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NO. 4-10-0049

Filed 6/30/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
THOMAS REARDON,)	No. 08CF498
Defendant-Appellant.)	
)	Honorable
)	Patrick W. Kelley,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

Held: Because defendant failed to establish that the trial court abused its discretion by imposing a 16-year prison sentence following his guilty plea to second degree murder, the appellate court affirmed the trial court's sentencing judgment.

In September 2009, defendant, Thomas Reardon, pleaded guilty to second degree murder (720 ILCS 5/9-2(a)(2) (West 2006)). In November 2009, the trial court sentenced defendant to 16 years in prison.

Defendant appeals, arguing that his sentence was excessive. We disagree and affirm.

I. BACKGROUND

In September 2009, defendant pleaded guilty to second degree murder (720 ILCS 5/9-2(a)(2) (West 2006)) pursuant to an open plea. Prior to accepting defendant's guilty plea, the trial court considered the State's factual basis in which it explained that in October 2007,

defendant struck William Wahl three times in the head with a hammer under the unreasonable belief that Wahl was about to attack his friend and codefendant, Jill Utterback. As Wahl lay unconscious, defendant and Utterback left the scene without reporting the incident to police or medical personnel. Wahl later died from his injuries.

At a November 2009 sentencing hearing, defendant, arguing for the imposition of minimal prison time, presented the following factors in mitigation: (1) he was 46 years old at the time of the offense; (2) he had a limited criminal history; (3) he had a steady job in the insurance industry; (4) he had a good, nonviolent character; (5) Wahl was often aggressive and violent when he consumed alcohol and illicit drugs; (6) he had an unreasonable belief that he was acting in self-defense and defense of another; (7) he did not contemplate that his actions would cause or threaten serious harm; (8) his actions were induced by his codefendant; (9) he accepted responsibility and testified; (10) his criminal actions were unlikely to recur; and (11) his failure to come forward immediately following the incident was attributable to the advice of counsel.

The State, arguing for the imposition of an 18-year sentence, presented the following factors in aggravation: (1) the need to deter others and (2) that a minimal sentence would deprecate the seriousness of the offense.

After hearing argument at defendant's sentencing hearing and considering the factual basis for the plea, the presentence investigation report, the victim impact statements, the financial impact of incarceration upon the state, the evidence in aggravation and mitigation, the statutory aggravating and mitigating factors, and defendant's statement on his own behalf, the trial court announced its findings in mitigation and aggravation.

The trial court found the following statutory and nonstatutory factors in mitiga-

tion: (1) defendant had a minimal criminal history (730 ILCS 5/5-5-3.1(a)(7) (West 2006)); (2) defendant lacked a history of violence; and (3) the crime happened under circumstances that were unlikely to recur (730 ILCS 5/5-5-3.1(a)(8) (West 2006)). The court explicitly rejected the following mitigating factors: (1) that defendant did not contemplate serious harm (730 ILCS 5/5-5-3.1(a)(2) (West 2006)) and (2) that the codefendant induced defendant to commit the crime (730 ILCS 5/5-5-3.1(a)(5) (West 2006)).

The trial court found the following factors in aggravation: (1) the need to deter others (730 ILCS 5/5-5-3.2(a)(7) (West 2006)) and (2) that defendant did not make any effort to assist Wahl after his wounds were meted out, and that such assistance may have saved his life. The court, however, explicitly declined to consider the fact that defendant failed to come forward to law enforcement immediately after the incident as an aggravating factor.

Based upon these findings, the trial court sentenced defendant to 16 years in prison. The court declined to impose a term of probation because it found that doing so "would deprecate the seriousness of the offense and be inconsistent with the ends of justice." The court also noted that it was imposing a day-to-day good-time sentence, which, along with credit for 539 days already served prior to sentencing, would actually require defendant to serve only approximately seven years in prison.

This appeal followed.

II. THE TRIAL COURT'S IMPOSITION OF A 16-YEAR SENTENCE FOR SECOND DEGREE MURDER

A. The Sentencing Hearing and Factors Considered By the Trial Court

Section 5-4-1 of the Unified Code of Corrections requires the trial court to

conduct a hearing prior to the imposition of a sentence, wherein the court shall perform, in pertinent part, the following tasks:

- "(1) consider the evidence, if any, received upon the trial;
- (2) consider any presentence reports;
- (3) consider the financial impact of incarceration based on the financial impact statement filed with the clerk of the court by the Department of Corrections;
- (4) consider evidence and information offered by the parties in aggravation and mitigation;
- (4.5) consider substance abuse treatment, eligibility screening, and an assessment, if any, of the defendant by an agent designated by the State of Illinois to provide assessment services for the Illinois courts;
- (5) hear arguments as to sentencing alternatives;
- (6) afford the defendant the opportunity to make a statement in his own behalf;
- (7) afford the victim of a violent crime *** committed by the defendant the opportunity to make a statement concerning the impact on the victim and to offer evidence in aggravation or mitigation[.]" 730 ILCS 5/5-4-1(a) (West 2006).

The Code also enumerates a number of mitigating factors (730 ILCS 5/5-5-3.1 (West 2006)) and aggravating factors (730 ILCS 5/5-5-3.2 (West 2006)) that the court must consider when

determining the appropriate sentence.

B. Second Degree Murder and the Applicable Sentencing Range

Section 5-8-1(a) of the Code provides, in pertinent part, as follows:

"[A] sentence of imprisonment for a felony shall be a determinate sentence set by the court under this Section, according to the following limitations:

* * *

(1.5) for second degree murder, a term shall be not less than 4 years and not more than 20 years[.]" 730 ILCS 5/5-8-1(a), (a)(1.5) (West 2006).

The Code does not prohibit probation as an alternative to imprisonment for second degree murder. See 730 ILCS 5/5-5-3(b)(1), (c) (West 2006). However, the trial court is not required to impose a term of probation if it finds the following statutory provision applicable:

"[H]aving regard to the nature and circumstance of the offense, and to the history, character and condition of the offender, the court is of the opinion that:

(2) probation *** would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice[.]" 730 ILCS 5/5-6-1(a), (a)(2) (West 2006).

C. Defendant's Claim That the Trial Court's Imposition
of a 16-Year Prison Sentence Was Excessive

Defendant argues that his sentence was excessive. In support of this claim, defendant contends that the trial court abused its discretion by (1) improperly balancing the aggravating and mitigating factors and (2) demonstrating an unwillingness to consider the full range of statutorily permissible penalties. We address defendant's contentions in turn.

1. *The Trial Court's Weighing of Aggravating
and Mitigating Factors*

Defendant contends that the trial court improperly balanced the aggravating and mitigating factors. In particular, defendant asserts that the court overemphasized the aggravating evidence and gave insufficient weight to the mitigating evidence. We disagree.

In criminal cases, the trial court is charged with finding and balancing the relevant factors, and coming to a reasoned decision as to the appropriate punishment. *People v. Garibay*, 366 Ill. App. 3d 1103, 1108, 853 N.E.2d 893, 898 (2006). The court is given " 'wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation.' " *People v. Flores*, 404 Ill. App. 3d 155, 157, 935 N.E.2d 1151, 1154 (2010) (quoting *People v. Roberts*, 338 Ill. App. 3d 245, 251, 788 N.E.2d 782, 787 (2003)). If a sentence falls within the statutorily permissible range of punishment, it will not be disturbed on review absent an abuse of discretion. *Id.* The court abuses its discretion when it imposes a sentence that is " 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Id.* (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000) (which cites *People v. Fern*, 189 Ill. 2d 48, 54, 723 N.E.2d 207, 210 (1999))). In reviewing the trial court's balancing of the relevant factors, "the

reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed [the sentencing] factors differently." *Stacey*, 193 Ill. 2d at 209, 737 N.E.2d at 629.

As we noted earlier, the trial court considered several mitigating and aggravating factors. Defendant claims only that the weight the court attributed to those factors failed to adequately reflect his rehabilitative potential. However, defendant's position is merely his opinion as to what the appropriate weight of the relevant factors should have been in light of his rehabilitative considerations. As such, defendant's opinion as to what would have been a more appropriate sentence is of no moment because the only consideration here is whether the trial court abused its discretion by imposing a 16-year sentence.

In this case, the trial court imposed a sentence within the statutorily permissible range based upon its balancing of the relevant factors, several of which were wholly unique to the particular facts of this case. Accordingly, we conclude that the court's 16-year sentence was not only not an abuse of discretion, but was entirely appropriate.

2. The Trial Court's Consideration of Probation

Defendant next contends that the trial court abused its discretion by demonstrating an unwillingness to consider the full range of statutorily permissible penalties. In particular, defendant asserts that the court limited its own discretion by refusing to consider probation as an alternative to incarceration, and thus, the sentence that it did impose was tainted by its "closed state of mind." We disagree.

In support of his claim, defendant cites the following language used by the trial court at the sentencing hearing:

"Now, I do need to address probation. I don't think probation is appropriate here given the fact this case is a very serious offense, a man died who didn't need to die. I do think it would deprecate the seriousness of the offense and be inconsistent with the ends of justice, so I'm not going to give defendant probation here."

Defendant asserts that, because every second degree murder case involves the death of someone "who didn't need to die," the trial court's choice of words revealed that it possessed a state of mind "unwilling" to consider the full range of sentencing alternatives. While not arguing that the court abused its discretion in eschewing a probationary period, defendant asserts that the court's apparent closed state of mind evinced a faulty reasoning that may have contributed to defendant's 16-year sentence. As best we can tell (because defendant has failed to cite a single case), defendant apparently believes that a court's failure to consider the full range of permissible penalties renders any sentence imposed by it an abuse of discretion.

We refuse to address the merits of defendant's claims in this regard because we conclude that he mischaracterizes the trial court's state of mind. As the State points out, the court's statement that "a man died who didn't need to die" is most reasonably interpreted--not as a blanket statement about all second degree murder cases--but rather as the court's acknowledgment of the particular facts of this case. Defendant, following his attack on Wahl, did nothing to alert medical personnel of Wahl's injuries. Had he done so, Wahl may well have survived and, as the court put it, "we'd be dealing with an aggravated battery case and not a murder case."

Defendant leaves us unconvinced that the court was unwilling to consider the full range of

statutorily permissible penalties. Indeed, the very fact that the court took time to address the reasons why it felt probation was inappropriate in this case rebuts defendant's claim that it had a "closed mind" and an unwillingness to consider probation as an alternative to incarceration.

III. CONCLUSION

For the reasons stated, we affirm the trial court's sentence. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

Affirmed.