2011 IL App (4th) 100186-U

Filed 8/8/11

NO. 4–10–0186

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARLONE D. PENDLETON, a/k/a MARLONE D. PENDELTON Defendant-Appellant.	)))))))	Appeal from Circuit Court of Champaign County No. 09CF415 Honorable Thomas J. Difanis, Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Pope and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 26 years in prison upon his conviction for aggravated criminal sexual assault.

¶ 2 In December 2009, a jury found defendant, Marlone D. Pendleton, guilty of aggravated criminal sexual assault (720 ILCS 5/12–14(a)(2), (d)(1) (West 2008)), a Class X felony. In January 2010, defendant's motions to vacate and for new trial were denied, and the trial court sentenced him to 26 years in prison. In March 2010, defendant appeared on a motion to reconsider sentence, which the court denied. Defendant appeals, arguing the court erred by imposing an excessive sentence. We affirm.

¶ 3 Testimony at trial showed in March 2009, S.C., a 16-year-old girl, left her home in the middle of the night to meet her boyfriend, Johnnie. Upon arriving at Johnnie's house, S.C. and Johnnie went to the garage and sat and talked. Sometime later several other men arrived, including defendant. At that point, S.C. stated that the lights in the garage were turned off and

she was sexually assaulted by numerous individuals. Defendant was one of the individuals S.C. claimed had assaulted her. He was tried along with four codefendants, who were also accused of sexually assaulting S.C.

¶ 4 Lisa Moment, a nurse that treated S.C. after the incident, testified to preparing a sexual-assault kit on S.C., which included various swabs used to preserve deoxyribonucleic acid (DNA) present on the victim's body. Moment further testified that S.C. had extensive vaginal tears and bleeding that required surgery. Detective Mary Bunyard testified to speaking with S.C. at the hospital. Detective Bunyard stated that S.C. told her that defendant was one of the men that had assaulted her. Detective Bunyard then obtained a DNA swab from defendant which was tested and compared to DNA evidence gathered from the crime scene and from the sexual-assault kit. Dana Pitchford, a forensic scientist, then testified that defendant's DNA had been found on various pieces of evidence that linked him to the alleged crime, including used condoms (which also contained S.C.'s DNA), underpants that belonged to the victim, and swabs taken from S.C.'s body.

¶ 5 Defendant testified on his own behalf and admitted being present in the garage on the evening in question. However, defendant stated he had consensual sex with S.C. that evening and never assaulted her in any way. At the close of evidence, the jury found defendant guilty of aggravated criminal sexual assault. All four of his codefendants were found not guilty. Defendant was sentenced to 26 years' imprisonment. Subsequent motions to vacate, for new trial, and to reconsider his sentence were all denied by the trial court.

¶ 6 This appeal followed.

¶ 7 On appeal, defendant contends the trial court abused its discretion in sentencing

him to 26 years' imprisonment. Specifically, defendant argues the court failed to properly consider his youth and lack of "extensive criminal record" as mitigating factors and instead placed too much emphasis on deterrence as a factor in aggravation.

¶ 8 Because trial courts have broad discretion in the imposition of sentence, a reviewing court may only disturb that sentence when the court abused its discretion. *People v. Hauschild*, 226 Ill. 2d 63, 90, 871 N.E.2d 1, 16 (2007). A court's ruling constitutes an abuse of discretion when it is " 'arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *People v. Sutherland*, 223 Ill. 2d 187, 272-73, 860 N.E.2d 178, 233 (2006) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)). Moreover, sentences imposed within the statutory guidelines are presumed to be proper and will not be overturned unless the sentence substantially departs from the spirit and purpose of the law and the nature of the offense. *Hauschild*, 226 Ill. 2d at 90, 871 N.E.2d at 16.

¶ 9 In the case at bar, the jury convicted defendant of one count of aggravated criminal sexual assault, a Class X felony (720 ILCS 5/12–14(a)(2), (d)(1) (West 2008)), with a sentencing range of 6 to 30 years (730 ILCS 5/5–8–1(a)(3) (West 2008)). At sentencing, the court considered defendant's youth and rehabilitative potential as mitigating factors. Defendant's criminal history and the need for deterrence were considered as factors in aggravation. The pre-sentencing report showed defendant had a misdemeanor possession-of-cannabis charge as a juvenile, as well as convictions for misdemeanor domestic battery and felony obstructing justice as an adult. Defendant had been on probation for the felony charge for approximately six weeks when he committed the instant sexual assault. The court also emphasized sexual crimes of the nature committed by defendant were "deterrable" and it had a duty to "fashion a sentence that

will not only deter [defendant], but, as the code says, others similarly situated from committing this type of offense."

¶ 10 When determining whether a trial court's sentence was manifestly disproportionate to the nature of the offense, we do not grant greater weight to rehabilitative potential than to the seriousness of the offense. *People v. Shaw,* 351 Ill. App. 3d 1087, 1093-94, 815 N.E.2d 469, 474 (2004). Moreover, "[t]he existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed." *People v. Pippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001). Here, the sentence was within the statutorily permitted range. Further, defendant's criminal history, the fact he had been recently placed on felony probation, and the serious nature of the crime all support the sentence he received. The record clearly indicates the court took into account defendant's age and rehabilitative potential, both of which were expressly considered as nonstatutory factors in mitigation. However, it is equally clear from the record the court believed the crime warranted a substantial term of imprisonment. Under the circumstances of this case, the 26-year term of imprisonment was not excessive.

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

¶ 12 Affirmed.