely to commit another crime, would likely comply with the terms of probation, and her health would be endangered in prison. Regarding the factors in aggravation, however,

the trial court observed that the defendant's conduct caused serious harm, the victim was physically handicapped, the defendant was a family member in a position of trust, and a term of imprisonment was necessary to deter others from committing the same crime. The record thus demonstrates that the trial court considered the mitigating factors at the defendant's sentencing hearing, along with all the other evidence presented, and this court cannot substitute its judgment merely because it is possible that those factors could be weighed differently. *Alexander*, 239 Ill. 2d at 213. As such, we find that the trial court did not abuse its discretion in sentencing the defendant to a term of imprisonment rather than probation.

¶ 22 The defendant maintains, however, that the trial court improperly utilized Courtney's death as an aggravating factor where her death was an element of the offense of involuntary manslaughter of a family member. In support of her contention of error, the defendant relies on the following remarks which the trial court delivered at the end of the sentencing hearing:

> "Life is precious, even a life that is disabled, even a life that is profoundly disabled.
>
> Your daughter, Courtney Liltz, was innocent and vulnerable and fragile. Her life was fragile. All life is fragile.
>
> The choice you made that morning, for whatever reasons, was not, as your counsel has argued, an act of love. It was a crime. Only God can end a life out of love."

¶ 23 Contrary to the defendant's contention, the trial court's statement does not establish that Courtney's death was an aggravating factor at sentencing. While a trial court may not consider a factor implicit in an offense as an aggravating factor, it may address "the particular circumstances and facts that speak to the seriousness of the offense." *People v. Valadovinos*,

2014 IL App (1st) 130076, ¶ 55. The trial court's comments did not suggest that the fact of Courtney's death was the reason the defendant received a term of imprisonment but, rather, addressed and rejected the defendant's argument that her reasons for killing Courtney supported a sentence of probation. Moreover, these comments occurred at the end of the sentencing hearing, after the trial court reviewed the factors in mitigation and aggravation and explained that it had considered the defendant's allocutory statement and exhibits, the PSI, defense counsel's argument, and the State's sentencing recommendation. See *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009) ("In determining whether the trial court based the sentence on proper aggravating and mitigating factors, a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court."). Therefore, we reject the defendant's claim of error and find that the trial court did not utilize Courtney's death as an improper factor at sentencing.

¶ 24 In a related argument, the defendant contends that the trial court erred in implicitly sentencing her based on the original charge of first-degree murder although she pled guilty to involuntary manslaughter of a family member. See *People v. Daly*, 2014 IL App (4th) 140624, ¶¶ 30, 45 (reducing the defendant's prison sentence to probation, as recommended by the State, where the trial court's comments at the sentencing hearing revealed that it "considered the nature and circumstances of an offense to which [the] defendant did not plead guilty."). This argument lacks merit, as the trial court's comments during the sentencing hearing do not demonstrate that it sentenced the defendant based on the original charges or considered facts outside the stipulated basis for her negotiated plea of guilty. To the contrary, the court stated:

> "This Court is not a fact-finder of guilt or innocence with regard to the charge as amended by the State. The Court is a fact-finder, however, as to what a

> fair and just sentence should be after a finding that there is a sufficient factual basis to support the plea to the charge of involuntary manslaughter.
>
> This Court's sentence is based upon a finding of guilty as to that charge, not upon involuntary manslaughter reduced from first-degree murder. In other words, this Court has not and cannot consider that the defendant was originally charged with first-degree murder."

The defendant, in her brief on appeal, neither addresses the above comments of the trial court nor directs us to any specific evidence in the record which indicates that the trial court sentenced her as though she had pleaded guilty to a more serious offense. Rather, the record before us refutes the notion that the trial court sentenced the defendant based on the original charge of first-degree murder and, therefore, her claim of error fails.

¶ 25 Finally, the defendant submits that her term of imprisonment is excessive because it lacks deterrent value and was imposed without regard for her rehabilitative potential. According to the defendant, her sentence has no deterrent purpose because she pleaded guilty to involuntary manslaughter of a family member, an offense that was reckless and not intentional. See 720 ILCS 5/9-3(f) (West 2014)). This argument lacks merit because, although an enhanced sentence for involuntary manslaughter may be unlikely to deter conduct that is entirely unintentional, (*People v. Martin*, 119 Ill. 2d 453, 459 (1988)), recklessness, as defined by statute, includes the conscious disregard of risk. 720 ILCS 5/4-6 (West 2014); *People v. Huber*, 144 Ill. App. 3d 195, 197 (1986). To the extent the defendant argues that her sentence is excessive in view of her capacity for rehabilitation, we observe that the trial court's duty was to "strike a balance between the seriousness of the offense and [the] defendant's rehabilitative potential." *People v. Martin*, 2012 IL App (1st) 093506, ¶ 47. At the plea hearing and sentencing hearing, the trial court

received extensive evidence regarding both the circumstances of the offense and the defendant's background, character, and medical conditions. The record demonstrates that the trial court weighed and considered these factors. This court may not substitute its judgment merely because it is possible to have weighed those factors differently. *Alexander*, 239 Ill. 2d at 213.

¶ 26 For the foregoing reasons, we reject the State's confession of error and find that the trial court did not abuse its discretion in sentencing the defendant to a term of four years' imprisonment on her conviction for involuntary manslaughter of a family member. Therefore, we affirm the judgment and sentence of the trial court.

¶ 27 Affirmed.