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2012 IL App (3d) 110139-U

Order filed June 6, 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 14th Judicial Circuit,
Plaintiff-Appellee,)	Rock Island County, Illinois,
)	
v.)	Appeal No. 3-11-0139
)	Circuit No. 10-CF-762
)	
REGINALD W. MITCHELL,)	Honorable
)	Walter D. Braud,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in sentencing defendant to seven years' imprisonment for aggravated criminal sexual abuse.

¶ 2 Defendant, Reginald W. Mitchell, pled guilty to one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2008)) and was sentenced to seven years' imprisonment.

Defendant appeals, arguing that the cause should be remanded for a new sentencing hearing

because the trial court considered a factor inherent in the offense as a factor in aggravation and that his sentence was excessive. We affirm.

¶ 3

FACTS

¶ 4 Defendant was charged with one count of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2008)) and three counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2008)). The charges alleged that defendant had committed acts of sexual penetration and sexual conduct on his two daughters between 2006 and 2009.

Defendant pled guilty to one count of aggravated criminal sexual abuse, and the State dropped the other three charges. The cause proceeded to a sentencing hearing.

¶ 5 At the sentencing hearing, the trial court stated that it had read the presentence investigation report, as well as a psychological evaluation of defendant by Dr. Kirk Witherspoon. Thereafter, the victims' aunt read letters that had been prepared by the victims. The letters noted the harm that defendant's actions had caused them and stated that defendant had blamed them for the abuse. The victims requested that the court give defendant significant prison time.

Thereafter, defendant made a brief statement wherein he apologized for his actions.

¶ 6 In pronouncing its sentence, the trial court stated that it had weighed the factors in mitigation and aggravation. It noted that defendant had no prior delinquency or criminal activity and had gone through life, up to this point, as a good, law abiding citizen. However, the court noted that unlike some crimes, sexually abusing one's child is inherently wrong. Such a crime, according to the court, cannot be forgiven, taken back, or explained away. Therefore, based on the seriousness of defendant's crime, the court sentenced defendant to seven years' imprisonment. Defendant appeals.

¶ 7

ANALYSIS

¶ 8 Defendant argues that the cause should be remanded for a new sentencing hearing because the trial court, while sentencing defendant, relied on the fact that defendant's crime was inherently wrong, which was a factor implicit in the offense. Although a trial court has broad discretion when imposing a sentence, it may not consider a factor implicit in the offense as an aggravating factor in sentencing. *People v. Ellis*, 401 Ill. App. 3d 727 (2010). However, the trial court may consider the nature and circumstances of the offense, including the nature and extent of each element of the offense committed by the defendant. *People v. Saldivar*, 113 Ill. 2d 256 (1986). Further, the trial court is not required to refrain from any mention of the factors that constitute elements of an offense, and a mere reference to the existence of such a factor is not reversible error. *People v. Jones*, 299 Ill. App. 3d 739 (1998). We will not reverse a sentence imposed by a trial court unless it is clearly evident that the sentence was improperly imposed. *Ellis*, 401 Ill. App. 3d 727.

¶ 9 Here, defendant points to the trial court's comment that his crime was inherently wrong and could not be explained away, taken back, or forgiven. We believe that these comments were made for the permissible purpose of stating the nature and circumstances of defendant's heinous crime and not as factors in aggravation. Therefore, we will not remand the cause for resentencing.

¶ 10 Defendant also argues that his seven-year sentence for aggravated criminal sexual abuse is excessive. 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 seriousness of the offense is the most

important factor a court considers when deciding a sentence. *People v. Evans*, 373 Ill. App. 3d 948 (2007). A trial court's decision regarding sentencing is entitled to great deference, and a sentence will not be disturbed absent an abuse of discretion. *People v. Coleman*, 166 Ill. 2d 247 (1995). A sentence that falls within the statutory range does not amount to an abuse of discretion unless it is manifestly disproportionate to the nature of the offense. *People v. Jackson*, 375 Ill. App. 3d 796 (2007).

¶ 11 Here, the trial court did not abuse its discretion when it sentenced defendant. Aggravated criminal sexual abuse is a Class 2 felony (720 ILCS 5/12-16(g) (West 2008)) with a sentencing range of not less than three years and not more than seven years (730 ILCS 5/5-8-1(a)(5) (West 2008)). Defendant's sentence was within the statutory range. While it is true that defendant was sentenced at the top of the range, defendant's crime, which involved sexual abuse of his own children, was egregious enough to warrant such a sentence. We further do not find that the trial court improperly considered or failed to consider the factors in mitigation. Thus, defendant's sentence was not excessive.

¶ 12

CONCLUSION

¶ 13 The judgment of the circuit court of Rock Island County is affirmed.

¶ 14 Affirmed.