2020 IL App (1st) 172387-U

SIXTH DIVISION
July 17, 2020

No. 1-17-2387

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. 16 CR 7105
	)	
DIEGO CABRERA,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The sentences imposed by the trial court were not an abuse of discretion.

¶ 2 Following a bench trial, defendant Diego Cabrera was found guilty of attempted aggravated vehicular hijacking (720 ILCS 5/8-4(a) (West 2016), 720 ILCS 18-4(a)(3) (West 2016)), vehicular invasion (720 ILCS 5/18-6(a) (West 2016)), disarming a peace officer (720 ILCS 5/31-1a(a) (West 2016)), aggravated battery (720 ILCS 5/12-3.05(f)(1) (West 2016)), and aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2016)). The trial court merged the counts for vehicular invasion, aggravated battery, and aggravated unlawful restraint into the count for attempted

aggravated vehicular hijacking, and sentenced Mr. Cabrera to two concurrent 10-year prison terms for attempted aggravated vehicular hijacking and disarming a peace officer. On appeal, Mr. Cabrera contends that his sentences were excessive, considering his minimal criminal history and potential for rehabilitation, and that the record fails to adequately establish justification for the sentences. Because we cannot find an abuse of discretion by the trial court, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Daniel de la Fuente testified that, shortly before midnight on April 15, 2016, he was working on his vehicle in his garage in the 3000 block of West 23rd Street in Chicago when Mr. Cabrera entered through the open door. Mr. Cabrera said, " '[y]ou have ten seconds,' " began counting, grabbed Mr. de la Fuente, and tried to pull him from the vehicle. The two men "scuffle[d]" and ended up in the yard. Mr. Cabrera grabbed a brick and hit Mr. de la Fuente in the head but said he would not kill Mr. de la Fuente if Mr. de la Fuente surrendered the vehicle. Mr. de la Fuente then hit Mr. Cabrera in the head with a brick and held him down. At one point, a neighbor walked by and Mr. de la Fuente screamed to call the police. When officers arrived and tried to apprehend Mr. Cabrera, he lunged at them, tried to grab an officer's taser, and was ultimately dragged away by the police. Mr. de la Fuente was "scraped up" and had a "little gash" on his head but did not go to a hospital.

¶ 5 Chicago police officer Miguel Renteria testified that he observed Mr. Cabrera and Mr. de la Fuente fighting. Mr. Cabrera lunged at Officer Renteria and took his taser, so Officer Renteria and his partner pushed Mr. Cabrera to the ground. During the struggle, Mr. Cabrera shot the taser twice, hitting himself once. Mr. Cabrera was arrested and taken to a hospital.

¶ 6 At the close of the State's case, the defense moved for a directed finding, which the trial court granted as to a count of attempted murder.

¶ 7 Mr. Cabrera testified on his own behalf. He said that on April 15, 2016, he was on his way to his friend Vito's house with the intention to move in. He explained he had made a "deal" with his parents that he could live with them for a year while he was on parole for a 2014 conviction for felony driving under the influence (DUI), but that when parole was over, he had "to go." When Mr. Cabrera exited the train station, suspected gang members confronted and followed him. Mr. Cabrera was scared, ran away, and tried to get help. At one point, he asked a man with a phone to call the police. This man, later identified as Christian Villalobos, acted like "who are you" and backed away. Mr. Cabrera then ran to an open garage, went inside, and asked for help. Mr. de la Fuente had an "attitude" and told him to leave, so he left through the back door. Mr. de la Fuente then ran toward Mr. Cabrera and hit him on the back of the head with a brick. Mr. Cabrera denied demanding Mr. de la Fuente's vehicle, threatening to kill him, or hitting him with a brick, but admitted punching him. The men wrestled until Mr. de la Fuente put Mr. Cabrera in a headlock, told him it was okay, and offered him a ride. When the police arrived, Mr. Cabrera followed their instructions, but was tasered. He denied lunging at the officers or trying to take a taser.

¶ 8 In rebuttal, the State presented Christian Villalobos who testified that his girlfriend was dropping him off on the 3000 block of West 23rd Street shortly before midnight on April 15, 2016, when Mr. Cabrera ran up to the vehicle, yelled "get the f*** out [of] the car," and tried to open the driver-side door. As his girlfriend drove away, Mr. Villalobos approached Mr. Cabrera to deescalate the situation. Mr. Cabrera demanded an Uber and reached for Mr. Villalobos's phone. The encounter ended when Mr. Cabrera approached a different vehicle.

¶ 9 After closing argument, the trial court found Mr. Cabrera guilty of the charges other than the attempted murder charge on which the court had entered a directed finding. The court ordered a presentence investigation report (PSI). The PSI stated that Mr. Cabrera was born on December

13, 1994, completed the tenth grade, and participated in ROTC. Mr. Cabrera stated that he enjoyed a good childhood and previously worked as a dishwasher. The PSI also revealed that Mr. Cabrera drank a six-pack of beer each day and had juvenile adjudications for possession of a stolen motor vehicle and possession of cannabis. His adult criminal history included two convictions for aggravated DUI, criminal defacement of property, and a default judgment for unsafely crossing between train cars.

¶ 10 At sentencing, the State noted Mr. Cabrera's felony DUI convictions and argued the nature of the offense, attacking a person in his garage, warranted a substantial sentence. In mitigation, defense counsel argued that Mr. Cabrera was only 20 years old when this crime occurred and did not have an extensive felony background. Defense counsel suggested that the two prior DUIs and the fact that Mr. Cabrera admitted in the PSI that he drank "about a six-pack a day" could indicate a substance abuse problem. Counsel stated that, although Mr. Cabrera dropped out of high school, he had been employed and hoped to enter a vocational training program. Counsel noted that Mr. Cabrera's family cared about him and argued that Mr. Cabrera had the ability to become a productive citizen.

¶ 11 The court merged the counts for vehicular invasion, aggravated battery, and aggravated unlawful restraint into the count for attempted aggravated vehicular hijacking. During the sentencing hearing, the court checked with the State to make sure that neither sentence was "mandatory consecutive" and that it would be served at "50%." The court's entire statement explaining the sentences it imposed was as follows: "I've considered the factors in aggravation, mitigation. Sentencing as I've said is on Count 2 and Count 4, Class One. It's at 50%. Sentence is ten years in the Department of Corrections, concurrent, two years MSR." Mr. Cabrera filed a motion to reconsider arguing that his sentences were "excessive in view of [his] background." The

trial court denied the motion without comment.

¶ 12 II. JURISDICTION

¶ 13 Mr. Cabrera was sentenced on August 23, 2017, and timely filed his notice of appeal on September 5, 2017. We have jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013) and Rule 606 (eff July 1, 2017), governing appeals from final judgments of conviction in criminal cases.

¶ 14 III. ANALYSIS

¶ 15 On appeal, Mr. Cabrera argues that his sentences were excessive where the trial court "failed to take into account" his age, limited criminal history, and potential for rehabilitation, and there were no "significant aggravating factors." He also argues that the sentence was improper because the trial court failed to give any reasons for the sentence imposed.

¶ 16 The State responds that Mr. Cabrera failed to preserve the alleged error regarding the trial court's analysis of the sentencing factors when he did not object at the sentencing hearing or in his postsentencing motion. We reject the State's suggestion that there has been any forfeiture of this claim. Mr. Cabrera filed a motion to reduce his sentence on the basis that it was excessive in view of his background. Mr. Cabrera's argument on appeal, that the sentence is excessive because the court failed to take into account his age, limited criminal history, and potential for rehabilitation, is the identical claim. Even if Mr. Cabrera has expanded or refined his arguments on appeal in support of this claim, the claim itself has been preserved. As our supreme court has made clear, "[w]e require parties to preserve issues or claims for appeal; we do not require them to limit their arguments here to the same arguments that were made below." *Brunton v. Kruger,* 2015 IL 117663, ¶ 76. Therefore, we will address Mr. Cabrera's claim on the merits.

¶ 17 When determining a sentence, the trial court must balance relevant factors, such as the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). A trial court is not required to expressly outline its reasoning for a sentence, and absent some affirmative indication to the contrary, other than the sentence itself, a reviewing court presumes that the trial court considered all mitigating factors on the record. *People v. Perkins*, 408 Ill. App. 3d 752, 763 (2011); see also *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 51 (absent evidence to the contrary, we presume that the sentencing court considered all mitigating evidence presented).

¶ 18 Because the most important sentencing factor is the seriousness of the offense, the trial court is not required to give greater weight to mitigating factors, and the presence of those factors neither requires a minimum sentence nor precludes a maximum one. *Jones*, 2014 IL App (1st) 120927, ¶ 55. A reviewing court will not alter a defendant's sentence absent an abuse of discretion by the trial court. *Alexander*, 239 Ill. 2d at 212. A trial court abuses its discretion in determining a sentence where the sentence is greatly at variance with the spirit and purpose of the law or if it is manifestly disproportionate to the nature of the offense. *Id*. So long as the trial court does not ignore pertinent mitigating factors or consider either incompetent evidence or improper aggravating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *Perkins*, 408 Ill. App. 3d at 762-63. This broad latitude means that a reviewing court cannot substitute its judgment simply because it might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 19 Here, Mr. Cabrera was sentenced for the Class 1 felonies of attempted aggravated vehicular

hijacking (720 ILCS 5/8-4(a), (c)(2) (West 2016), 720 ILCS 18-4(a)(3) (West 2016)), and disarming a peace officer (720 ILCS 5/31-1a(a) (West 2016)). The sentence for a Class 1 felony is between 4 and 15 years in prison. See 730 ILCS 5/5-4.5-30(a) (West 2016). We cannot say that the concurrent 10-year sentences imposed on Mr. Cabrera, which are in the middle of the applicable sentencing range, were, on their face, an abuse of discretion.

¶ 20 Mr. Cabrera argues that the sentence imposed, which is two-and-a-half times the minimum sentence, means that the trial court failed to consider the evidence presented in mitigation, including his supportive family, previous employment and desire for vocational training, rehabilitative potential, lack of criminal background, and his youth. However, as our supreme court has recognized, "[a] defendant's rehabilitative potential *** is not entitled to greater weight than the seriousness of the offense." *People v. Coleman*, 166 Ill. 2d 247, 261 (1995). It is not the function of a reviewing court to independently reweigh these factors and substitute its judgment for that of the trial court. *Alexander*, 239 Ill. 2d at 214-15.

¶ 21 Mr. Cabrera specifically argues that the trial court failed to consider his youth and the fact that his brain was still developing at the time of the offense. He notes that the United States Supreme Court has found that young people lack maturity and reasoned judgment and recognized that they have a greater potential for rehabilitation. See, *e.g.*, *Miller v. Alabama*, 567 U.S. 460, 474 (2012) (the "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children"). He also notes that this court has expanded the holding of *Miller* to a category known as emerging adults, or those who are over 18 but whose brains have not fully developed. *People v. House*, 2019 IL App (1st) 110580-B, *appeal allowed*, No. 125124 (Ill. Jan. 29, 2020) (finding that a mandatory life sentence for a 19-year-old violated the proportionate penalties clause of the Illinois constitution).

¶ 22 In ruling the eighth amendment forbids mandatory life sentences for juvenile offenders who are convicted of homicide, the Supreme Court in *Miller* explained that a court must take into account how children are different from adults for purposes of sentencing and that an offender's youth and attendant characteristics must be considered before imposition of life imprisonment without the possibility of parole. *Id*. at 480, 483. In *House*, this court built on *Miller* and other cases to hold youth needed to be considered before a mandatory life sentence could be imposed on a defendant who was convicted on the basis of accountability. 2019 IL App (1st) 110580-B, ¶ 60.

¶ 23 Mr. Cabrera was not a minor and did not receive a life sentence. He was 20 years old at the time of the crime, which is not considered a juvenile. While we recognized in *House* that the principles in *Miller* also apply to young adults, we have not applied those principles yet outside of an actual or a *de facto* life sentence. This case does not fall within *Miller* or *House*.

¶ 24 While we are sympathetic to Mr. Cabrera's position that the trial court should have articulated the basis for this lengthy sentence, we cannot reverse on this basis. We appreciate Mr. Cabrera's argument that section 5-4.5-50 of the Unified Code of Corrections (730 ILCS 5/5-4.5-50 (West 2016)) states that the sentencing judge "shall set forth his or her reasons for imposing the particular sentence entered in the case." But our supreme court has held, notwithstanding this language, that a trial court is not required to set out its reasons for imposing a particular sentence. *People v. Davis*, 93 Ill. 2d 155, 162-63 (1982). In *Davis*, the court held that "shall" was permissive rather than mandatory and that the trial court has "no independent duty" to provide reasons for a particular sentence. This often makes it difficult for a defendant, such as Mr. Cabrera, to demonstrate that the trial court considered an impermissible factor or that it failed to recognize a mitigating one. It also makes it hard for us to perform the task the supreme court gave us under Rule 615(b)(4) (eff. Jan. 1, 1967) to "reduce the punishment imposed by the trial court," in

appropriate cases. But, unless or until our supreme court decides to revisit this issue, we are bound by *Davis*. *Yakich v. Aulds*, 2019 IL 123667, ¶ 13.

¶ 25 Finally, we note that the sentencing hearing makes clear that the judge questioned the State to be sure that the sentences would be concurrent and that they would be served at 50%. As the trial judge explained to the defendant after he imposed the sentence, it was, in effect, a five-year sentence, of which Mr. Cabrera had already served more than a year. A search of the Illinois Department of Corrections's website, of which we may take judicial notice (*People v. Ware*, 2014 IL App (1st) 120485, ¶ 29), confirms that Mr. Cabrera's projected release date is based on a five-year sentence.

¶ 26 In short, we see no abuse of discretion or basis for reducing the sentences imposed.

¶ 27 IV. CONCLUSION

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.