2012 IL App (2d) 100753-U
No. 2-10-0753
Order filed January 27, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 07-CF-3307
MICHAEL J. JACKSON,	)	Honorable Timothy Q. Sheldon,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in sentencing defendant to a total of 40 years' imprisonment (on a 15-to-67 range) for various child sex offenses: although the court initially suggested that it was relying on general psychological studies, it clarified on reconsideration that it had relied on record evidence of the present victims' emotional harm; although the court's statement of personal opinion as to the gravity of offenses against children was improper, the sentences themselves were based on proper factors, particularly the seriousness of the present offenses and defendant's abysmal criminal record.

¶ 1 Following a bench trial, defendant, Michael J. Jackson, was found guilty of two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2004)) and one count

of aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2004)). The trial judge sentenced defendant to 17 years' imprisonment on each of the sexual assault charges and to 6 years' imprisonment on the sexual abuse charge, to be served consecutively, for a total sentence of 40 years. Following the denial of his motion for reconsideration of his sentences, defendant timely appealed. On appeal, defendant argues that the trial judge abused his discretion in sentencing defendant, because the judge based his sentences on "alleged and unnamed psychological studies which indicate the victims scarred by sexual abuse will go on to scar others" and on his personal opinion that "crimes against children are more serious than murder." Defendant asks for a new sentencing hearing. For the reasons that follow, we affirm defendant's sentences.

¶ 2 I. BACKGROUND

¶ 3 Defendant was charged with four counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2004)) and four counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2004)). The alleged victims were defendant's two sons: JJ1, born on June 10, 1998, and JJ2, born on July 8, 1999.

¶ 4 Defendant's bench trial took place on November 2, 2009. The State presented testimony from both victims, the victims' mother, and two investigators with the Kane County Child Advocacy Center. JJ1 testified that defendant did not live with him. JJ1 and JJ2 would see defendant on weekends at their aunt's house, where the two victims shared a bedroom. During the evenings, while they were getting ready for bed, defendant would come into the bedroom and make JJ1 and JJ2 take off their clothes and lie next to each other on the bed. Defendant would stick his penis in the victims' butts. JJ1 further testified that defendant would put his mouth on the victims' private parts. JJ2 testified that defendant would hold him down and kiss his butt. Defendant told the victims not

to tell anyone. The victims reported defendant's actions to their mother, and she contacted the police.

¶ 5 After the State rested, upon defendant's motion the trial judge entered a finding of not guilty as to the first two counts of predatory criminal sexual assault. The defense then rested and the parties presented closing arguments. Thereafter, the judge found defendant guilty of the two remaining counts of predatory criminal sexual assault of a child and one count of aggravated criminal sexual abuse. The judge found defendant not guilty of the three remaining counts of aggravated criminal sexual abuse.

¶ 6 A sentencing hearing took place on December 10, 2009. The State presented in aggravation evidence of a pending felony charge that it intended to prove up but then dismiss upon sentencing in the present case. The State also pointed to a victim impact statement prepared by the victims' mother, which was included in the presentence investigation report, and asked the judge to take it into consideration. In mitigation, defendant presented a letter from Charles A. Quinlan. Defendant did not make a statement. The State asked that defendant receive a sentence higher than the minimum. Defendant asked for the minimum aggregate sentence of 15 years' imprisonment.

¶ 7 In sentencing defendant, the trial judge began by noting that he had considered the evidence at trial, the presentence investigation report, the financial impact of incarceration, the psychological injury caused to others, and the evidence in aggravation and mitigation. Pointing to the presentence investigation report, the judge emphasized that defendant "began his life of crime as a juvenile delinquent by committing the felony offenses of burglary, criminal damage to property and damage to State supported property." Defendant had been put on probation and, after the filing of multiple petitions to revoke probation, defendant was sentenced to the Kane County Youth Home. The judge

further noted that, as an adult, defendant had approximately 22 to 28 convictions, or "as many criminal convictions as he has years on earth." The judge referred to defendant as a "lifelong criminal." The judge also noted that defendant no longer had contact with his children and did not pay child support. Defendant was an unemployed high-school dropout. The judge then noted as follows:

> "[Defendant] has caused irreparable psychological harm to three people. His ex-wife and his two young boys all have been damaged by his actions. This Court feels personally that crimes against children are more serious than murders. The crimes against children can never heal. They are sentenced to a lifetime of injury. In murder cases, the survivors heal after a period of time, but when an adult injures children that is the most heinous offense and these two boys are going to be harmed for life and they are two delightful little boys who came to court and courageously testified and this Court has admiration for these two young boys.
>
> This is a terrible offense for which these boys will be scarred. And if one believes the psychologists and the medical profession, it is likely that they may go on and scar others themselves because of this."

The judge went on to note that defendant had a rough start in life, specifically that defendant's father had left him and that his mother had been murdered when defendant was two years old. The judge noted that, nevertheless, defendant had been taken in by relatives and cared for.

¶ 8 Finally, the judge noted that, even though the minimum permissible sentence in the case is very high, a minimum sentence is "for that person who has led a law abiding life and then goes astray

once." The judge emphasized that "[defendant] has never, ever been out of trouble from the time that he was a child until *** now" and also pointed out that defendant had another felony pending.

¶ 9 The judge sentenced defendant to 17 years' imprisonment on each of the sexual assault charges and to 6 years' imprisonment on the sexual abuse charge, to be served consecutively, for a total sentence of 40 years.

¶ 10 Defendant moved for reconsideration of his sentences. Defendant argued, *inter alia*, that it was error for the trial judge to consider the emotional and psychological harm caused to the victims when no evidence of such harm had been presented to the judge and that it was error to find that defendant's actions were worse than those of a murderer. (Although defendant did not refer specifically in his motion, as he does in his brief, to the court's reference to "alleged and unnamed psychological studies," he did raise the issue during the hearing.)

¶ 11 The trial judge denied the motion. The judge acknowledged that he "may have uttered things from [his] common knowledge and [his] experience and observations that [were] dehors the record and the case at bar." Nevertheless, upon reconsideration, he pointed to the victim impact statement prepared by the victims' mother, which stated that she and the victims received counseling, that her depression, which resulted from the offenses, had impacted her ability to earn a living, that she and the victims suffered from nightmares and found it difficult to trust others, that the victims had changed emotionally, that the victims had numerous emotional breakdowns, that one of the boys was very withdrawn and cried frequently, and that the other boy had become very angry and self-conscious. After summarizing the victim impact statement, the judge concluded:

> "Having reviewed [the statement], I don't believe that my comments that the boys' mother was psychologically damaged and that the boys were psychologically damaged was drawn from my own knowledge, experience and reading.
>
> I believe that I made that finding based on the testimony and the presentence report submitted by [the victims' mother], and what she has experienced since [defendant] perpetrated this crime upon the two boys."

¶ 12 Defendant timely appealed.

¶ 13 II. ANALYSIS

¶ 14 Defendant argues that the trial judge abused his discretion in sentencing defendant, because the judge based his sentences on "alleged and unnamed psychological studies which indicate the victim scarred by sexual abuse will go on to scar others" and on his personal opinion that "crimes against children are more serious than murder." We disagree and find that the sentences were not an abuse of discretion.

¶ 15 The judge found defendant guilty of two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1), (b)(1) (West 2004)), Class X felonies, each with a sentencing range of 6 to 30 years (730 ILCS 5/5-8-1(a)(3) (West 2004)). Defendant was also found guilty of one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(b), (g) (West 2004)), a Class 2 felony, with a sentencing range of not less than 3 years and not more than 7 years (730 ILCS 5/5-8-1(a)(5) (West 2004)). In addition, the sentences were mandatorily consecutive (730 ILCS 5/5-8-4(a)(ii) (West 2004)) for an aggregate sentencing range of 15 to 67 years.

¶ 16 Our constitution requires that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill.

Const. 1970, art. I, § 11. A reviewing court will not disturb a sentence that is within the applicable sentencing range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). So long as the trial court " 'does not consider incompetent evidence, improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the statutory range prescribed for the offense.' " *People v. Bosley*, 233 Ill. App. 3d 132, 139 (1992) (quoting *People v. Hernandez*, 204 Ill. App. 3d 732, 740 (1990)). A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d at 210. "It is the province of the trial court to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case" (*People v. Latona*, 184 Ill. 2d 260, 272 (1998)), and the reviewing court may not substitute its judgment for that of the trial court merely because it might weigh the pertinent factors differently. *Stacey*, 193 Ill. 2d at 209.

¶ 17 In support of his argument that the judge abused his discretion, defendant relies primarily on *People v. Bolyard*, 61 Ill. 2d 583 (1975). In *Bolyard*, the defendant was convicted of indecent liberties with a child. At the sentencing hearing, the judge heard the defendant's argument for granting probation and then expressed his opinion that individuals convicted of crimes of sexual violence should not receive probation. On appeal, the supreme court held that the defendant was entitled to a new sentencing hearing, finding that "the trial judge arbitrarily denied probation because defendant fell within the trial judge's category of disfavored offenders." *Bolyard*, 61 Ill. 2d at 587. The present case is distinguishable. Here, a review of the entire transcript from the sentencing hearing and the hearing on the motion for reconsideration does not support defendant's claim that the judge's sentences were based on "alleged and unnamed psychological studies" or on his personal

opinion concerning the offenses. Rather, the record reveals that the judge considered all the appropriate factors in aggravation and mitigation in fashioning defendant's sentences. See *People v. Dal Collo*, 294 Ill. App. 3d 893, 897 (1998) ("In determining whether a sentence was improperly imposed, a reviewing court should not focus on a few words or statements of the trial judge. Instead, it should consider the record as a whole").

¶ 18 We first note that the record refutes defendant's claim that the judge's sentences were based on "alleged and unnamed psychological studies." During the hearing on the motion to reconsider, when confronted with defendant's allegation of error, the judge specifically noted that he "may have uttered things from [his] common knowledge and [his] experience and observations that [were] dehors the record and the case at bar." Nevertheless, the judge expressly clarified that his conclusion that the victims suffered emotional and psychological damage was "based on the testimony and the presentence report submitted by [the victims' mother], and what she has experienced since [defendant] perpetrated this crime upon the two boys." In any event, this case is in no way similar to either *People v. Dameron*, 196 Ill. 2d 156 (2001), or *People v. Rivers*, 410 Ill. 410 (1951), relied on by defendant. Here, unlike in *Dameron* and *Rivers*, there is no evidence that the judge "sought alternative avenues of information" (*Dameron*, 196 Ill. 2d at 179) or conducted a "private investigation" during the course of the trial or sentencing (*Rivers*, 410 Ill. at 418).

¶ 19 Second, although the judge's statement of personal opinion was improper, the record shows that the sentences themselves were based on proper factors. See *People v. Bosley*, 197 Ill. App. 3d 215, 222 (1990). The judge emphasized the seriousness of the offenses, which is the most important factor to be considered. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). The judge also emphasized defendant's criminal history, referring to defendant as a "lifelong criminal." Defendant

faced an aggregate sentencing range of 15 to 67 years' imprisonment. While the judge acknowledged that the minimum sentence was high, he further noted that the minimum sentence is "for that person who has led a law abiding life and then goes astray once." The judge emphasized that "[defendant] has never, ever been out of trouble from the time that he was a child until *** now" and also pointed that, at the time of sentencing, defendant had another felony pending. Given the nature of the offenses and defendant's criminal history, we cannot say that the judge abused his discretion in imposing a total sentence that is one year higher than the midpoint of the range of available sentences.

¶ 20 III. CONCLUSION

¶ 21 In light of the foregoing, we affirm.

¶ 22 Affirmed.