2017 IL App (2d) 150297-U
No. 2-15-0297
Order filed July 24, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JUSTIN MARTIN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 13-CF-2767 Honorable Patrick L. Heaslip, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing the defendant.

¶ 2 The defendant, Justin Martin, pled guilty to failing to report an accident that resulted in death (625 ILCS 5/11-401(b) (West 2012)) and was subsequently sentenced to 12 years' imprisonment. The defendant appeals, arguing the trial court (1) drew inferences unsupported by the record, (2) considered improper aggravating factors, (3) improperly discounted mitigating factors, and (4) imposed an excessive sentence. We affirm.

¶ 3 BACKGROUND

¶ 4 At approximately 11:15 p.m. on October 2, 2013, an intoxicated Todd Jackson wandered into the middle of Charles Street in Rockford, Illinois. Several bystanders witnessed a small red truck strike Jackson and continue onward without stopping. Multiple bystanders immediately rendered assistance, including providing CPR. Pieces of the truck, glass, blood, and teeth were strewn across the street. The evidence suggested that Jackson died instantly because of his injuries.

¶ 5 The next day, Rockford police received a Crime Stoppers tip divulging the location of a red truck with a damaged front end. Police arrived at the location and spotted the damaged red truck from their vantage on the street. The truck was parked in a grassy, fenced yard just beyond the driveway of a residence. Another vehicle was parked diagonally in the driveway, obscuring the view of the truck from the street. The truck's front end was smashed and the windshield was shattered. The base of the windshield featured a spherical splinter pattern roughly the size of a human head.

¶ 6 Police spoke with the occupant of the residence who informed them the truck belonged to her son, the defendant. The defendant spoke with police and consented to a search of the truck and to have his blood and urine collected for forensic examination. His blood and urine were collected approximately 17 hours after the crash. Toxicology reports indicated his blood contained alcohol (.055g/dL), and his urine contained cocaine, cocaine metabolites, and THC metabolites.

¶ 7 The defendant made several admissions. Initially, the defendant claimed to have hit a deer with his truck, but then confessed to hitting a person on Charles Street. The defendant told police that he had consumed "one or two beers" the day of Jackson's death, and had also been drinking the next day, prior to the officers arriving. The defendant also mentioned that he had a

history of being a "pot smoker." He admitted to leaving the scene of the accident and not reporting it.

¶ 8 The defendant was arrested and charged with failing to report an accident involving death after leaving the scene (625 ILCS 5/11-401(b) (West 2012)). After participating in a Supreme Court Rule 402 (Ill. S. Ct. R. 402 (eff. July 1, 2012)) conference, the defendant pled guilty to the charged offense. After confirming that the defendant understood he was relinquishing his right to a jury trial and that the charged offense had a sentencing range of 4 to 15 years' imprisonment (730 ILCS 5/5-4.5-30(a) (West 2012)), the trial court accepted his guilty plea.

¶ 9 During the sentencing hearing, the state put on four witnesses, introduced forty exhibits into evidence, and submitted four victim impact statements from Jackson's family members. The State requested a sentence of 12 years' imprisonment. The defendant's sole witness was his sister. The defendant requested the minimum sentence of 4 years' imprisonment. At the close of the hearing, the trial court announced its findings, stating:

> "I have considered the statutory matters in aggravation and mitigation and having due regard to the circumstances of the offense, I find as follows: In aggravation, I find that the defendant has a prior criminal history. In point of fact, on the night in question when this fatal accident occurred, the defendant was on court supervision for a DUI. In pursuant [*sic*] to the terms of that court supervision, he was prohibited from consuming alcohol, from using illegal drugs, and from otherwise violating the laws of this land.
>
> This sentence is necessary to deter others from committing the same offense. Our community, unfortunately, seems to be plagued with drunk-driving cases involving injuries and bodily harm to innocent people. And we seem to have a disproportionate share of driving, drivers failing to stop and render assistance when an accident occurs.

It doesn't seem like but a few days go by when you can't open the paper and read about some fatal accident from a drunk driver, from someone fleeing from the police, from someone striking a pedestrian and killing them and not stopping to render assistance. It is a plague, and it has to stop. And one way to curb this is to send a message to the community that this type of behavior will not be tolerated.

In this case, it was Todd Jackson who was struck down by Mr. Martin and left to die. He knew he hit a pedestrian. He hid his truck in an attempt to conceal it from police. He admitted having [*sic*] drinking alcohol on the date of the accident, and when confronted at his home the following day by police he had a strong smell of alcohol, he admitted to the use of drugs, and using drugs the following day after the accident. He submitted to testing and he was positive for illegal drugs in his system.

There is substantial evidence that suggests that on the night of this fatal accident, that you, Mr. Martin, could have been impaired, and due to alcohol and or drug use, and that maybe your reason for not having stopped that night. Clearly you had no business driving a motor vehicle on this date. Your license was revoked. You were on court supervision for a DUI. You were forbidden from consuming alcohol and illegal drugs. Your use of both of those may have been another reason for your motive to leave the scene and not render assistance.

We will never know your real reason for failing to stop and render assistance. You treated Todd Jackson in a cold and indifferent manner, showing no concern for his life or welfare; that is unconscionable, and such behavior will not be accepted in our society. Your conduct threatened others on the night of this accident; this evidence by your driving after having consumed alcohol and possible drugs.

* * *

> Mr. Martin, you took the life of a vibrant, loving son, brother, uncle, coworker, a man who was contributing to society. You, on the other hand, are an individual who has taken from society and not contributing [*sic*]."

In mitigation, the trial court found that a number of factors applied, but it did not specify what those factors were. The trial court then sentenced the defendant to 12 years' imprisonment. Following the denial of his motion to reconsider sentence, the defendant filed a timely notice of appeal.

¶ 10 ANALYSIS

¶ 11 On appeal, the defendant argues that the trial court erred in its consideration of the factors in aggravation and mitigation. As to aggravation, the defendant asserts that the trial court improperly (1) found he concealed his truck from police; (2) found he knowingly hit a person; (3) found he was intoxicated during the accident; (4) relied on his driver's license being revoked at the time of the incident; and (5) found that deterrence was a proper aggravating factor to consider in order to "send a message" to the community, which was "plagued" by drunk drivers and drivers leaving the scene of accidents. As to mitigation, the defendant contends that the trial court failed to consider (1) the unlikelihood of recidivism and (2) his social history—specifically his steady employment, challenged upbringing, sub-par family environment, and demonstrated contributions to society. Alternatively, the defendant argues that his sentence is excessive. The defendant therefore requests that we either reduce his sentence or remand for resentencing.

¶ 12 As a preliminary matter, we note that the State and the defendant disagree on the proper standard of review. The defendant insists that we should we review his contentions *de novo*,

while the State maintains that we should not disturb the trial court's decision absent an abuse of discretion.

¶ 13 In determining the standard of review, we find that the defendant conflates two distinct arguments: whether the trial court relied on an improper aggravating factor, which is reviewed *de novo* (*People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8), and whether there was sufficient evidence in the record to support the trial court's finding of a fact—a fact which was later used as a necessary condition in the consideration of an otherwise proper aggravating factor. A trial court's findings are entitled to great deference and will not be disturbed absent an abuse of discretion. See *People v. Jones*, 168 Ill. 2d 367, 376 (1995) ("[T]he scope of an appellate court's examination of a sentence imposed by the trial court is limited to whether the record discloses that the trial court abused its discretion"). Accordingly, as to the defendant's contentions that pertain to the factual inferences that the trial court drew from the record, we will not disturb the trial court's findings absent an abuse of discretion. *Id.*; see also *People v. Robinsons*, 2015 IL App (1st) 130837, ¶ 92 (a trial court is allowed to make reasonable inferences from the evidence during sentencing). As to whether the trial court considered improper factors, we will review those issues *de novo*. See *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8.

¶ 14 Turning to the merits of the defendant's appeal, we first observe that, in determining the appropriate sentence, the trial court must consider all factors in both aggravation and mitigation and balance those factors against each other. *People v. Berry*, 175 Ill. App. 3d 420, 429 (1988). The trial court is in the best position to consider these factors because it can observe the defendant, while the reviewing court must rely on the record. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). The trial court has broad discretion in determining sentences within the range authorized by law (*id.*), even when the sentence is informed by judge-found facts. *Alleyne v. United States*,

570 U.S. ___,___, 133 S. Ct. 2151, 2163 (2013). We may not substitute our judgment for that of the trial court merely because we might have weighed the sentencing factors differently. *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 15 We reject the defendant's argument that the trial court drew numerous inferences that were not supported by the record. Evidence that the defendant parked his truck beyond his driveway in a way so as to obscure any street vantage, and that another car was parked diagonally in the driveway between the truck and street, supported an inference that the defendant was trying to conceal the truck. The trial court could reasonably infer that the defendant knew that he hit someone based on the defendant's statement the day after the accident acknowledging that he hit someone. Furthermore, based on the evidence that the defendant had consumed alcohol on the day of the accident, that he tested positive for alcohol and drugs on the day after the accident, and that he was on court supervision for a prior DUI, the trial court could reasonably infer that the defendant had drugs or alcohol in his system at the time of the accident and that could be one reason why he did not stop after striking Jackson.

¶ 16 We also find unpersuasive the defendant's argument that, even if the trial court could have properly drawn the inferences that the defendant hid his truck following the accident and knew he had hit someone, the trial court should not have considered them as aggravating factors. Although attempting to conceal one's involvement in a crime after the crime has occurred is not a statutory factor in aggravation, the trial court could certainly consider that the defendant took additional steps to evade detection beyond merely leaving the scene and failing to report an accident. See *People v. Traina*, 230 Ill. App. 3d 149, 155 (1992) (a trial court may consider nonstatutory aggravating factors).

¶ 17 As to the defendant's argument that the trial court improperly considered that the defendant "knew" he hit a pedestrian because such knowledge is implicit in the offense, the record does not support the defendant's contention. In reviewing the trial court's comments in their entirety, it is apparent that the trial court was just discussing the relevant facts of the case when it referred to the defendant's knowledge of striking someone. That is not improper. See *People v. Jones,* 299 Ill. App. 3d 739, 746 (1998) ("A judge is not required to refrain from any mention of factors that constitute elements of an offense").

¶ 18 We also find without merit the defendant's argument that it was improper for the trial court to consider as an aggravating factor that his license had been revoked. As the defendant points out, the record reveals that he had a valid license at the time of the accident. Although the trial court did indicate at sentencing that the defendant did not have a valid license at the time of the accident, when this mistake was brought to the trial court's attention during the hearing on the defendant's posttrial motion, the trial court stated that it had not considered the defendant's license being suspended as a factor in sentencing. The trial court's comments at the hearing on the posttrial motion establish that it did not improperly consider the defendant's license having been revoked in sentencing him. See *People v. McCain,* 248 Ill. App. 3d 844, 852-53 (1993) (examining motion to reconsider sentence in determining the reasoning of the trial court).

¶ 19 Further, we reject the defendant's argument that the trial court improperly considered deterrence as an aggravating factor in sentencing. The defendant insists that his offense was a spur-of-the-moment decision that lacked premeditation, and thus, deterring others from committing the offense cannot be accomplished by imposing a harsh sentence on him. The defendant also contends that it was improper for the trial court to indicate that it wanted to "send a message" to the community that behavior like the defendant's would not be tolerated.

¶ 20 A trial court may consider deterrence of others as an aggravating factor (*People v. Calabrese*, 398 Ill. App. 3d 98, 126 (2010)), even for offenses that are seemingly "nondeterrable," such as voluntary manslaughter and second-degree murder (*People v. Black*, 223 Ill. App. 3d 630, 635 (1992)). There was nothing improper in the trial court imposing a sentence that it believed would deter others from committing a similar crime.

¶ 21 We next consider the defendant's argument that the trial court did not consider all of the relevant factors in mitigation. Specifically, the defendant contends that the trial court did not consider his contributions to society, which included his steady employment for about a decade, the help he provided to his sister who has disabilities, and his amicable relationships with his two children. He also insists that the trial court failed to consider the unlikelihood that he would commit the offense again.

¶ 22 "If the record contains a trial court's articulation of factors in aggravation, the reviewing court may presume factors in mitigation were considered as well." *People v. McDonald*, 227 Ill. App. 3d 92, 100 (1992). "Where mitigating evidence is before court, it is presumed the court considered that evidence absent some contrary indication other than sentence imposed." *People v. Markiewicz*, 246 Ill.App.3d 31, 55 (1993). To rebut the presumption that the court considers all evidence in mitigation, "a defendant must make an affirmative showing that the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38.

¶ 23 In pronouncing sentence, the trial court stated that the defendant had taken the life of someone "who was contributing to society" while the defendant was someone who was not. The defendant contends that the trial court's comments indicate that it did not consider any of his contributions to society. We disagree. We believe that the trial court was not ignoring the defendant's contributions to society but instead affording them minimal weight in light of the

fact that the defendant's actions had killed someone. It is not the province of this court to reweigh the relevant factors. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000); see also *People v. Harmon*, 2015 IL App (1st) 122345, ¶¶133-35 (trial court did not err in placing minimal weight on the defendant's employment history in light of the nature of the defendant's offense).

¶ 24 Further, although the defendant argues that the trial court should have given more weight to the fact that he was unlikely to commit this offense again, it is apparent that the trial court did not because it believed that a lengthy sentence was necessary to deters others from committing a similar crime. It is well settled that the seriousness of the offense or the need to protect the public may outweigh mitigating factors and the goal of rehabilitation. *People v. Gagliani*, 251 Ill. App. 3d 1019, 1029 (1993).

¶ 25 Finally, we reject the defendant's argument that his sentence was excessive. Pointing to a sexual assault case, *Stacey*, 193 Ill. 2d at 206-07, in which the supreme court reduced the defendant's sentence, the defendant argues that we should do the same in this case. However, comparisons between defendants in different cases are proper, if at all, only when the circumstances of the two defendants are substantially identical. *People v. Hindson*, 301 Ill. App. 3d 466, 479 (1998). An appellate court must determine whether the trial court abused its discretion by considering the facts in the case at hand and not in comparison to arbitrarily chosen facts in arbitrarily chosen cases. *Id.* Accordingly, we decline the defendant's invitation to compare the sentence imposed in this case to the one imposed in *Stacey*. Rather, as the trial court's decision reflects that it considered all of the relevant factors in aggravation and mitigation, its sentence was within the statutory range, the sentence was not at great variance with the spirit and the purpose of the law, and the sentence was not manifestly disproportionate to the nature of the offense, we decline to disturb its sentence. See *Stacey*, 193 Ill. 2d at 210.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed. As part of our judgment, we grant the State's request that the defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4–2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 28 Affirmed.