2017 IL App (2d) 150558-U
No. 2-15-0558
Order filed December 7, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DENNIS JOSEPH MIKOSZ, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 13-CF-2380 Honorable Joseph G. McGraw, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to an aggregate 15 years' imprisonment for aggravated DUI and aggravated fleeing; defendant's offenses were quite serious and his lack of a felony criminal history was not as mitigating as he suggested.

¶ 2 Defendant, Dennis Joseph Mikosz, was convicted of aggravated driving under the influence (aggravated DUI) (625 ILCS 5/11-501(d)(1)(F) (West 2012) (causing death)) and aggravated fleeing to elude (625 ILCS 5/11-204.1(a)(3) (West 2012) (causing damage in excess of $300)), and sentenced to an aggregate 15 years in prison. He appeals, contending that the sentence was an abuse of discretion. We affirm.

¶ 3 Evidence at trial showed that at about 9 p.m. on August 22, 2013, two Winnebago County sheriff's deputies were driving a marked squad car when they saw a Dodge Ram truck leave the parking lot of a bar on East State Street in Rockford. The truck swerved within its lane, turned left to go north on Alpine Road, crossed the centerline, and almost struck a vehicle in the oncoming lane.

¶ 4 The deputies stopped the truck. One deputy approached the driver's side of the truck, while the other deputy approached the passenger's side. The truck was being driven by the defendant. The front passenger window of the truck was rolled down, and the deputy on that side of the truck could smell alcohol on defendant's breath. Both deputies believed that defendant was driving under the influence of alcohol.

¶ 5 The officers told defendant to remain at the scene, but he sped away, leading the officers on a high-speed chase. In the course of the chase, he ran several stop signs and red lights. He struck another vehicle, but was able to keep driving. The chase finally ended when defendant's truck ran into the driver's side of a Chrysler Sebring. The driver of the Sebring, 54-year-old Michelle Parker, was taken to a hospital, where she was pronounced dead.

¶ 6 After hitting the Sebring, defendant's truck continued in motion and struck a Ford Escape being driven by Maribeth Speckman. The Escape, which was worth more than $300, was damaged beyond repair, but none of its occupants was injured. Defendant was transported from the crash scene to a hospital, where he was treated by medical personnel and briefly interviewed by a police officer. Defendant admitted that he had crashed his truck into another vehicle, but he denied that he had been drinking. He refused to provide the police with a blood or urine sample. Police obtained a warrant to collect samples of defendant's blood and urine. Tests on those samples showed that defendant had a blood-alcohol level of 0.22 grams per deciliter.

¶ 7 The forensic pathologist who performed an autopsy on Parker's body found that she had died almost immediately as the result of various injuries caused by the crash, including a broken neck, a partially torn aorta, and severe lacerations to her liver. Accident-reconstruction experts opined that defendant's truck was going at least 74 miles per hour when it hit the Sebring. The speed limit where the crash occurred was 40 miles per hour.

¶ 8 A 12-count indictment was filed against defendant charging him with, among other things, first-degree murder, aggravated DUI, and reckless homicide under various theories. The matter proceeded to a bench trial. Defendant's only defense was that he was not guilty of first-degree murder. The court found him not guilty of murder, but guilty of all other charges.

¶ 9 According to the presentence investigation report (PSI), defendant was born in 1982. He never knew his biological father, and his mother was a heroin addict who neglected him. At about age 5, he was placed in the custody of his aunt and uncle in Bloomingdale, where he lived until he dropped out of school in the 11th grade to attend a marine-mechanics school in Florida.

¶ 10 Defendant had his first experiences drinking alcohol when he was 14 or 15. In his late teens, he drank several shots of vodka once per month. When he turned 20, he began drinking a fifth of vodka every day, maintaining that habit until his arrest in this case. Defendant reported using cannabis, cocaine, and hallucinogenic drugs.

¶ 11 Defendant obtained a GED in 2000. He had been steadily employed since 2004 doing marine repair and working as an electrical contractor.

¶ 12 Defendant had 11 misdemeanor convictions between 1998 and 2004, including two convictions for DUI. Five of his convictions were for misdemeanor drug or alcohol offenses and the rest involved non-DUI traffic offenses. He was convicted of a drug offense in Indiana in 2010.

¶ 13 At sentencing, defendant's adoptive father, William Mikosz, read a prepared statement saying that defendant had had a "hard life." The person who was involved in the "horrific accident" was not "the real Dennis." Defendant was "friendly, polite, knowledgeable, and kind." When anyone needed help, defendant would help selflessly. Mikosz called what happened in this case "an aberration."

¶ 14 Shortly after the accident, Mikosz received a letter from defendant. He said that he felt terrible about what had happened. He realized that he had a huge problem with drinking and that he should have sought help sooner. In a letter to the trial judge, Mikosz wrote that the incident occurred shortly after defendant had broken up with his girlfriend.

¶ 15 In allocution, defendant apologized to Parker's family and took full responsibility for his actions. He stated that he made a "stupid, horrible" decision.

¶ 16 The court sentenced defendant to the maximum 14-year term for aggravated DUI, followed by a 1-year term for aggravated fleeing to elude. The court merged the remaining convictions. Defendant would have to serve at least 85% of the 14-year term and at least 50% of the 1-year term.

¶ 17 The trial court denied defendant's motion to reconsider the sentence. Defendant timely appeals.

¶ 18 As noted, on appeal defendant contends that his 15-year aggregate sentence was an abuse of the court's discretion. He maintains that the trial court failed to give adequate consideration to the considerable mitigating factors. He points out that he had never previously been convicted of a felony and that although he had two prior DUIs, the most recent was in 2004. Since that time, he had been convicted only of a misdemeanor drug offense. Other evidence showed that he was sincerely remorseful and was sincere in his desire to pursue treatment for his alcohol abuse. He

noted that he had a difficult upbringing with an absent father and a neglectful mother. Despite this, he had been steadily employed and had a strong family support system.

¶ 19 Illinois Supreme Court Rule 615(b)(4) grants a reviewing court the power to reduce a sentence. Ill. S. Ct. R. 615(b)(4) (eff. Jan. 1, 1967). That power, however, should be exercised " 'cautiously and sparingly.' " *People v. Jones*, 168 Ill. 2d 367, 378 (1995) (quoting *People v. O'Neal*, 125 Ill. 2d 291, 300 (1988)). "A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court." *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A sentence is an abuse of discretion only where it is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 20 The trial court has broad discretion in imposing a sentence, and, accordingly, its sentencing decisions are entitled to great deference (*Stacey*, 193 Ill. 2d at 209) "because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the 'cold' record" (*People v. Fern*, 189 Ill. 2d 48, 53 (1999)). "The trial judge has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. [Citation.]" *Stacey*, 193 Ill. 2d at 209.

¶ 21 The court here did not abuse its discretion in sentencing defendant. Although defendant presented substantial mitigating evidence, defendant's offense was quite serious. See *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002) (the seriousness of the offense is the most important factor in determining an appropriate sentence, and the presence of mitigating factors or absence

of aggravating factors does not require the minimum sentence be imposed); see also *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010) (existence of mitigating factors does not mandate the minimum sentence or preclude the maximum sentence).

¶ 22 Defendant, while admittedly intoxicated, led police on a high-speed chase, running several red lights and stop signs in the process, and ultimately crashed into Parker's car, killing her. Although the trial court correctly recognized that Parker's death was inherent in the offense of aggravated DUI as charged, defendant's conduct endangered many other drivers, and it was merely fortuitous that others were not killed or injured.

¶ 23 Defendant points out that he had never before been convicted of a felony. However, the PSI shows 11 prior convictions, mostly involving drugs and alcohol. Although, with one exception, the convictions occurred more than 10 years before, defendant admittedly continued to drink and use illegal drugs. He admitted drinking a fifth of vodka every day until his arrest for this offense. At sentencing, he conceded that he had a serious problem with alcohol and that he should have asked for help sooner. Accordingly, defendant's lack of a felony criminal history is not nearly as mitigating as he suggests.

¶ 24 The record shows that the trial court gave appropriate consideration to the aggravating and mitigating evidence, and we cannot say that the 15-year aggregate sentence was an abuse of discretion. Therefore, we affirm the judgment of the circuit court of Winnebago County. As part of our judgment, we grant the State's request that 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).

¶ 25 Affirmed.