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2012 IL App (3d) 091052-U

Order filed January 19, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD JUDICIAL DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit
Plaintiff-Appellee,	)	Peoria County, Illinois
	)	
v.	)	Appeal No. 3-09-1052
	)	Circuit No. 08-CF-200
JAMES E. SARGENT,	)	
	)	Honorable
Defendant-Appellant.	)	James E. Shadid
	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's request to present psychiatric testimony on defendant's behalf at trial. The trial court considered all relevant factors in aggravation and mitigation before imposing a sentence that was not excessive. We affirm defendant's conviction and sentence.

¶ 2 Following a bench trial, defendant was convicted of two counts of first degree murder in relation to the death of his infant son, Benjamin Sargent. Prior to trial, the trial court denied defendant's motion *in limine* seeking to present psychiatric testimony at trial. The trial court found that the State proved certain aggravating factors beyond a reasonable doubt, justifying an

extended sentence of 100 years imprisonment. We affirm.

¶ 3 FACTS

¶ 4 On March 4, 2008, a Peoria County grand jury issued a two-count bill of indictment against defendant. Count I alleged that from February 4, 2008, through February 12, 2008, defendant committed the offense of first degree murder in that while under a duty to provide care and protection to his child, Benjamin Sargent, born 8/27/07, defendant confined Benjamin Sargent to a car seat and knowingly neglected to provide food, liquid, and sanitation to the child, "that being exceptionally brutal or heinous behavior indicative of wanton cruelty" knowing said acts would create a strong probability of death and thereby caused Benjamin Sargent's death by starvation in violation of section 9-1(a)(2) of the Criminal Code of 1961 (720 ILCS 5/9-1(a)(2) (West 2008)).

¶ 5 Count II alleged that from February 4, 2008, through February 12, 2008, defendant committed the offense of first degree murder in that with the intent to kill and while under a duty to provide care and protection to his child, Benjamin Sargent, born 8/27/07, defendant confined Benjamin Sargent to a car seat and knowingly neglected to provide food, liquid, and sanitation to the child, "that being exceptionally brutal or heinous behavior indicative of wanton cruelty" and thereby caused Benjamin Sargent's death by starvation in violation of section 9-1(a)(1) of the Criminal Code of 1961 (720 ILCS 5/9-1(a)(1) (West 2008)).

¶ 6 On August 22, 2008, the trial court granted defendant's motion to appoint a psychological expert to conduct an evaluation of defendant to determine fitness and sanity. The court appointed Dr. Terry Killian. On December 18, 2008, defense counsel filed a motion *in limine* seeking to introduce Dr. Killian's testimony to show that defendant suffered from

borderline personality disorder which contributed to defendant's conscious disregard of his parental duties. The motion asserted the circumstances of the infant's death were "well outside the common knowledge of the potential jurors that may hear this case." On January 6, 2009, the State filed a response to defendant's motion *in limine*, arguing Dr. Killian's testimony represented an attempt to present a diminished capacity defense which is not recognized in this State.

¶ 7 During the hearing on defendant's motion *in limine,* defense counsel called Dr. Terry Killian who testified that he evaluated defendant on October 21, 2008, for purposes of determining defendant's fitness and sanity. Killian opined that defendant did not suffer from any psychiatric illness that would have rendered defendant incapable of appreciating the criminality of his conduct.

¶ 8 However, Killian determined that defendant suffered from bipolar mood disorder, borderline personality disorder, posttraumatic stress disorder and dissociative disorder, not otherwise specified. Killian explained that defendant's dissociative disorder was triggered by some event, such as stress. According to Killian, during the time period of February 5, 2008, to February 12, 2008, defendant became stressed after Tracy Hermann left with another man, leaving defendant alone with their infant and feeling abandoned. Thus, defendant did not form a conscious awareness of the danger of his actions during that week. Killian opined that defendant was in an extended dissociative state shortly before the infant's death and was "being pretty much consciously unaware of what was going on around him." On cross-examination, Killian surmised defendant "would have to have been pretty deeply in a dissociative episode" to ignore Benjamin's cries. Dr. Killian stated that he did not believe that defendant consciously

disregarded the risk his neglect posed to Benjamin Sargent.

¶ 9 Dr. Killian explained that when he evaluated defendant, he did so for the purpose of determining only whether defendant could appreciate his conduct and was not psychotic. Once he made that determination, he did not conduct any further evaluation or questioning on the issue of whether beyond a reasonable doubt, defendant was in a dissociative state. Dr. Killian acknowledged that he did not use any of the dissociative scales or conduct any standardized tests when evaluating defendant for the dissociative disorder.

¶ 10 The court noted the findings in Dr. Killian's report did not show defendant suffered from any type of severe psychiatric illness that would have rendered him incapable of appreciating the criminality of his alleged conduct. The court denied defense counsel's request for an involuntary manslaughter instruction and denied defense counsel's request to allow Dr. Killian to testify at trial.

¶ 11 On April 24, 2009, defendant filed a motion to reconsider claiming that the court should reconsider its ruling regarding Dr. Killian's testimony as to the aggravating factor of brutal or heinous behavior. On April 27, 2009, the State filed a motion to bar the testimony of Dr. Killian.

¶ 12 On April 27, 2009, the trial court conducted a hearing on the remaining pretrial motions. When the court asked defense counsel why Dr. Killian's testimony regarding defendant's dissociative state should be allowed, defense counsel responded, "Because, your Honor, we believe to the extent that it shows that there was a problem with him forming conscious awareness of, or conscious disregard, that would go to the heart of whether he was consciously intending to inflict pain and suffering upon Benjamin."

¶ 13 The court ruled that Dr. Killian's testimony should not be allowed for two reasons. First,

Dr. Killian testified that defendant was capable of appreciating the risk to Benjamin. Second, the court did not believe that Dr. Killian's testimony provided a proper foundation for which he could opine as to the issue of whether defendant did not actually appreciate the risk under the circumstances.

¶ 14 The cause proceeded to bench trial on April 27, 2009. At the close of evidence on April 29, 2009, the court found defendant guilty of both counts of first degree murder. The court found that the evidence established the cause of death in this case was sepsis, resulting from dehydration, due to defendant confining the child in a car seat and/or a crib without proper care for eight days. The court found that defendant was capable of providing Benjamin with care but decided on February 4, 2008, that his duties as a parent " 'had become too overwhelming and stressful,' " according to defendant. The court found defendant's behavior was not reckless.

¶ 15 The court stated that the testimony presented at trial and the exhibits admitted into evidence show "conduct that was devoid of mercy or compassion, and hatefully or shockingly evil." Therefore, the court further found the State's evidence established the sentencing enhancement of exceptionally brutal and heinous behavior indicative of wanton cruelty beyond a reasonable doubt.

¶ 16 On June 16, 2009, Peoria County adult probation filed a presentence investigation report with the court. According to the report, defendant was 23 years old at the time of the offense and nearly 25 years old at the time the report was prepared.

¶ 17 According to the report, defendant’s first psychological evaluation was completed when defendant was seven years old. By age four, defendant was displaying inappropriate behavior, including little concern for consequences, poor response to punishment, and temper tantrums.

On June 11, 1996, defendant was admitted to the Children and Adolescent Unit at Zeller Mental Health Center at the age of 11. Defendant was admitted due to threatening to kill his mother with scissors, touching her inappropriately, and being generally out of control. It was reported by defendant's mother at the time that this was defendant's third hospitalization. While hospitalized, defendant engaged in an active fantasy life with a morbid theme. Defendant was diagnosed with attention deficit disorder, arithmetic disorder, oppositional defiant disorder, and parent/child problem.

¶ 18 The report stated that defendant was considered a disabled adult by the Social Security Administration. Defendant did not complete high school and had not obtained a GED. According to school records, defendant was suspended three times during fifth grade for disruptive behavior. In high school, defendant was placed in a behavior disorder classroom. From 2003 until August 2004, defendant attended Kiefer School in Peoria, Illinois due to "his disruptive and violent outbursts." Defendant dropped out of high school in the 10th grade. Defendant admitted to the probation department that "he had academic problems probably because he did not care to apply himself due to the social problems." Defendant was suspended more than once in high school for fighting.

¶ 19 In 1998, defendant was hospitalized in the Methodist Hospital Mental Health Unit for taking an overdose of ginseng, sexually acting out, and cutting his parent's furniture with a butcher knife. It was reported at that time that defendant had a history of torturing cats and other animals. Defendant continued to receive mental health services until 2006.

¶ 20 According to a psychiatric evaluation on July 6, 2006, defendant did not have any formal thought disorder and his responses were appropriate but delusional and exaggerated. The

psychiatric evaluation found, “No cognitive impairment is elicited. Insight and judgment are very limited.”

¶ 21 Defendant began dating his fiancé, Tracey Hermann, in August 2006, that she moved into his residence four days later, and that she became pregnant in December 2006. Their son, Benjamin Sargent, was born August 27, 2007. The probation department wrote in the report that during the interview, defendant “never mentioned his son in any manner except to say that now people believe that he killed his son.”

¶ 22 According to the report, Tracey Hermann left her 14-month old daughter from another relationship with defendant while she worked. Defendant’s psychiatrist told defendant and Hermann in November 2006 that it "may not be a good idea because he [defendant] has very short fuse and becomes irritable and he [defendant] is not stable at this time with his moods.” Thereafter, defendant terminated mental health services. At that time, defendant was diagnosed with bipolar disorder and cannabis dependence, and no overt signs of psychosis were elicited other than grandiose thoughts.

¶ 23 According to the report, defendant's previous criminal history included a 1999 misdemeanor disorderly conduct offense, when defendant was a juvenile, and a 2004 adult misdemeanor conviction for the offense of aggravated assault. Defendant also had 2007 convictions for unlawful possession of drug paraphernalia and disorderly conduct resulting from defendant’s threat to cut his neighbor’s head off because she complained to defendant about his dogs running loose. Defendant admitted making the threat.

¶ 24 On June 25, 2009, the trial court denied defendant's motion for new trial and proceeded to sentencing. Defense called four witnesses to testify in mitigation. Wendell Bohna, a friend of

defendant, testified that defendant lived with him for one and one-half years while Tracy Hermann was pregnant. Bohna told the court that defendant was a sincere and loving individual. Connie Bohna, Wendell Bohna's wife, testified that she never observed defendant act in a brutal or callous manner and described defendant as compassionate, loving and conscientious. She told the court that while defendant resided with her and her husband, she left her children in defendant's care and that she never felt that her children were in danger.

¶ 25 Thomas Sargent, defendant's father, testified that the only time he recalled defendant being mean was the occasion on which he tried to stab his mother when he was a child. Sargent also acknowledged that defendant attacked him in 2004. Sargent described defendant as a person that always wanted to help others. Rosemary Sargent, defendant's mother, testified that defendant would get upset when he was younger because people called him names and mistreated him at school. She also testified that defendant would sometimes get distracted and would forget to take care of things, such as the family dog.

¶ 26 The court then heard sentencing alternatives from the attorneys. Defense counsel argued that

> "when you filter the events that we have here through the psychological filter, which we couldn't do at trial, because by law since we didn't claim insanity, the psychological testimony, the evidence of mental impairment was irrelevant *** [b]ut I think that it is something that absolutely has to be considered here in the sentencing phase."

Defense counsel stated that defendant suffered a traumatic episode on February 7, 2008, as a

result of losing Tracy Hermann and "because he was wrapped up in something else, well, we had the horrible results that we did." In mitigation, defense counsel also argued that defendant did not contemplate that his criminal conduct would threaten serious physical harm, that there were substantial grounds to excuse his conduct although failing to establish a defense, that defendant's conduct was the result of circumstances unlikely to recur, and that defendant had little criminal history.

¶ 27 Following defendant's unsworn statement in allocution, the court said that it considered the presentence investigation report, the evidence, the arguments of counsel and defendant's statement. The court stated that none of the statutory factors in mitigation applied and that in aggravation, defendant had a criminal history and a sentence was necessary to deter others. Further, the court stated that it believed defendant's mental health was a factor in aggravation. According to the reports, defendant's psychiatrist told defendant on November 9, 2006, that it was not a good idea for Tracy Hermann to leave her daughter with defendant due to his moods and instability. Defendant's response was to get angry and tell the doctor that he would not return. The court also found that defendant lacked any remorse. The trial court sentenced defendant on one count of first degree murder to a 100-year term of imprisonment with truth-in-sentencing to apply.

¶ 28 On December 21, 2009, the trial court denied defendant's motion to reconsider sentence. The court directed the clerk of the court to file a notice of appeal on defendant's behalf. Per the court's order, a notice of appeal was filed that same day.

¶ 29 ANALYSIS

¶ 30 On appeal, defendant raises two claims of error. First, defendant asserts that the trial

court improperly denied defendant’s motion *in limine* seeking to introduce psychiatric testimony at trial. Second, defendant asserts that the trial court abused its discretion when sentencing defendant.

¶ 31 I. Dr. Killian’s Testimony

¶ 32 In this appeal, defendant challenges the trial court's ruling denying defendant’s motion *in limine* seeking to allow Dr. Killian to testify that defendant suffered from a dissociative state at the time of the offense and therefore, defendant did not consciously disregard his parental duties or intend to inflict pain and suffering upon Benjamin.

¶ 33 A trial court has the inherent authority to admit or exclude evidence. *People v. Williams*, 188 Ill. 2d 365, 369 (1999). We review a trial court’s decision to grant or deny a motion *in limine* pursuant to an abuse of discretion standard. *People v. Williams*, 188 Ill. 2d at 369; *People v. Averett*, 381 Ill. App. 3d 1001, 1017 (2008). Accordingly, we will not reverse the court's ruling “unless it is arbitrary, fanciful or unreasonable or no reasonable person could take the same view as the court or the court applied an impermissible legal standard.” *People v. Hulitt*, 361 Ill. App. 3d 634, 637 (2005) (citing *Kimble v. Earle M. Jorgenson Co.,* 358 Ill. App. 3d 400, 408 (2005)).

¶ 34 The question of a defendant's state of mind at the time of the crime is a question of fact to be determined by the trier of fact. *People v. Hulitt*, 361 Ill. App. 3d at 637. Mental states, such as intent to cause great bodily harm, “ ‘are not commonly established by direct evidence and may be inferred from the character of the defendant's conduct and the circumstances surrounding the commission of the offense.’ ” *People v. Hulitt*, 361 Ill. App. 3d at 637 (quoting *People v. Raines*, 354 Ill. App. 3d 209, 220 (2004), quoting *People v. Adams,* 308 Ill. App. 3d 995, 1006 (1999)).

However, an expert may not give an opinion supporting the doctrine of diminished mental capacity, which falls short of insanity, as that doctrine is not recognized in the State of Illinois. *People v. Hulitt*, 361 Ill. App. 3d at 640.

¶ 35 Dr. Killian's testimony, during the hearing on the motion *in limine*, indicated that he believed that defendant suffered from a dissociative state and that due to his dissociative tendencies, defendant was not consciously aware of the risk of harm to his infant son. Dr. Killian did not opine that defendant was insane, but rather that in spite of his sanity, he had a diminished appreciation for the danger to his son resulting from several days of inattention. Accordingly, we conclude that Dr. Killian's testimony was founded on the doctrine of diminished capacity due to a mental illness which is not allowed under Illinois law. *People v. Hulitt*, 361 Ill. App. 3d at 640.

¶ 36 II. Sentencing

¶ 37 When reviewing a challenge to a trial court's sentence, the appropriate standard of review is an abuse of discretion standard. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). A sentence which falls within the statutory range of penalties does not constitute an abuse of discretion unless the sentence is manifestly disproportionate to the nature of the offense or greatly varies with the spirit and purpose of the law. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). When deciding a sentence, the most important factor to be considered by the trial court is the seriousness of the offense. *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010).

¶ 38 The case law provides that "[a]lthough the legislature has prescribed the permissible ranges of sentences, great discretion still resides in the trial judge in each case to fashion an appropriate sentence within the statutory limits." *People v. Fern*, 189 Ill. 2d 48, 53 (1999).

Consequently, a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *People v. Stacey*, 193 Ill. 2d at 209; *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 39 In this case, defendant claims the trial court abused its discretion by failing to recognize both statutory or nonstatutory factors in mitigation and also by considering deterrence, defendant's mental health, and defendant’s lack of remorse as factors in aggravation. The State responds that the trial court did not abuse its discretion when sentencing defendant.

¶ 40 A. Factors in Mitigation

¶ 41 On appeal, defendant submits that the trial court should have considered defendant's mental or psychological impairments, his youthfulness, the absence of a felony criminal history, and the unlikeness that defendant would commit a similar crime in the future in favor of mitigating the seriousness of the punishment imposed by the court. The State disagrees that these circumstances presented mitigating evidence.

¶ 42 A judge presented with evidence that an offender suffers from a mental disorder must first determine whether this information should be considered in mitigation or in aggravation. Mental health difficulties may be considered by a judge as mitigating evidence when the mental health challenges of an offender evokes compassion for a defendant in the court's mind. On the other hand, in some cases, the mental health status of an offender may be properly considered in aggravation when this mental status demonstrates potential dangerousness toward other innocent victims in the future. *People v. Thompson*, 222 Ill. 2d 1, 43 (2006) (citing *People v. Ballard*, 206 Ill. 2d 151, 190 (2002); *People v. Macri,* 185 Ill. 2d 1, 66 (1998)); *People v. Heider*, 231 Ill. 2d 1, 20-21 (2008) (citing *People v. McNeal,* 175 Ill. 2d 335, 370 (1997)).

¶ 43 In this case, defendant's psychiatrist warned defendant and others that defendant should not be allowed to care for small children without the assistance of other caregivers because defendant has a "very short fuse and becomes irritable." We conclude defendant's longstanding unstable mental health was properly considered by the court in aggravation, rather than mitigation, since defendant was made aware of his psychiatrists' concerns but failed to follow through with treatment.

¶ 44 Next, defendant argues that his youthfulness, minimal criminal history, and the unlikelihood that any other child would be placed in his care should have minimized the punishment imposed by the court. The youth of a defendant does not overcome other aggravating factors, such as the nature of the crime. *People v. Hoskins*, 237 Ill. App. 3d 897, 900 (1992) (citing *People v. Taylor*, 80 Ill. App. 3d 1109 (1980)).

¶ 45 The presentence investigation report in this case shows defendant had three misdemeanor convictions as an adult, including a 2004 conviction for the offense of aggravated assault and a 2007 conviction for disorderly conduct based on defendant's threat to cut his neighbor's head off after she complained about defendant's dogs running loose. In light of this criminal history, we reject defendant's contention that his youthfulness and lack of criminal history should have been considered in mitigation.

¶ 46 Defendant also asserts that the circumstances of this offense are unlikely to reoccur because he will be unable to father other children due to his age, once released from prison, and that the court should have considered this factor in mitigation. We do not find defendant's argument persuasive since a person of advanced years can become the caretaker of a child. Moreover, contrary to defendant's claim that he was convicted "because of his inability to

adequately take care of his son," defendant was convicted of the intentional act of first degree murder resulting from defendant's knowing failure to provide food, water or sanitation to his infant son for eight days, which caused the infant to lapse into a coma and die.

¶ 47 B. Factors in Aggravation

¶ 48 Defendant also contends that the trial court erred by finding that a sentence was necessary to deter others because defendant suffered from a mental illness, relying on our decision in *People v. McCumber*, 148 Ill. App. 3d 19 (1986). *McCumber* can be easily distinguishable from the case at bar. Unlike the circumstances presented in *McCumber*, Dr. Killian concluded that defendant, in this case, did *not* suffer from any psychiatric illness that would have rendered him incapable of appreciating the criminality of his conduct. Moreover, we note that since our ruling in *McCumber*, other appellate courts have upheld deterrence as a factor in aggravation even in cases where the crime was not a premeditated offense. See *People v. Smith*, 195 Ill. App. 3d 878, 883-84 (1990); *People v. Hall*, 159 Ill. App. 3d 1021, 1034-35 (1987).

¶ 49 Based upon the broad discretion given to a trial judge when imposing a sentence, "a court may logically give reasonable consideration to the need for deterrence as a factor in the imposition of a sentence." *People v. Cameron*, 189 Ill. App. 3d 998, 1010 (1989). We conclude that based upon the conviction herein and the facts surrounding the crime, the trial court reasonably considered deterrence as an aggravating factor herein.

¶ 50 Defendant next claims that the record lacks any support of the trial court's conclusion that defendant lacked remorse. We disagree. In this case, the probation department noted in their presentence investigation report that during their interview with defendant, defendant

"never mentioned his son in any manner except to say that now people believe that he killed his son." At sentencing, defendant spoke to the court but did not express remorse for the loss of his son or apologize for his actions.

¶ 51 Finally, contrary to defendant's contention on appeal, the record clearly shows the trial court did not consider the brutal and heinous nature of the crime as a factor in aggravation at sentencing. Here, the trial judge found this factor was proven beyond a reasonable doubt at trial and did not reconsider this factor when sentencing defendant. At the time of sentencing, the trial court clearly articulated the factors in aggravation which applied in this case in formulating defendant's sentence, and those factors did not include the finding that defendant's conduct was brutal or heinous in nature. Therefore, the trial court did not improperly consider defendant's brutal and heinous behavior in sentencing defendant. See *People v. Gonzales*, 151 Ill. 2d 79 (1992).

¶ 52 CONCLUSION

¶ 53 The judgment and sentence of the circuit court of Peoria County is affirmed.

¶ 54 Affirmed.