2012 IL App (2d) 100594-U
No. 2-10-0594
Order filed January 3, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of De Kalb County.
Plaintiff-Appellee,	)	
v.	)	No. 05-CF-617
ERIC A. LASKOWSKI,	)	Honorable Robbin J. Stuckert,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: (1) The trial court did not abuse its discretion in sentencing defendant to 40 years' imprisonment (where he was eligible for an extended term of life) for first-degree murder: although there were mitigating factors, the sentence was justified by the factors in aggravation, particularly the brutality of the offense; (2) although the trial court admitted and considered victim-impact statements from seven people who were not entitled to submit them, defendant did not show that he was denied a fair sentencing hearing and thus did not show reversible plain error: nothing indicated that the court was influenced by the improper statements, which comprised a tiny portion of the sentencing evidence.

¶ 1 Defendant, Eric A. Laskowski, entered an open plea of guilty to first-degree murder (720 ILCS 5/9-1(a)(3) (West 2004)) and was sentenced to 40 years' imprisonment. On appeal, he argues

that (1) his sentence is excessive; and (2) the trial court abused its discretion in relying on victim impact statements that were inadmissible and unduly prejudicial. We affirm.

¶ 2 Early in the morning of October 7, 2005, the body of Frank Riccardi was discovered in a field in De Kalb County. At defendant's guilty-plea hearing, held October 1, 2009, the State presented the following factual basis for the plea. Arriving on the scene on the morning of October 7, 2005, a sheriff's deputy saw that Riccardi was lying face down, with a gash in his head, next to a vehicle. Shattered pieces of automobile glass were nearby, as were two cigarette butts. Anthony Riccardi, Frank's brother, would testify that, at about midnight, Frank said that he was going to buy marijuana from "Ricky," who drove a red Mitsubishi Eclipse. On October 7, 2005, a sheriff's deputy stopped defendant, commonly known as "Ricky," as he was driving a red Mitsubishi Eclipse that had a shattered passenger-side window. He agreed to talk to sheriff's deputies about the Riccardi incident.

¶ 3 The factual basis continued as follows. Dr. Brian Mitchell, who conducted the autopsy on Riccardi, would testify that signs of external injury included an abrasion on the bridge of the nose; a 4.5-inch laceration across the back of the head; seven abrasions on the back of the neck; an abrasion on the right lateral neck; four contusions on the back of the upper right arm; and a two-inch blunt laceration at the top of the right parietal scalp. There was considerable internal hemorrhaging and fracturing. The cause of death was homicide by blunt-force multiple trauma to the head. The court also admitted photographs (taken at the autopsy) of Riccardi's wounds.

¶ 4 The trial court considered four videotaped police interviews of defendant. The first interview was with two deputies on the afternoon of October 7, 2005. Defendant told them that the killing resulted from a drug deal "gone sour." At first, he said that he had gone to buy marijuana from Riccardi, a recent acquaintance, and taken $1,900. After he and Riccardi parked their cars, Riccardi

bashed in defendant's window with what defendant later learned was a BB gun. Defendant took a baseball bat from his car, exited, and approached Riccardi. Riccardi said, "This is what happens" and pointed the gun at defendant. Defendant hit Riccardi in the neck or the side of the head. Riccardi came at defendant. Defendant hit him again. At some point, Riccardi fell to the ground.

¶ 5 Defendant told the deputies that he swung until his arm was sore. He estimated that he hit Riccardi 15 times. Defendant "lost it" because he was "pissed off" at Riccardi for smashing the car window. He also corrected himself, explaining that Riccardi had been the would-be buyer and had brought along $1,900 for two ounces of high-quality marijuana Defendant did not know what had happened to the money. He insisted that he and Riccardi had been the only ones there. He added that, after the encounter, he tossed away the gun and the baseball bat and drove off.

¶ 6 The next interview began at about 6:15 p.m. on October 7, 2005. The deputies confronted defendant with discrepancies between his statements and the forensic evidence, which showed that Riccardi had not been struck in the side of the head or the neck. Defendant stuck to his story. He estimated that he swung at Riccardi 15 to 20 times, possibly hitting him after he had become unconscious. Defendant added that he had brought the marijuana with him but had thrown it away on the drive back to Rockford.

¶ 7 The third interview took place on October 8, 2005. Defendant said that Riccardi had given him between $3,000 and $4,000, which defendant had then thrown away. The deputies reminded defendant that he had been found with $1,900 on him. They asked whether there was more to the story. Defendant then revealed that he knew someone nicknamed "Big Smoke" (later identified as Karar Albaiaty). Defendant still insisted that he had confronted Riccardi alone, but he now said that, afterward, he drove to an empty lot, met Big Smoke, and paid him a debt of about $1,000.

¶ 8 The deputies told defendant that, although he had told them where to recover the drugs, the bat, and the BB gun, they had not found any of the items despite thorough searches. Defendant insisted that he had told the truth. Asked why Riccardi had smashed the car window, defendant explained that he had told Riccardi that the marijuana would cost $700 more than agreed. Defendant conceded that Riccardi had never had a gun; defendant had made that up.

¶ 9 At the fourth interview, on March 5, 2008, defendant (accompanied by his attorney) made a statement and was then questioned by two sheriff's deputies. In the statement, defendant recounted that, on the evening of October 6, 2005, he and Albaiaty met up at the home of Ian Cylar in Rockford. At about 1 or 1:30 a.m., they drove in defendant's car out to the field, where defendant stashed duffle bags containing marijuana about 25 yards from where he planned to park. He and Albaiaty drove to a gas station in Kirkland, where they met Riccardi. Riccardi then followed defendant and Albaiaty out to the field and parked near them. Riccardi and defendant exited their cars. Riccardi handed defendant the money, which defendant gave to Albaiaty to count.

¶ 10 Defendant said that he walked over to get the duffle bags and heard talking. As he picked up the bags and turned around, he heard glass break and saw Albaiaty swinging the bat at Riccardi. Defendant went back, pushed Albaiaty, and pulled out his cell phone to call 911. Albaiaty grabbed the phone and told defendant that it was defendant's "choice" whether to call 911. As Albaiaty had just beaten Riccardi and was still holding the bat, defendant did not call. He "guess[ed]" that Albaiaty had hit Riccardi 15 or 20 times. He could not explain how he could see the beatings from 25 yards away in the darkness. He recounted that he and Albaiaty put the bat and the marijuana into the car's trunk and drove back to Cylar's, where they put the items into Albaiaty's car.

¶ 11 Defendant related that Riccardi had agreed to buy 15 pounds of marijuana for $200 per pound. Defendant had owed Riccardi slightly more than $100, which he took "off the top." Of the

remaining proceeds, $1,900 went to defendant and $500 each to Albaiaty and Cylar. Defendant said that Albaiaty had financed defendant's and Cylar's "growing operation," which had produced the marijuana. Asked why Albaiaty agreed to receive only $500 from the sale, defendant said that it was "just the way [they] had it worked out." He added that Cylar went with them but did not leave the car during the confrontation with Riccardi.

¶ 12 In the second phase of the interview, defendant said that Albaiaty told him that he had attacked Riccardi because Riccardi's payment was short by about $100. In the third phase of the interview, defendant admitted that he could not account for how Albaiaty was able to hit Riccardi so many times in the short time between when defendant walked toward the duffle bags and when he confronted Albaiaty.

¶ 13 In addition to the interviews of defendant, the trial court admitted a videotape of a custodial interview of Albaiaty, conducted on May 13, 2008. After initially denying any involvement in the Riccardi killing, he gave the following account. Albaiaty, defendant, and Cylar never brought any drugs along. Albaiaty had planned to defraud Riccardi by taking his money and fleeing. After Riccardi paid defendant, Albaiaty started to count the money. Defendant returned to the car. He told Albaiaty that they had to kill Riccardi because Riccardi knew defendant, defendant's family, and where they lived. Albaiaty did not know Riccardi, Riccardi would not recognize him, and he had no desire to kill Riccardi. He insisted on taking the money and fleeing. Defendant had a baseball bat in his car, and he grabbed the bat and started beating Riccardi. Albaiaty witnessed the attack. Defendant returned to his car and put the bat onto the edge of his seat.

¶ 14 Albaiaty recounted that, after the beating, he, defendant, and Cylar drove off and returned to Cylar's house. Cylar received $50 or $100 of the proceeds and Albaiaty and defendant split the rest evenly. Albaiaty did not know where the baseball bat could be found.

¶ 15 Albaiaty later pleaded guilty to armed robbery and was sentenced to 13 years' imprisonment.

¶ 16 The presentencing investigation report (PSIR) reveals that defendant was born August 30, 1985. In 2001, he was adjudicated delinquent based on burglary, damaging property, and possessing cannabis. He received 12 months of supervision, which he completed successfully. As an adult, defendant was convicted of four minor traffic offenses, for which he was fined and for two of which he received supervision. He was employed full-time until he was charged in this case.

¶ 17 On December 2, 2009, after hearing arguments, the trial court held that defendant's offense was accompanied by exceptionally brutal and heinous conduct indicative of wanton cruelty. This finding made defendant eligible for an extended-term sentence of life imprisonment. See 730 ILCS 5/5-8-1(b) (West 2004). The trial judge noted that defendant's most recent account of the killing differed sharply from both what he told the deputies on October 7 and 8, 2005, and what Albaiaty stated in his interview. Also, Albaiaty's version was corroborated heavily by defendant's earlier statements and by the fact that no drugs were ever recovered. Most important, however, the murder was a "cold-blooded act on an unsuspecting victim" who was defenseless and had done nothing to provoke a "systematic and continuous beating" that lacked "any logical reasoning."

¶ 18 The trial court admitted the report of Gerard J. Girdaukas, Ph.D, a licensed clinical psychologist who had interviewed defendant and examined other pertinent information. In the report, dated February 8, 2010, Girdaukas stated as follows. In an interview on February 4, 2010, defendant said that "it was a mix of [himself and Albaiaty] who did it." He added, "I really don't know why I hit him that night, to be completely honest." Defendant explained that Albaiaty initially hit Riccardi but, when defendant started to call 911, Albaiaty ordered him to start hitting Riccardi, which defendant did. Defendant said that he acted out of fear and panic.

¶ 19 Girdaukas reported that, when defendant was about four, he suffered a severe head injury that likely affected his neuropsychological functioning and might account in part for poor educational development. Defendant reported that, as an adolescent, he used painkillers and drank heavily, then switched to marijuana. A few months before he met Riccardi, he and Cylar started dealing in drugs, with financial help from Albaiaty.

¶ 20 Girdaukas administered several personality tests to defendant. The results were consistent with dependent functioning and high levels of anxiety. Defendant likely suffered "an Anxiety Disorder of significant proportion" and was limited in his ability to achieve close interpersonal relationships. However, the test results indicated a "low propensity toward psychopathy/antisocial personality disorder." Girdaukas opined, "As for the danger that [defendant] will reoffend upon release, I find it unlikely, given his personality profile (the preponderance of psychological data indicate that he is more anxious/avoidant tha[n] psychopathic/aggressive) and because of the responsibility that he has taken in regard to his offense." Girirdaukas recommended a sentence near the minimum.

¶ 21 The trial court admitted a total of 10 victim impact statements. Three, by Riccardi's father, mother, and brother, were read aloud at the sentencing hearing. The other statements were submitted by three of Riccardi's aunts; two of his uncles; the first cousin of his parents; and the husband of his first cousin. (We shall describe them more in our discussion of defendant's second claim of error.)

¶ 22 The State argued that, first, although serious harm to the victim was implicit in the offense, defendant's actions, which would support an extended-term sentence, were extraordinary in the degree of harm that they caused. Second, defendant had a juvenile adjudication of burglary. Third, a lengthy sentence was needed to deter others. Finally, the State contended, defendant's guilty plea

did not show that he had taken full responsibility for his actions; his interview of March 5, 2008, and his statements to Girdaukas showed that, although he initially confessed to hitting Riccardi 15 to 20 times with the bat, he later concocted stories to minimize his involvement in the killing.

¶ 23 Defendant responded that, by pleading guilty, he had accepted responsibility for what was admittedly a brutal murder. Also, he had a slight criminal record, with no adult convictions. Girdaukas believed that defendant's likelihood of reoffending was low.

¶ 24 In pronouncing sentence, the judge stated as follows. Although Riccardi was "brutally and heinously murdered," there were conflicting versions of how it happened and, especially, of defendant's exact role. Defendant's later statements, including those to Girdaukas, created "some concern" that he was "minimizing his action on that day." Because defendant had presented such a dubious version of the incident to Girdaukas, the judge had no confidence in Girdaukas' conclusion that defendant was unlikely to reoffend. Even under defendant's latest version of the offense, his need to please Albaiaty led him to strike Riccardi repeatedly after Riccardi was helpless.

¶ 25 Apologizing to Riccardi's family for the long delays in the case, the judge explained, "I did want to ensure that a [*sic*] defendant as all defendants receive a proper time in Court." She added later, "I know that we are all here for justice, but no sentence that I ever impose will be a just sentence for your family who has lost this young man."

¶ 26 The judge agreed with the State that defendant had caused serious harm to the victim (beyond that inherent in the offense). Also, it appeared that defendant never really planned to sell drugs to Riccardi but had instead planned his murder; significantly, no drugs were ever recovered. Defendant was not "induced" into the murder; he was "an active participant." However, his minimal prior record was a factor in mitigation. The court sentenced defendant to 40 years' imprisonment. After the court denied his motion to reconsider sentence, he timely appealed.

¶ 27 On appeal, defendant contends first that his sentence is excessive. He asserts that the trial court did not sufficiently consider several factors in mitigation, including his youth, relatively slight prior record, problems with alcohol and substance abuse, and acceptance of responsibility by pleading guilty. For the following reasons, we reject defendant's claim of error.

¶ 28 The trial court has broad discretion in deciding on an appropriate sentence, and we may not disturb the sentence absent an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence within the statutory limits will be deemed an abuse of discretion if it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id.* at 210. We may not substitute our judgment for the trial court's merely because we would have weighed the various sentencing factors differently. *People v. Fern*, 189 Ill. 2d 48, 53 (1999).

¶ 29 We cannot say that defendant's 40-year sentence is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of his offense—which, he concedes, not only consisted of the unprovoked murder of a helpless victim but also involved such brutal and wanton infliction of suffering that defendant was eligible for an extended-term sentence. The autopsy report and the photographs bear out the trial court's finding that Riccardi was savagely beaten numerous times. Moreover, although the trial judge did not definitively decide among the various accounts of the murder, she did conclude that defendant participated actively, and she was highly skeptical of defendant's attempts to minimize his actions. For example, the judge noted that, although defendant initially portrayed the killing as "a drug transaction gone bad," no drugs were recovered, despite defendant's assertion that he had brought along duffle bags containing 15 pounds of marijuana.

¶ 30 In general, the record strongly supported the conclusion that defendant was the one who decided to kill Riccardi and the one who carried out the plan. Defendant originally said as much to the deputies within hours after the crime. Only many months later did he claim that Albaiaty turned the drug set-up into a brutal murder, and the deputies who listened to him pointed out that his new story strained credulity to the breaking point in several respects. For example, defendant implied that Albaiaty murdered a stranger over a $100 shortfall in a sale from which Albaiaty was to receive only a small share. Also, defendant claimed that Albaiaty struck Riccardi 15 to 20 times in a very short span of time and that defendant saw all of the blows in the near-total darkness. Defendant himself admitted that he could not explain these remarkable "facts." Finally, defendant stated that he attempted to call 911 as Albaiaty stood holding the bat over the fallen victim, yet defendant did not report the incident until he was questioned the next day, and even then he did not mention Albaiaty at all. Moreover, although the trial judge had doubts about Albaiaty's account of the killing, we note that Albaiaty was far more able to ascribe a plausible motive to defendant than vice versa.

¶ 31 Defendant's assertion that the trial court did not consider proper mitigating factors is not well taken. The judge explicitly stated that defendant's slight prior record was a factor in mitigation. She also discussed Girdaukas' report, although she did not find it as persuasive as defendant had hoped. The judge was obviously aware of defendant's relative youth, and the PSIR detailed his problems with drugs and alcohol (which appear to have had nothing to do with the murder—by defendant's own account, he was as much a dealer as a user at the time). We note that a trial judge is not required to identify specifically all the mitigating factors that she has considered. *People v. Garibay*, 366 Ill. App. 3d 1103, 1109 (2006). We presume that the judge considered the mitigating evidence unless the record affirmatively shows otherwise. *Id.* The record does not rebut that presumption.

¶ 32 Finally, we disagree with defendant that the trial judge did not sufficiently consider that, by pleading guilty, he took responsibility for his actions. The record bears out the judge's conclusion that defendant's acceptance of responsibility was both extremely tardy and far from complete. We cannot fault the judge for expressing concern that, nearly four years after committing the murder, defendant still tried to minimize his role in it. Between October 2005, when he first spoke to the deputies, and March 2008, when he gave his final recorded statement—and even later, in talking to Girdaukas—defendant presented shifting versions of the crime. He told the various deputies a number of what he later admitted were lies designed to throw them off the track—and, almost certainly, he told a great many other lies to which he never admitted. Defendant's acceptance of responsibility could reasonably have been seen more as an acceptance of being caught, and it did not necessarily deserve great weight. We shall not disturb the trial court's treatment of this factor.

¶ 33 As defendant received far less than the maximum nonextended-term sentence, we cannot find an abuse of discretion. We turn to defendant's second claim of error: that the court erroneously admitted seven victim impact statements (those not by Riccardi's parents or brother) that were inadmissible and unduly prejudicial.

¶ 34 Defendant concedes that the mere admission of victim impact statements that were not statutorily authorized is not a ground to disturb his sentence. See 725 ILCS 120/9 (West 2004); *People v. Richardson*, 196 Ill. 2d 225, 230 (2001). However, he notes that due process still prohibits the introduction of evidence that is so unduly prejudicial that it renders a sentencing hearing unfair. *Id*. at 233. Thus, although defendant concedes that he is entitled to no relief merely because the court admitted and considered victim impact statements from seven people who were not entitled to submit them (see 725 ILCS 120/6(a) (West 2004)), he contends that he was denied a fair sentencing hearing because the statements contained appeals to considerations that were irrelevant

to proper sentencing. Defendant also points to the "sheer volume" of the statements. Defendant concedes that he has forfeited this claim of error by failing to raise it in his motion to reconsider sentence. See *People v. Enoch*, 122 Ill. 2d 176, 186-88 (1988). He therefore requests that we review his claim for reversible plain error. See *People v. Harvey*, 211 Ill. 2d 368, 387 (2004). We do so, and we conclude that defendant has shown none.

¶ 35 Defendant calls our attention to two allegedly prejudicial passages in the statements. A two-paragraph statement from Riccardi's aunt reads, in part, "Frankie's great-grandfather was Frank Riccardi, Sr. *** Frankie was Frank Riccardi, IV—there will be no Frank Riccardi, V," because "you, Eric A. Laskowski, brutally ended Frankie's life on October 7, 2005." A one-page statement from the husband of Riccardi's first cousin includes a request that the trial court impose the maximum sentence on defendant. According to defendant, these two alleged improprieties demonstrate that his sentence was unduly influenced by irrelevant considerations.

¶ 36 We disagree. We fail to see *any* indication that defendant's sentence, which was well below the maximum that one statement writer urged, was influenced by anything in the short, unsworn victim impact statements. Defendant's reference to the "sheer volume" of the improperly-admitted statements is unconvincing. The seven statements comprise only a tiny portion of the materials before the court at sentencing; by "volume," they are minuscule compared to the rest of the materials—the lengthy videotaped statements by defendant and Albaiaty, the detailed PSIR, Girardaukas' report, the autopsy report and photographs, and the letters from various of defendant's relatives and former employers. The two allegedly improper passages that defendant cites are a tiny part of all the victim impact statements, to say nothing of all the evidence at sentencing.

¶ 37 More important, nothing suggests that the trial judge gave any weight to anything improper in the victim impact statements. In pronouncing sentence, the judge emphasized the brutality and

senselessness of the crime; defendant's slight prior record; and defendant's attempts to minimize his culpability, to the detriment of the search for the truth. The judge said nothing about the victim impact statements beyond noting briefly at the outset that she had read them all. A court of review will presume that the sentencing court relied only on proper evidence. *People v. Trimble*, 220 Ill. App. 3d 338, 353 (1991). The defendant must affirmatively show otherwise. *People v. Lawrence*, 254 Ill. App. 3d 601, 614 (1993). Defendant has not done so.

¶ 38 Defendant notes that the trial judge stated that she had *read* all of the victim impact statements. This does not mean, however, that the judge was *influenced* by any improper matters in those statements. In *People v. Beck*, 295 Ill. App. 3d 1050, 1066 (1998), we held that the defendant had failed to show any prejudicial error from the introduction of improperly-admitted victim impact statements. We noted that, although the improperly-admitted statements had been included in the PSIR, which the judge stated he had considered, the judge never referred specifically to any of the letters. The situation is not substantially different here.

¶ 39 In an attempt to show prejudice, defendant notes that, at sentencing, the judge twice addressed the victim's family. We fail to see how this fact demonstrates any reliance on improper matters in the victim impact statements. The two instances, which we cited earlier, were routine and commendable attempts to convey to the Riccardi family the judge's awareness of the seriousness of their loss and of the naturalness of any frustration that they might have felt with how long the case had gone on. Notably, the judge told the family that the delay was the cost of providing defendant with the fair hearing to which he was entitled. Nothing here supports defendant's claim of error.

¶ 40 For the foregoing reasons, the judgment of the circuit court of De Kalb County is affirmed.

¶ 41 Affirmed.