2014 IL App (2d) 120827-U
No. 2-12-0827
Order filed January 14, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. WILLIE J. HARRISON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 09-CF-791 Honorable Joseph G. McGraw, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Burke and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to 40 years' imprisonment (on a 20-to-60 range) for first degree murder: defendant's criminal history was extensive and violent, defendant's lack of impulse-control made the circumstances likely to recur, the aggravating factors justified the sentence even though it was effectively a life sentence, and the court presumably considered the financial impact of his incarceration as required by statute and was not otherwise required to balance that cost against the need for punishment.

¶ 2 Defendant, Willie J. Harrison, appeals the judgment of the circuit court of Winnebago County sentencing him to 40 years in prison for first-degree murder (720 ILCS 5/9-1(a)(2) (West 2008)). He contends that the trial court abused its discretion and requests that this court reduce

his sentence pursuant to Illinois Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967). Because the trial court did not abuse its discretion in sentencing defendant to 40 years' imprisonment, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This case arose out of defendant having stabbed one of his roommates with a knife, causing the victim's death. Defendant was indicted on one count of first-degree murder intending to kill (720 ILCS 5/9-1(a)(1) (West 2008)), one count of first-degree murder intending to do great bodily harm (720 ILCS 5/9-1(a)(1) (West 2008)), one count of first-degree murder knowing that the act created a strong probability of death (720 ILCS 5/9-1(a)(2) (West 2008)), and one count of first-degree murder knowing that the act created a strong probability of great bodily harm (720 ILCS 5/9-1(a)(2) (West 2008)).

¶ 5 The following evidence, pertinent to defendant's challenge to his sentence, is taken from his bench trial. On March 14, 2009, defendant shared an apartment with Jermaine Rogers (the victim), Elissa Barkley (Rogers's girlfriend), and Aaron Ingram. The relationship between defendant and Rogers and Barkley was contentious at best. The police had been called to the apartment several times in early 2009 regarding disturbance, noise, and disorderly conduct complaints.

¶ 6 On the weekend before the murder, defendant, who was drunk, went to a neighbor's apartment. While there, he said that he was tired of Rogers messing with him and "jumping on him" and that he would kill Rogers if he continued to do so. Defendant stated that he carried a knife for protection, and a knife fell from his pocket as he left.

¶ 7 In March 2009, defendant and Rogers argued. Defendant went into the bathroom and came out with a partially concealed knife. Rogers was alerted to the knife, he told defendant to

put it away, and defendant did.

¶ 8 On March 13, 2009, at about 3 p.m., defendant, Rogers, Barkley, and Ingram were all drinking in the apartment. Defendant and Rogers argued, but no physical contact occurred. At around 9 p.m. on that date, Rogers, Barkley, and Ingram went to Rogers's mother's home.

¶ 9 The trio returned to defendant's apartment at about 3 a.m. on March 14, 2009. When they began to watch a DVD, defendant became angry. Once again, he and Rogers argued. The police arrived, told them to calm down, and warned them that if the police were called back someone would be arrested.

¶ 10 Within 30 minutes of the police leaving, defendant and Rogers resumed arguing. Defendant called the police, and Rogers left. After arriving, the police arrested Barkley for shouting at them. Ingram told defendant that Rogers was going to be very upset when he found out that Barkley had been arrested. According to Ingram, defendant showed him a knife that was under his mattress and said that he had "something for [Rogers] if he [came] back getting crazy."

¶ 11 Rogers returned a short time later. When defendant informed him of Barkley's arrest, the two men began arguing. Defendant then went into the bathroom. After a few minutes, defendant quickly exited the bathroom with clenched hands and went straight for Rogers.

¶ 12 The two men fought in the kitchen. According to Ingram, Rogers did not attack defendant and did not have a weapon. Ingram observed Rogers fall to the floor, heard a gurgling sound, and saw blood on the floor. Defendant then called 911, and Ingram left.

¶ 13 Officer Andrew Seale of the Rockford police department was sent to the apartment at 6:38 a.m. on March 14, 2009. Defendant told Officer Seale that Rogers had attacked him and that he had stabbed Rogers. He identified a knife on the top of the television as the one he used. There were no weapons near Rogers's body.

¶ 14 An autopsy revealed that Rogers had drugs and alcohol in his blood. He had a stab wound on the left side of his back that was about 7 inches deep, and another that was about 2 ½ inches deep. The deeper wound punctured a lung and lacerated the aorta. Rogers died from blood loss.

¶ 15 Defendant told the police that, upon learning of Barkley's arrest, Rogers grabbed him and they began fighting in the kitchen. Defendant, who was smaller than Rogers, grabbed a knife from a table in the kitchen and stabbed Rogers once or twice to get him off of defendant.

¶ 16 There was evidence that Rogers had threatened several people in the past with a knife, including two of his brothers. On another occasion, Rogers struck a police officer when being arrested.

¶ 17 Defendant testified that on March 14, 2009, at about 3 a.m., he argued with Rogers and Barkley, who were "out of control." Defendant called the police, and, when Rogers and Barkley learned of that, they became "very aggressive."

¶ 18 Later, after Rogers returned and learned that defendant had had Barkley arrested, he became furious and kicked defendant's bed. Defendant told Rogers that he was going to call the police and went into the bathroom to do so. Rogers burst in and threw defendant onto the kitchen floor. Rogers put his arm around defendant's neck and began choking him. According to defendant, Rogers said that he was going to kill him. When Rogers refused to release defendant, defendant grabbed the knife and stabbed him.

¶ 19 On cross-examination, defendant did not recall whether he told the police that Rogers said that he was going to kill him. He admitted that he did not tell the police that Rogers choked him, although he did tell them that Rogers was trying to hurt him.

¶ 20 The trial court found that defendant stabbed Rogers with a knife, knowing that it created

a strong probability of death, and that he did so without any lawful justification. The court found defendant guilty of first-degree murder and denied his motion for a new trial.

¶ 21 The presentence investigation report (PSI) showed that defendant had an extensive criminal history that spanned several decades. It included numerous convictions of aggravated battery, aggravated discharge of a weapon, aggravated assault of a peace officer, resisting a peace officer, domestic battery, and various property, drug and alcohol-related, and traffic offenses. He had also been incarcerated in jail and prison multiple times and had repeatedly violated probation. The PSI stated that defendant had issues with a lack of "impulse control." Two of defendant's prior violent crimes involved the use of a knife against a victim.

¶ 22 Defendant, in his allocution, stated that "if anyone jumps on me or attacks me and tries to hurt me or kill me in any kind of way *** I'm gonna do everything in my human power to try and stop that person." Defendant elaborated that "[i]f [he had] to grab a baseball bat, gun, knife, hammer, or whatever [he could] get [his] hands on *** that's what [he would] do." He added that "if the person dies in the process, that's their tough luck."

¶ 23 In sentencing defendant, the trial court stated that it considered the evidence at trial, the PSI, the aggravating and mitigating factors, the arguments as to sentencing alternatives, defendant's allocution, defendant's rehabilitative potential, and whether a sentence could be fashioned that would restore defendant to useful citizenship. The court found that defendant did not act under a strong provocation, that there were not substantial grounds tending to excuse or justify defendant's conduct, and that his conduct was not induced or facilitated by another. The court further found that defendant had a "substantial" criminal history that was "violent and assaultive." The court found that defendant's conduct in this case "was the result of circumstances likely to recur, not unlikely but likely to recur," because "violent and assaultive

behavior, especially with a knife, characterizes this defendant." The court added that defendant had "exhibited a pattern of violent and assaultive behavior, including assaults with knives in the past." The court found that a lengthy sentence was necessary to deter others. Finally, the court stated that it considered defendant to be a "dangerous person," that he lacked "impulse control," and that his lack of impulse control "manifests itself in a violent, assaultive way."

¶ 24 The court sentenced defendant to 40 years in prison, with credit for time served of 1,231 days. After the court denied his motion to reconsider the sentence, defendant filed a timely notice of appeal.

¶ 25 II. ANALYSIS

¶ 26 Defendant contends that the trial court abused its discretion in sentencing him to 40 years in prison. In doing so, he argues that the majority of his past crimes were nonviolent, that the court incorrectly found that this crime was the result of circumstances that were likely to recur, that no rational criterion justifies keeping him in prison until he is 92 years old, and that his effective "life sentence" has financial costs that outweigh any benefit from punishing him so severely. Thus, he asks that this court reduce his sentence under Rule 615(b)(4).

¶ 27 Although Rule 615(b)(4) gives a reviewing court the power to reduce a sentence, that power should be used carefully and sparingly. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Trial courts have broad discretion in sentencing, and a sentence within the applicable statutory range may not be disturbed on appeal absent an abuse of discretion. *Alexander*, 239 Ill. 2d at 212. Such an abuse of discretion occurs when the sentence greatly varies with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212.

¶ 28 In our case, defendant's sentence fell within the applicable statutory range of 20 to 60

years in prison. See 730 ILCS 5/5-4.5-20(a)(1) (West 2008). Therefore, we give the trial court's sentencing decision great deference in considering whether it was an abuse of discretion. See *People v. Null*, 2013 IL App (2d) 110189, ¶ 55.

¶ 29 All sentences should reflect the seriousness of the crime and the objective of returning the offender to useful citizenship. *Null*, 2013 IL App (2d) 110189, ¶ 56. Careful consideration must be given to all mitigating and aggravating factors, including the defendant's age, habits, and mentality, along with the need for deterrence and the potential for rehabilitation. *Null*, 2013 IL App (2d) 110189, ¶ 56. Even though a reviewing court might weigh the sentencing factors differently than the trial court, that does not warrant altering the sentence. *Null*, 2013 IL App (2d) 110189, ¶ 56.

¶ 30 In this case, defendant contends that his criminal history did not warrant such a long sentence. This contention lacks merit. Defendant has a lengthy, extensive criminal history that includes numerous crimes of violence. The fact that defendant's criminal history contains more nonviolent crimes than violent crimes does not detract from the seriousness of his violent crimes. Nor does it weaken the conclusion that defendant lacks impulse control and acts violently toward others. At best, the number of nonviolent crimes merely reflects defendant's overall inability to conform his conduct to the law. The trial court's characterization of defendant's criminal history as violent was accurate and does not show any abuse of discretion.

¶ 31 Defendant next posits that the trial court incorrectly found that his crime was the result of circumstances likely to recur, because it is not likely that he would be involved in a situation similar to the one that resulted in his conviction here. One of the statutory mitigating factors that a trial court must consider is whether the defendant's criminal conduct was the result of circumstances unlikely to recur. See 730 ILCS 5/5-5-3.1(a)(8) (West 2008). The trial court did

so here and found that this factor did not apply.

¶ 32 Its ruling in that regard was well supported by the evidence, defendant's background, his criminal history, and his comments at sentencing. The crime in this case resulted, in large part, from defendant's lack of impulse control and his willingness to act violently toward others. Although the precise circumstances in this case might not recur, another set of circumstances in which defendant uses a weapon violently against another would be highly likely to recur. The court properly found that this mitigating factor did not apply.

¶ 33 Defendant asserts that there is no rationale for keeping him in prison until he is 92. He is wrong, however, as the seriousness of his crime, his violent past, the need for deterrence, and his limited rehabilitative potential justified a significant sentence. The trial court carefully considered all of the mitigating and aggravating factors, as well as the evidence before it, and fashioned a sentence that was in the middle of the statutory range. Although that sentence is significant in light of defendant's age, we cannot say that the court abused its discretion in arriving at that sentence.

¶ 34 Finally, defendant argues that the trial court should have considered the financial cost of incarcerating him for what is effectively a life sentence and balanced that cost against the need to punish him so severely. Defendant cites no authority that supports his contention.

¶ 35 A similar argument was raised in this court before, and we rejected it under the facts of that case. See *People v. McGowan*, 2013 IL App (2d) 111083, ¶ 16. The defendant in that case relied on *United States v. Craig*, 703 F. 3d 1001, 1002-04 (7th Cir. 2012) (Posner, J., concurring), for the proposition that a court should consider the cost of imprisoning an elderly person, the likelihood of recidivism, and the modest incremental benefit of substituting a superlong sentence for merely a very long sentence. *McGowan*, 2013 IL App (2d) 111083, ¶ 16.

The facts in *Craig* are clearly distinguishable from our case, just as they were from those in *McGowan*. In any event, we are not required to follow the concurrence in *Craig*, and we respectfully disagree with the legal proposition espoused there.[1] The trial court here did not abuse its discretion in not applying a balancing scheme similar to that set forth in the *Craig* concurrence.

¶ 36 That said, we note that section 5-4-1(a)(3) of the Unified Code of Corrections (730 ILCS 5/5-4-1(a)(3) (West 2008)) required the trial court to consider the financial impact of incarceration based on the financial impact statement of the Department of Corrections. Defendant, however, does not contend that the trial court failed to follow section 5-4-1(a)(3). Even if he did, he could not overcome, with contrary evidence, the presumption that the trial court considered the financial impact of sentencing him to 40 years in prison. See *People v. Acevado*, 275 Ill. App. 3d 420, 426 (1995).

¶ 37 Defendant's arguments do not demonstrate an abuse of discretion, and therefore they do not warrant a sentence reduction under Rule 615(b)(4). The record shows that the trial court took all of the mitigating and aggravating evidence into consideration in fashioning a sentence in the middle of the statutory range. There is no indication in the record that the sentence varied greatly from the spirit and purpose of the law or was manifestly disproportionate to the nature of the offense. See *Alexander*, 239 Ill. 2d at 212. Thus, the trial court properly exercised its discretion in sentencing defendant to 40 years' imprisonment.

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[1] Our research does not indicate any cases that have elevated the concurrence in *Craig* to a holding. *Cf. Vasiloff v. United States*, No. 4:10-cv-8001-YEH-MHH, 2013 WL 6283084, at *17 n.12 (N.D. Ala. Aug. 14, 2013) (noting the *Craig* concurrence but applying the principle opinion in *Craig* to uphold an effective life sentence under the eighth amendment). Any such holding would not bind us regardless. See *People v. Snowden*, 2011 IL App (1st) 092117, ¶ 65.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 40 Affirmed.