2015 IL App (2d) 130537-U
No. 2-13-0537
Order filed August 13, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 10-CF-1109
DANIEL R. BAKER,	)	Honorable Daniel B. Shanes,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to 47 years' imprisonment despite defendant's mental health issues where defendant murdered victim in a brutal and heinous manner.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Daniel R. Baker, appeals the sentence imposed by the trial court for first-degree murder. 720 ILCS 5/9-1(a)(3) (West 2010). On appeal, he raises two issues. First, he contends that the 47-year sentence imposed by the trial court is excessive and fails to adequately consider the relationship between defendant's mental illness and the severity of the offense.

Second, he contends that he is entitled to a reduction of various fines and fees to the extent that they are void.

¶ 4 Before proceeding further, we will address the propriety of the fees and fines. The State agrees that they are improper. Defendant asks that we modify them ourselves; the State requests that we remand to the trial court to allow it to do so. Defendant explains that the erroneous fines resulted from the trial court imposing them on each count in the indictment rather than upon his sole conviction. The State suggests that a remand is necessary; however, given the clear nature of the error, this would be a waste of judicial resources. Therefore, in accordance with our authority under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we modify the fines, fees, and costs assessed against defendant as follows: (1) the Arrestee Medical Assessment is reduced to $10; (2) the Child Advocacy Center fee is reduced to $5; (3) the "County" fee is reduced to $50; (4) the DNA Test Clerk's fee is reduced to $10: (5) the "Drug Court" fine is reduced to $5; (6) the Specialty Court fee is reduced to $10; (7) the State Police Operation fee is vacated; (8) the State's Attorney's fee is reduced to $40; and (9) the Violent Crime Victim's Assistance fine is reduced to $12.

¶ 5 II. BACKGROUND

¶ 6 After a bench trial, defendant was found guilty but mentally ill of murder and was thereafter sentenced to a term of imprisonment of 47 years. Defendant contends the 47-year sentence imposed by the trial court is excessive because it fails to adequately consider the relationship between defendant's mental illness and the severity of the crime.

¶ 7 The trial court determined defendant acted out of rage and jealousy—rather than insanity—when he killed Marina Aksman following events on the evening of March 31, 2010, and the early morning of April 1, 2010. On March 31, 2010, defendant took his girlfriend,

Kristina Aksman, to the zoo for a date. Following the date, the couple returned to defendant's house that night. Kristina's mother, Marina, called Kristina multiple times because Kristina was out past her curfew. At approximately 2:42 a.m. on April 1, 2010, Marina called Kristina and told her that she was outside of defendant's house and that it was time for her to come home. Shortly after picking Kristina up from defendant's house, Marina called defendant's phone and left a voicemail message telling him that he was bipolar and that he was no longer allowed to see Kristina.

¶ 8 Around 3:14 a.m., defendant listened to Marina's message. He then called and left his own message on the Aksman home phone stating that he and Kristina had true love, but that people had gotten in the way. He told Robert, Marina's husband, that he should not have yelled at him for four hours and that Robert had made a big mistake. Defendant further stated, "You're not messing with us anymore." He continued, "Now there's going to be big trouble, you've picked the wrong guy to mess with." Defendant concluded, "Now it's over. You see, don't mess with Daniel Baker."

¶ 9 At approximately 4:30 a.m., defendant crashed his car into the Aksman house and entered the house by using a baseball bat to smash the patio door. Marina confronted defendant, and he hit her on the knee with the bat, immobilizing her. Defendant then struck Marina in the head 6 to 15 times, fracturing her skull, and killing her. After killing Marina, defendant tried to light her on fire and burn the house down with a lighter found at the scene, but the lighter did not work. Defendant then told Kristina to pack her clothes, directed her to pack her seizure medication, and took cash Marina kept in the house. Defendant and Kristina left in Kristina's car and traveled towards the Canadian border to escape the country. Defendant also considered traveling towards Mexico because an earthquake had just occurred and he believed they would be able to slip past

border police unnoticed. On April 5, 2010, defendant and Kristina were stopped for speeding by Glacier County, Montana deputy sheriffs. Members of the Lake County Major Crimes Task Force traveled to Montana to interview both defendant and Kristina. During a five-hour interview with Detective Schletz, a member of the Task Force, defendant admitted to killing Marina.

¶ 10 Dr. Eupil Choi, a forensic pathologist, testified that Marina died as a result of cranial cerebral injuries due to blunt force trauma. Choi said Marina had no "configuration left of her face." That is, the underlying structure of her entire face was fragmented, her sinuses and eyeballs were ruptured, her upper and lower jaw were fragmented, and teeth were missing and embedded in her throat. Further, there were bruises to her fingers and arms, indicating defensive injuries.

¶ 11 Dr. Stafford Henry, a psychiatrist, testified that defendant was legally sane when he committed the offense. Henry's review of the voicemail left by defendant, testimony by experts produced by the defense, and his own interviews with defendant showed that defendant consistently described goal-oriented, organized, reality-based, willful, conscious, deliberate behavior, before, during, and after the murder. Henry diagnosed defendant with bipolar disorder, obsessive-compulsive disorder, Tourette's syndrome, and paraphilia NOS. Despite these diagnoses, Henry concluded that defendant was able to act volitionally and did not lack substantial capacity to appreciate the criminality of his conduct. Henry testified that the voicemail defendant left on the Aksman's answering machine showed his thoughts were organized. Moreover, defendant spoke in a normal, calm cadence. Defendant's awareness to get gas after leaving the house, coupled with his decision not to enter Canada because he did not have his passport with him, showed willful, goal-oriented, organized, reality-based behavior.

Henry testified that defendant's flight from his crime showed a consciousness of guilt and an investment in self-preservation. Henry further noted that the fact that defendant directed Kristina to pack her seizure medication when they left, which showed his ability to be very organized and plan ahead.

¶ 12 The trial court observed that, prior to the murder, defendant had a history of mental illness. Defendant was diagnosed with Tourette's syndrome when he was five years old. Defendant's mother testified that defendant would consciously monitor his Tourette's tics and outbursts at school so as not to disrupt the classroom. She also stated he would sometimes have rage attacks when he got home. Defendant was taking medication until he was fifteen, when he decided to stop. Defendant did not go to a doctor, even though he told his mother that he could hear what other people were thinking. After his grandmother died, defendant dropped out of college. In 2007, defendant went to Florida without telling anyone. When he returned from Florida, he shaved all of his body hair "to cleanse" himself. In 2010, defendant took a trip with Kristina to Kansas City, without the knowledge of Kristina's family. After a couple of days, defendant and Kristina had to return home because Kristina did not have her seizure medication and became ill.

¶ 13 The trial court rejected defendant's insanity defense and found defendant guilty but mentally ill of the charges. The court found that defendant acted in a "blind rage, not insanity" when hitting Marina with the baseball bat. The court found that defendant became enraged after hearing Marina's voicemail telling him that he was no longer allowed to see Kristina. The court found that the State had proved the aggravating factor that the offense was accompanied by exceptionally brutal or heinous conduct indicative of wanton cruelty and that defendant was therefore eligible for an extended-term sentence of up to natural life in prison. After hearing

arguments of counsel and victim-impact statements at the sentencing hearing, the trial court offered defendant an opportunity to speak on his own behalf, but he declined to do so.

¶ 14 The trial court thereupon reviewed the record of the case and looked at multiple factors surrounding the crime when determining the appropriate sentence for defendant. First, the judge considered evidence presented at trial and at sentencing, arguments from counsel, the presentence investigation report, and the statutory and nonstatutory factors in aggravation and mitigation. He also recognized the "constitutional command to fashion a sentence that facilitates the defendant's rehabilitative potential and restores him to useful citizenship." See *People v. Kosanovich*, 69 Ill. App. 3d 748, 751 (1979). The judge acknowledged defendant's mental-health issues, but determined that they were not the reason that the murder occurred. Instead, the court found that the murder happened because of things such as rage, jealousy, love, desire for control, and anger. The trial court noted the need to deter others from committing the same type of crime, along with defendant's choices before, during, and after the murder. It further observed that defendant had no prior criminal history. It also noted defendant's likelihood to become enraged and commit a similar offense in the future. The trial court thereupon imposed the sentence of 47 years' imprisonment, with 3 years' mandatory supervised release, and $2,469.62 in court costs. Defendant now appeals. For the reasons that follow, we affirm.

¶ 15 III. ANALYSIS

¶ 16 There is no dispute about the appropriate standard of review between defendant and the State; however, defendant and the State disagree as to the result to which that standard points. Defendant claims the trial court abused its discretion when it sentenced him to 47 years' imprisonment. The State counters that the trial court's decision was within its discretion. We agree with the State.

¶ 17 "Abuse of discretion" is the most deferential standard of review—next to no review at all—and is therefore traditionally reserved for decisions made by a trial judge in overseeing his or her courtroom or in maintaining the progress of a trial. *People v. Coleman*, 183 Ill. 2d 366, 387 (1998). The decision to impose a particular sentence within the range permitted by statute is a matter of judicial discretion. *People v. La Pointe*, 88 Ill. 2d 482, 492 (1981). A sentence is an abuse of discretion by reason of its excessiveness only if it is contrary to the purpose and spirit of the law or if it is manifestly disproportionate to the nature of the offense. *People v. Cabrera*, 116 Ill. 2d 474, 493-94 (1987). A reviewing court has the authority to reduce excessive sentences only where the trial court abused its discretion. *People v. Porter*, 277 Ill. App. 3d 194, 200 (1995).

¶ 18 The Unified Code of Corrections (Code) vests trial courts with wide discretion in order to permit them to make reasoned judgments as to the penalty appropriate to the particular circumstances of each case. 730 ILCS 5/1-1-1 *et seq*. (West 2010); *People v. Hubbard*, 222 Ill. App. 3d 605, 613 (1991). 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. *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009) (citing *People v. Peshak*, 333 Ill. App. 3d 1052, 1069 (2002)). Some aggravating factors include whether a defendant's conduct caused serious harm, whether a defendant has a history of prior criminal activity, and whether the sentence is necessary to deter others from committing the same crime. 730 ILCS 5/5-5-3.2(a) (West 2010). In determining the exact length of a particular sentence within a sentencing range, the trial court may consider as an aggravating factor the manner in which the victim's death was brought about, as well as the seriousness, nature, and circumstances of the offense. *Dowding*, 388 Ill. App. 3d at 943.

Mitigating factors include whether a defendant acted under a strong provocation, a defendant's lack of prior criminal history, whether defendant is unlikely to commit another crime, and whether there were substantial grounds tending to excuse or justify a defendant's criminal conduct, though failing to establish a defense. 730 ILCS 5/5-5-3.1 (West 2010). Section 5-5-3.1(a) of the Code states that certain enumerated grounds "*shall* be accorded weight in favor of withholding or minimizing a sentence of imprisonment." (Emphasis added); 730 ILCS 5/5-5-3.1 (West 2010). It is well settled that the court need not recite and assign value to each factor in mitigation and aggravation upon which it is relying. *People v. Wilburn*, 263 Ill. App. 3d 170, 185 (1994). Moreover, where mitigating evidence is before the trial court, it is presumed that the court considered it absent some indication—beyond the sentence imposed—to the contrary. *People v. Bergman*, 121 Ill. App. 3d 100, 109 (1984). Other non-statutory, relevant factors in determining an appropriate sentence include the nature of the crime, protection of the public, punishment, as well as the defendant's rehabilitative prospects and youth. See *People v. Whitehead*, 171 Ill. App. 3d 900, 908 (1988).

¶ 19 Defendant argues that our constitution requires the trial court to consider his rehabilitative potential in addition to the seriousness of the offense in fashioning an appropriate sentence. The Constitution provides: "All 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; *People v. La Pointe*, 88 Ill. 2d 482, 493 (1981). The quoted constitutional provision does not require the court to detail for the record the process by which it concluded that the sentence it imposed was appropriate. *La Pointe*, 88 Ill. 2d at 493. A trial court is not required to place greater weight on the defendant's potential for rehabilitation than on the seriousness of the offense. *People v. Lindsay*, 247 Ill. App. 3d 518, 535 (1993). In the

instant case, the record indicates that the trial court carefully considered the presentence investigation report, the statutory factors in mitigation and aggravation, as well as defendant's rehabilitative potential.

¶ 20 The sentence in this case, which fell well within the statutory range, is not an abuse of discretion. When a defendant is convicted of first-degree murder, the trial court has the discretion to impose a sentence anywhere in the statutorily mandated range of 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-5 (West 2010). Defendant's argument that the 47-year sentence is on the high end of the 20 to 60 year range of imprisonment is not well-founded and has no basis in case law. See *People v. Colbert*, 2013 IL App (1st) 112935 (where the defendant was convicted of first degree murder and his 32-year sentence fell within the statutory range, it was not excessive); *People v. BoClair*, 225 Ill. App. 331, 335 (1992) (if an imposed sentence falls within the statutory range, it will not be found excessive unless there is an affirmative showing that the sentence varies greatly from the spirit and purpose of the law or manifestly violates constitutional guidelines.) Defendant's sentence, which is 13 years less than the maximum sentence of 60 years, is well within the statutory limits prescribed by the legislature and is actually closer to the middle of the range for a non-extended term sentence than the high end. Parenthetically, we note that due to the brutal and heinous nature of the crime, defendant could have been sentenced to natural-life imprisonment (730 ILCS 5/5-8-1(b) (West 2010)) or to a term of imprisonment of up to 100 years (730 ILCS 5/5-4.5-20(a) (West 2010)). As such, we could only conclude an abuse of discretion occurred if defendant's 47-year sentence is contrary to the purpose and spirit of the law or if it is manifestly disproportionate to the nature of the offense. *Cabrera*, 116 Ill. 2d at 493-94.

¶ 21 This we cannot do. It is clear the trial court concluded that the nature and circumstances of the offense warranted the 47-year sentence. The record shows that the trial court considered the appropriate factors in mitigation and aggravation. The trial court explained its reasoning for imposing the 47-year sentence during the sentencing phase of trial. In sentencing defendant, the trial court looked at the harm involved, especially the brutal and heinous nature of the murder itself. The court stated that the murder of Marina Aksman "was filled with senseless and gratuitous violence of Hollywood-ish proportion." The court also examined defendant's character and background, including his lack of prior criminal history. The court also looked at defendant's mental illness and determined that the case did not concern defendant's mental health issues, but his choices. The court determined that defendant made the choice to leave his home with a bat, drive to the Aksman home, enter it, and beat Marina to death with the bat. The court found that defendant was "an intelligent young man," who was capable of attending school and holding jobs without problems. The judge ruled that "to suggest that defendant lacks culpability because of those [mental-health issues], first, is not based upon the evidence in the case, and second, insults the thousands or millions of other people who do manage their own issues every day."

¶ 22 Having reviewed the record, we hold that that the trial court's application of factors in both aggravation and mitigation were correctly implemented. On the balance, given the heinous nature of the offense in light of the other factors surrounding the crime, we could not conclude that a sentence falling in the high-middle range of a non-extended murder sentence constitutes an abuse of discretion. Such a sentence is neither at great variance with the spirit and purpose of the law nor greatly disproportionate to the offense. See *People v. Hayes*, 70 Ill. App. 3d 811, 832 (1979).

¶ 23 Defendant counters that the heinous nature of the murder was a product of his mental illness. Furthermore, contrary to the State's request, the trial court expressly stated that it would not consider defendant's illness as an aggravating factor. Therefore, defendant continues, the trial court's ruling is internally inconsistent to the extent the trial court states it would not consider the mental illness in aggravation while, at the same time, it considered the product of the mental illness as an aggravating factor.

¶ 24 Defendant relies on *People v. Robinson*, 221 Ill. App. 3d 1045 (1991), in support of this contention. However, *Robinson* is distinguishable from this case. In *Robinson*, the defendant was convicted of aggravated criminal sexual assault. *Robinson*, 221 Ill. App. 3d at 1051. The reviewing court described the defendant's behavior as "reprehensible and heinous." *Id*. at 1052. Notwithstanding, the reviewing court ruled that the defendant's mental condition and history warranted consideration in mitigation. *Id.* The record showed that the defendant had been hospitalized in a psychiatric hospital as a result of a nervous breakdown months before the offense and again after she was diagnosed mid-trial with schizoaffective disorder. *Id.* The reviewing court thereupon reduced the defendant's sentence from twenty years to ten years. *Id.* Unlike *Robinson*, the trial court in the instant case actually gave weight to defendant's mental condition as a mitigating factor. This is evident in that the trial court did not impose an extended-term sentence on the basis of defendant's brutal and heinous conduct even though it made him eligible for one. Thus, the trial court's ruling is not internally inconsistent, as defendant argues.

¶ 25 Defendant acknowledges *Dowding*, 388 Ill. App. 3d 943, which holds that a trial court may consider as an aggravating factor the degree of harm caused to a victim, the manner in which the victim's death was brought about, as well as the seriousness, nature, and

circumstances of the offense in fashioning an appropriate sentence. We find that *Dowding* is applicable to the instant case. The record reflects that the trial court considered the degree of harm caused to the victim as an aggravating factor in accordance with Section 5-5-3.2 in the Code. 730 ILCS 5/5-5-3.2(a) (West 2010). The trial court described defendant's behavior as "brutal and barbaric" and "truly gruesome" to the extent of "violence of Hollywood-ish proportion." Our review of the record indicates that the trial court's characterizations are amply supported by the facts. Accordingly, we will not substitute our judgment for the trial court merely because we might have weighed the factors differently. *People v. Cox*, 82 Ill. 2d 268, 280 (1980).

¶ 26 Citing *Lindsay*, 247 Ill. App. 3d 518, 532-33, defendant next contends that his lack of a prior criminal record and absence of premeditation are mitigating factors that should reduce his sentence to a lesser term. However, the *Lindsay* court did not consider these factors in isolation as defendant intimates. *Lindsay* cites Section 5-5-3.2 of the Code, which addresses factors in aggravation and extended term sentencing. 730 ILCS 5/5-5-3.2(a) (West 2010). Factors in aggravation include (1) whether the defendant's conduct caused or threatened serious harm; (2) whether the defendant exhibited any remorse for his crime; (3) the amount of force used, including the infliction of torture, sadism, threats, emotional trauma and wholly gratuitous violence; and (4) the defendant's age and the extent and seriousness of his criminal record. 730 ILCS 5/5-5-3.2(a) (West 2010); *People v. Lindsay*, 247 Ill. App. 3d 518, 533 (1993). When considering an appropriate sentence, courts base their decisions on the *totality of the facts* surrounding the offense. *People v. Douglas*, 362 Ill. App. 3d 65, 78 (2005). The record indicates that the trial court considered the totality of the facts in their entire context, which included defendant's lack of prior criminal history, when determining the appropriate sentence.

Although defendant would like us to focus on his lack of prior criminal history, it must be balanced against other aggravating and mitigating factors. In short, defendant's lack of a criminal history and premeditation are not such compelling considerations as to allow us to conclude that the trial court abused its discretion.

¶ 27 For the foregoing reasons, particularly in light of the brutal and heinous nature of defendant's conduct, we cannot say that the trial court abused its discretion in imposing a sentence in the upper-middle portion of the non-extended sentencing range for first-degree murder. Defendant's mental-health issues notwithstanding, this sentence is not excessive. Accordingly, the judgment of the trial court is affirmed as modified herein.

¶ 28 Affirmed as modified.