2012 IL App (3d) 100855-UB

Order filed August 17, 2012
Modified Upon Denial of Petition for Rehearing September 25, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-10-0855
v.	)	Circuit No. 05-CF-2232
	)	
KAREEM J. COBBINS,	)	Honorable Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court's rejection of defendant's insanity defense was not against the manifest weight of the evidence. (2) Defendant's 40-year sentence for first degree murder was not an abuse of discretion.

¶ 2 Following a bench trial, defendant, Kareem J. Cobbins, was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2004)) and sentenced to 40 years' imprisonment. Defendant appeals, arguing that: (1) the trial court's finding that defendant was sane at the time of the

offense was against the manifest weight of the evidence; and (2) his sentence was excessive. We affirm.

¶ 3 FACTS

¶ 4 I. Pretrial

¶ 5 On May 8, 2008, defendant was charged by superceding indictment with two counts of first degree murder for stabbing his wife, Tonya Cobbins, on October 24, 2005. 720 ILCS 5/9(a)(1), (a)(2) (West 2004). Defendant pled not guilty and raised the affirmative defense of insanity. The trial court ordered Dr. Randi Zoot, a clinical psychologist, to examine defendant to determine his sanity at the time of the offense and his fitness for trial. On May 16, 2006, Zoot found defendant mentally fit to stand trial. On July 17, 2006, Zoot prepared a psychological evaluation of defendant. Zoot's opinion regarding defendant's sanity at the time of the offense was inconclusive; however, she was concerned that defendant suffered from some type of brain dysfunction or pathology. Zoot suggested a complete neuropsychological evaluation of defendant in order to reach an opinion.

¶ 6 The trial court ordered Dr. Robert Hanlon, a clinical neuropsychologist, to evaluate defendant. Hanlon performed a neuropsychological evaluation of defendant on May 11, 2007, at the jail, to provide an assessment of his current status. After reviewing Zoot's report, court records, police reports, and the results of a positron emission tomography scan, Hanlon reported that defendant currently suffered from a neuropsychological impairment and a significant functional disability, which was consistent with the effects of a chronic, untreated seizure disorder. Hanlon diagnosed defendant as suffering from a cognitive disorder, depressive disorder, and seizure disorder; however, he did not come to a conclusion as to defendant's sanity

at the time of the offense.

¶ 7 On October 18, 2007, Zoot submitted a supplemental report based on the results of Hanlon's evaluation of defendant. Zoot's opinion as to defendant's sanity was again inconclusive, because she found it was unclear whether defendant's neuropsychological impairment had any impact on defendant's mental state at the time of the offense.

¶ 8 The State hired Dr. Lisa Sworowski, a clinical psychologist, to conduct a psychological and neuropsychological evaluation of defendant. Sworowski prepared her report on February 11, 2009, and opined that while defendant demonstrated some signs of cognitive impairment and may have experienced mild psychopathology, his deficits and symptoms were of insufficient severity to have substantially diminished his capacity to appreciate the criminality of his conduct at the time of the offense.

¶ 9 II. Trial

¶ 10 At the bench trial, the evidence regarding the offense established on October 23, 2005, Tonya returned home from a baby shower at approximately 9:30 p.m. There was no indication defendant and Tonya argued that night.

¶ 11 The next morning, the police were dispatched to defendant's house at 9:16 a.m. in response to a 911 call involving a stabbing. Defendant stood at the front door of the house and told the police that he killed Tonya, and that she was upstairs. Tonya was found upstairs in her bedroom with a knife in her chest. Tonya died as a result of multiple stab wounds to the chest.

¶ 12 Defendant's five-year-old son was in his parent's bedroom at the time of the offense, and he witnessed defendant stab Tonya to death. The couples' infant child was in the bed next to Tonya when defendant stabbed her. Yolanda Glover, Tonya's sister, was also in the house at the

time of the offense, because she had been living with defendant and Tonya for four years. After stabbing Tonya, defendant awoke Glover and told her that he was sorry for what he had done, and he needed someone to take care of the children. Defendant then handed her the telephone and told her to call the police to come get him. Glover then called 911.

¶ 13 In a videotaped interview defendant gave to the police shortly after his arrest, defendant indicated that the week prior to the incident, he admitted to his wife that earlier in their six-year marriage, he had an affair with Gail Stubbs. As a result, defendant and Tonya started having arguments. On the morning of the incident, while Tonya was still asleep in the bedroom, defendant stated that he went downstairs to the kitchen, grabbed a knife, returned to the bedroom, and stabbed Tonya. Throughout the interview, defendant was at times reluctant to give information regarding the incident, but stated more than once that he had made a mistake.

¶ 14 According to Stubbs, she had an affair with defendant for a short period of time starting in 1992. After Stubbs ended the affair she continued to communicate with defendant, last speaking to him by telephone two weeks prior to this incident.

¶ 15 According to defendant's mother, prior to the incident, she visited defendant and Tonya approximately once a week. On the day prior to the incident, defendant was acting normal. She was unaware of defendant suffering from any seizures, and she never saw him experience any seizures or shaking.

¶ 16 The parties stipulated that Hanlon would testify consistently with the report he previously submitted regarding his May 11, 2007, evaluation of defendant. Zoot testified that she interviewed defendant three times in June and July 2006 at the jail, performed one psychological test, and reviewed the bill of indictment, police reports, defendant's videotaped statements, and

his jail medical records. Pursuant to Zoot's report, defendant's medical records revealed that upon admission to jail on October 24, 2005, defendant rolled up a sock and stuffed it into his throat, thereby experiencing difficulty breathing. A few days later defendant rammed his head into the wall and knocked himself out for a brief period of time.

¶ 17 During the interviews with Zoot, defendant stated that in the days prior to the offense nothing unusual occurred, but he reported "not feeling right," though he could not be more descriptive. Defendant stated that the only unusual past experience he had was when he was about 19. At that time, he smoked "bad" marijuana and felt "creepy crawly," and he thought he had rabies. Defendant's mother confirmed defendant's peculiar behavior for approximately two to three months during this time period.

¶ 18 In discussing the offense, defendant reported that "everything happened real quick, I just jumped up and ran, I wasn't thinking nothing." Defendant could not offer an explanation for his thoughts or feelings. Defendant stated that he was unaware of what he was doing until his son yelled for him. When asked why he told a social worker at the jail that he killed his wife because someone performed voodoo on him, he initially stated that would be the only explanation for his conduct. In a follow-up interview, defendant stated that he did not know why he had said that to the social worker.

¶ 19 Zoot testified that defendant was aware of some wrongdoing after the offense when he told Glover to call the police. However, this did not address his mental state while he was stabbing Tonya. Zoot reported that there was no evidence to suggest that defendant had been an aggressive, violent, or antisocial individual.

¶ 20 Zoot further testified that after reviewing Hanlon's findings, her opinion regarding

defendant's sanity was still inconclusive. She was familiar with the testing Hanlon performed, but was not familiar enough to critique or interpret it.

¶ 21 The State then called Sworowski to testify. Defendant stipulated that Sworowski was an expert in clinical psychology and neuropsychology. Sworowski testified that she was a licensed clinical psychologist, and had been doing neuropsychological evaluations since 1994, but she was not yet board certified. Sworowski testified that in preparing her report, she interviewed defendant three times in July 2008 at her office, performed psychological and neuropsychological testing, and conducted collateral interviews of defendant's mother and Glover. She also reviewed defendant's videotaped statements, Zoot and Hanlon's reports, and court documents. In the collateral interviews, Sworowski learned that there was nothing unusual in defendant's behavior prior to the incident.

¶ 22 In the interviews with Sworowski regarding defendant's medical history, he reported having a possible concussion at the age of 17, and was bit by a rat or a cat in 1993, which he believed caused him to contract rabies. Defendant denied ever having neurological symptoms or seizures. Defendant's mother and Glover also denied ever observing defendant have a seizure.

¶ 23 When defendant explained what happened when he killed his wife, he claimed evil spirits were controlling him. When Sworowski confronted defendant about his claim that he was a victim of voodoo by a mistress during the incident and mentioned acting out a dream, defendant would not commit to whether he truly believed he was a victim of voodoo and denied any hallucinations at the time of the offense. Sworowski testified that this behavior is not consistent with someone who had delusions characteristic of a psychotic disorder, because delusions are very fixed and would have to last more than one day. Additionally, delusions would have

affected multiple aspects of his life, of which there was no evidence.

¶ 24 Sworowski also testified that approximately one hour after the incident, defendant was able to give a detailed account of how he stabbed Tonya to those present at the scene, which indicated he was lucid at the time of the offense. Defendant also displayed no psychotic behavior and complained of no psychotic symptoms surrounding the murder. Defendant also reported having physiological sensations such as a feathery feeling on the right side of his face before going to court, but denied having them at the time of the incident.

¶ 25 Sworowski disagreed with Zoot's opinion that defendant was not aggressive or violent, because defendant reported hitting Tonya on two or three occasions and he drove drunk 11 to 15 times in the past, and she found that defendant had no remorse for the murder. Sworowski also disagreed with Hanlon's diagnosis that defendant had a cognitive disorder, because this diagnosis stemmed from a medical cause. She also disagreed with the depressive disorder and seizure disorder diagnoses, because defendant reported feeling depressed only a few times and there was no evidence defendant ever suffered from seizures, including defendant's denial of ever having a seizure.

¶ 26 Sworowski noted that she could not rule out malingering based on defendant's inconsistent reporting regarding his personal history and psychiatric symptoms. Sworowski opined that although defendant presently demonstrated some signs of cognitive impairment and may have experienced mild psychopathology, his deficits and symptoms were of insufficient severity to have substantially diminished his capacity to appreciate the criminality of his conduct at the time of the murder.

¶ 27 The trial court found defendant guilty on both counts. The trial court also found that

defendant did not prove by clear and convincing evidence that he did not appreciate the criminality of his conduct at the time of the offense. Defendant filed an amended motion for a new trial, arguing he was insane at the time of the offense, which the trial court denied.

¶ 28 III. Sentencing

¶ 29 At sentencing, the trial court stated that it had considered the evidence and testimony presented at trial and the sentencing hearing, the letters presented by defendant showing his family and community support, the presentence investigation report showing, in part, defendant's six-year work history with Office Max, and the factors in aggravation and mitigation. In mitigation, the trial court found that defendant did not have a prior criminal history, noting that defendant did not even have a speeding ticket. In discussing factors in mitigation that did not apply, the court stated that there were no grounds to excuse defendant's conduct, but acknowledged that defendant had some mental health issues. The court also stated that it could not rule out that the circumstances were unlikely to recur, because the victim was sleeping when defendant deliberately walked downstairs to get a knife, showing that defendant had a cold, calculated approach to the offense.

¶ 30 In aggravation, the court found that the sentence was necessary to deter others, and defendant held a position of trust because the victim was his wife. The court went on to state that defendant's two small children were also present during the murder. The trial court ultimately sentenced defendant to 40 years' imprisonment for first degree murder. 720 ILCS 5/9-1(a)(1) (West 2004). Defendant's motion to reconsider sentence was denied. Defendant appeals.

¶ 31 ANALYSIS

¶ 32 I. Insanity Defense

¶ 33 On appeal, defendant first argues that the trial court's finding that defendant was sane at the time of the offense was against the manifest weight of the evidence. Specifically, defendant argues that it was error for the court to accept Sworowski's testimony, because Zoot had concerns regarding defendant's mental health and Hanlon found defendant suffered from a mental illness. Defendant further argues that Hanlon's credentials were superior to Sworowski's, and the nature of the crime indicated defendant was insane.

¶ 34 In Illinois, a person is not criminally responsible for conduct if, at the time of the conduct, he suffered from mental disease or defect, such that he lacked substantial capacity to appreciate the criminality of that conduct. 720 ILCS 5/6-2(a) (West 2004). Where a defendant raises the defense of insanity, he bears the burden of proving by clear and convincing evidence that he is not guilty by reason of insanity. 720 ILCS 5/6-2(e) (West 2004).

¶ 35 On review, we will not reverse a trier of fact's resolution on the issue of an insanity defense, unless it is against the manifest weight of the evidence. *People v. Frank-McCarron*, 403 Ill. App. 3d 383 (2010). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *People v. Urdiales*, 225 Ill. 2d 354 (2007). Moreover, a reviewing court will not substitute its judgment for that of the trier of fact regarding credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn therefrom. *People v. Deleon*, 227 Ill. 2d 322 (2008).

¶ 36 In this case, we find that the evidence and testimony supported the trial court's finding that defendant was sane at the time of the offense. The trial court was not only presented with Sworowski's testimony that defendant was sane at the time of the offense, and the inability or

failure of the court-appointed experts, Zoot and Hanlon, to reach a conclusion as to whether defendant was insane at the time of the killing, but it was also presented with defendant's statements after the offense and the evidence of lay witnesses indicating that he was sane. The individuals who had contact with defendant near the time of the offense described him as normal, and one hour after the murder he was able to recall all the details surrounding it. See *People v. Dwight*, 368 Ill. App. 3d 873 (2006) (finding particularly relevant observations by lay witnesses made shortly before or after the crime was committed). Moreover, immediately after he killed his wife, he told Glover that he was sorry for what he did, and acknowledged that the police would arrest him.

¶ 37 Furthermore, even assuming defendant was mentally ill at the time of the murder, the court was not required to find that defendant was legally insane. See *People v. Fierer*, 260 Ill. App. 3d 136 (1994). Similarly, defendant's delusional statements regarding evil spirits also did not require a finding of insanity, especially where defendant did not commit to this belief when questioned regarding it. *Id.*

¶ 38 Defendant has not cited to any evidence showing that it was clearly evident that he could not appreciate the criminality of his actions when he killed his wife. Zoot's opinion regarding defendant's sanity was inconclusive, and Hanlon did not offer an opinion regarding defendant's sanity at the time of the offense. A conclusion that insanity merely cannot be ruled out is not compelling evidence that the trial court's finding was against the manifest weight of the evidence. See *Frank-McCarron*, 403 Ill. App. 3d 383. Although defendant disputes some of the findings and credentials of Sworowski, he does not show that she came to her conclusion arbitrarily, but merely disagrees with her reasoning. It was for the trial court to determine the weight to be

given to Sworowski's testimony, and we find nothing in the record that would require us to substitute our judgment for that of the trial court's. See *Deleon*, 227 Ill. 2d 322. Therefore, based on the evidence presented, we hold that the trial court's finding that defendant was sane at the time of the offense was not against the manifest weight of the evidence.

¶ 39 II. Excessive Sentence

¶ 40 Defendant next argues that his 40-year sentence was excessive in light of his employment history, family and community support, lack of criminal history, and current mental illness.

¶ 41 The Illinois Constitution mandates that all penalties 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. However, the determination and imposition of a sentence involves considerable judicial discretion, and we will not reverse a trial court's sentence unless we find that the court abused its discretion. *People v. Alexander*, 239 Ill. 2d 205 (2010). A trial court is in a far better position than an appellate court to fashion an appropriate sentence, based upon firsthand consideration of factors such as defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Streit*, 142 Ill. 2d 13 (1991). Therefore, we will not substitute our judgment for that of the trial court just because we may have balanced the sentencing factors differently. *Id.*

¶ 42 Here, defendant's 40-year sentence falls in the mid-range for first degree murder, which has a sentencing range of 20 to 60 years' imprisonment. See 730 ILCS 5/5-8-1(a)(1)(a) (West 2004). A sentence that falls within the statutory range is not an abuse of discretion unless 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 (2000).

¶ 43 In this case, defendant killed his wife as she slept and left his two young children motherless. The record reveals the trial court explicitly considered all aggravating and mitigating evidence when it sentenced defendant. The court also reviewed each factor in mitigation that defendant raises on appeal. Despite defendant's contentions that his sentence was excessive in light of the mitigating factors, we cannot substitute our judgment for that of the trial court merely because we might have weighed the factors differently. See *Alexander*, 239 Ill. 2d 205; *People v. Shaw*, 351 Ill. App. 3d 1087 (2004) (trial court was not required to give greater weight to defendant's rehabilitative potential and other mitigating factors than to the circumstances of the offense).

¶ 44 Additionally, the court noted that defendant's sentence was necessary to deter others from committing a similar crime, and that defendant held a position of trust when he murdered his wife while his two young children were present. In light of these aggravating factors and the nature of the offense, we cannot say that the court abused its discretion when it weighed the factors and found a sentence of 40 years' imprisonment appropriate. See *Alexander*, 239 Ill. 2d 205; *Stacey*, 193 Ill. 2d 203.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 47 Affirmed.