2012 IL App (4th) 100697-U

Filed 3/1/12

NO. 4-10-0697

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Champaign County |
| ISIAH EVANS, | ) | No. 08CF1123 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Heidi N. Ladd, |
| | ) | Judge Presiding. |

JUSTICE Knecht delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed, concluding the trial court did not abuse its discretion by sentencing defendant to 21 years in prison for home invasion.

¶ 2 In September 2009, defendant, Isiah A. Evans, pleaded guilty to one count of home invasion, in exchange for the State dismissing other charges. In October 2009, the trial court sentenced defendant to 21 years in prison.

¶ 3 Defendant appeals, arguing his 21-year sentence is excessive. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2008, defendant was charged with two counts of home invasion (720 ILCS 5/12-11(a)(3) (West 2008)), two counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2008)), and residential burglary (720 ILCS 5/19-3 (West 2008)). A later indictment filed in July

2008 charged defendant with two counts of home invasion and two counts of armed robbery, all of which are Class X felonies carrying mandatory prison terms of 21 to 45 years (720 ILCS 5/12-11(a)(3), (c), 18-2(a)(2), (b) (West 2008)). In August 2009, an information was filed charging defendant with a third count of home invasion (count VI) (720 ILCS 5/12-11(a)(2) (West 2008)), a Class X felony punishable by between 6 and 30 years in prison (730 ILCS 5/5-4.5-25(a) (West 2008)) .

¶ 6 In September 2009, defendant pleaded guilty to count VI, the unenhanced home-invasion charge, in exchange for the State's agreement to dismiss the remaining charges. As part of the plea agreement, the parties stipulated the evidence was sufficient for the trial court to find defendant's conduct resulted in great bodily harm to the victims and the court would enter a finding at sentencing pursuant to section 5-4-1(c-1) of the Unified Code of Corrections (730 ILCS 5/5-4-1(c-1) (West 2008)), meaning defendant would receive no more than 4.5 days of good-conduct credit for each month of his imprisonment (730 ILCS 5/3-6-3(a)(2)(iii) (West 2008)). The court informed defendant it could impose a sentence of between 6 and 30 years in prison, followed by three years' mandatory supervised release and fines up to $25,000. Defendant was also told he would be required to serve 85% of his sentence. Defendant acknowledged he understood.

¶ 7 The factual basis for the plea disclosed in May 2008, defendant and three accomplices, Chad Todd, Nazeer Smith, and Jamal Williams, targeted Robert and Diane Rigdon for robbery. They went to the Rigdons' business and followed them back to their home. Later, they forcefully entered the Rigdon home with the purpose of committing home invasion and armed robbery. Defendant and Williams were armed with semiautomatic handguns or similar

objects. Williams repeatedly struck Robert about the head with the weapon, resulting in severe injuries necessitating 100 or more staples and stitches. The head wounds Robert suffered also caused at least some temporary memory loss as well as other physical difficulties. Upon opening the door to the garage (where Robert and defendants were located), Diane was struck in the head when Williams forced the door open. The Rigdons were dragged into the house where their hands and feet were bound. Diane's hands were bound so tightly as to cause a continuing injury to her hands. The four defendants ransacked the home, stole various items, and repeatedly demanded the combination to the Rigdons' safe and means of gaining entry into the Rigdons' business. Defendant told the police he was involved in both the planning and commission of this crime.

¶ 8 The trial court entered a finding of guilt against defendant on count VI and scheduled a sentencing hearing for October 2009. At the sentencing hearing, the court considered a variety of factors and testimony.

¶ 9 The presentence investigation report revealed defendant was 20 years old at the time of sentencing. He had one prior misdemeanor conviction for resisting a police officer and was sentenced to 18 months' probation approximately one week prior to his arrest in this case. Defendant completed high school and was attending Parkland College on a basketball scholarship. Defendant did not drink alcohol or consume illegal drugs and expressed remorse.

¶ 10 The victim-impact statement provided by Diane stated defendant had "fully participated from start to finish." When Robert had trouble breathing, Diane informed defendant her husband had a bad heart and begged him to call 9-1-1. Defendant simply responded " 'It's almost over' for the 50th time." When Diane refused to answer defendant's questions regarding

debit cards, alarm codes, and combinations, defendant would "shake" her.

¶ 11 The transcription of defendant's recorded statement to police revealed he and his accomplices planned to rob a currency exchange. Believing the Rigdons owned the business, defendant and his accomplices took turns "trailing" the Rigdons to their home to find out where they lived. A few nights later, defendant and his accomplices waited until it was getting dark and then went to the Rigdons' home armed with guns, masks, and gloves. Robert was in his garage with the garage door open when defendant and Williams entered the garage. Williams hit Robert "upside the head with the Glock." Robert hit his head on the wall and fell down, but was not "all the way down" so Williams hit him again. Upon hearing the commotion, Diane opened the door leading to the house. Williams grabbed her and placed her in a closet while defendant "let the garage door down." Robert was dragged inside the house where defendant could "see the man right there bleeding real bad." Defendant stated he thought he was "losing" Robert, but told him to "hang in there" all while trying to "motivate him" to give defendant the alarm codes. Defendant believed they were inside the Rigdons' home for approximately four to five hours.

¶ 12 The parties stipulated that Dr. Yambert would testify Diane sustained non-life-threatening head and facial injuries requiring treatment.

¶ 13 Robert testified at defendant's sentencing hearing he was 72 years old and had been struck in the head several times, requiring over 100 stitches and staples to treat his wounds. He continued to suffer from dizziness and memory difficulties following the attack. Someone held a gun to his head and demanded information about access to his business. According to Robert, defendant both gave and received instructions.

¶ 14 Diane testified she was 68 years old. As a result of the attack, she had lasting

damage to her hands and had still not recovered feeling in two fingers due to loss of circulation from the bindings. She begged defendant to call 9-1-1, but defendant only responded it would soon be over.

¶ 15 Investigator David Sherrick testified defendant was forthcoming with information and cooperated with authorities. Defendant admitted being involved in the extensive planning of this robbery and to rushing in with a real firearm, although he blamed Todd for "masterminding" the crime. Defendant also admitted to police he had been involved in other robberies.

¶ 16 Investigator David Symsor testified defendant had been involved in at least three prior robberies. In March 2008, he witnessed Williams rob Darrell Kasper, a manager for Circle K. Defendant claimed he had no prior knowledge of this robbery but admitted he received $2,000 in proceeds from the crime. In April 2008, defendant was present at another robbery, where his job was to "back up" Williams if he needed help. Defendant received $600 to $800 from this robbery. In May 2008, after the home invasion and robbery of the Rigdons, defendant again assisted Williams in robbing Kasper for a second time, receiving $600 to $800 in proceeds.

¶ 17 In mitigation, defendant's high school coach, his minister, his mother, and a friend all testified about defendant's positive personal qualities. Defendant testified about his upbringing, his education, and basketball scholarship opportunities. Defendant stated he had been "very depressed" when he became involved with the other defendants. He apologized to the Rigdons, claiming he was "very sickened" by what happened to them.

¶ 18 The State recommended the maximum 30-year sentence, stating defendant committed a "particularly horrendous crime" against the Rigdons, as well as at least two other robberies. The State argued defendant committed these crimes despite the fact he was intelligent,

had a good upbringing, and had a lot of potential both athletically and academically. Defense counsel believed defendant deserved a sentence substantially less than Chad Todd (who had received 21 years), pointing out defendant had lived his life relatively free of a criminal history, was not the "mastermind" of this crime, and did not use drugs, drink alcohol, or participate in gang activities. Defense counsel also stated defendant made large contributions to the community and was suffering from depression when he became involved with the other defendants.

¶ 19 In responding to the sentence recommendations, the trial court noted the State was putting it "in a very difficult position" asking for a 30-year sentence because it was known Todd "was the mastermind" and he only received a 21-year sentence. The court opined the State had no basis to ask for a more severe sentence for defendant than it thought Todd deserved, considering Todd was the "mastermind" and both defendant and Todd cooperated fully with authorities.

¶ 20 In determining an appropriate sentence, the trial court gave "careful consideration" to the presentence investigation report, the stipulated testimony of Dr. Yambert, the victims-impact statement, the statements defendant gave to the police, the video defendant made in which he spoke of male achievement, making positive choices, and being a role model, and the testimony introduced by the State and defendant during the sentencing hearing. Additionally, the court considered the relative statutory factors, including the nature and circumstances of the crime, all evidence in mitigation and aggravation, "the character, history, and rehabilitative potential of the defendant, his statement in allocution, and the arguments and recommendation of counsel." The court further "evaluated each witnesses's testimony in light of their demeanor, the manner that they had while testifying, and their interests in the case." The court thoroughly evaluated and weighed all mitigating and aggravating factors in this case.

¶ 21 The trial court credited defendant for his youth and lack of "significant prior court involvement," but noted defendant had "so much going for him" but chose to "abandon everything that he was taught [and] everyone who supported him and believed in him, to embark on such a diametrically different and unlawful path." The court specifically found the testimony of defendant's high school coach, his minister, and his mother, all of whom testified to defendant's good character, success, and potential, to be impressive. However, the court stated while defendant had

> "more opportunities than most 19 year olds to draw from, and every door open for him, [h]e chose to throw it all away for *** what he thought would be easy money. He was willing to embark with three other young men on a premeditated [,] deliberate [,] and [] vicious attack on two innocent people, in their own home. *** [W]hy would he do that? [Defendant] actually gave the answer in his own words in that statement that he gave to Investigator Sherrick, some seven weeks later when he was apprehended, and he was asked about how he was approached about being involved in this whole event. *** [Defendant responded] 'How was I approached about it? Like "man, we fitting to bust this move, Joe", and basically like, "you want in on it?" Thousands. I heard thousands. I ain't got thousands. I want, I want money. I'm like "man, I'm in, I'm in for it, whatever." ' *** He abandoned everything that he knew and everything he was given for greed. His values, his

> morals, everything he knew was right, and his family and the faith that they had in him was for sale. ***
>
> For the chance to steal some money he was willing to take part in acts that went beyond mere criminal acts or lawlessness. These were acts that involved senseless violence and brutality to other human beings."

Further, the court stated "what really puts his choices and decisions into perspective is the evidence in aggravation that was admitted, and that is the three other robberies that he was involved in."

¶ 22 The trial court acknowledged defendant did turn himself in and cooperated with the police, albeit 7 1/2 weeks after the crime. However, defendant had many opportunities to withdraw and failed to do so and committed another robbery after the home invasion of the Rigdons. The court noted it had the responsibility to deter others, to

> "make it clear that society will not tolerate this type of crime. People have an absolute right to be safe in their home, to enjoy the security and comfort of their home, and not feel violated; not to live looking over their shoulder with locked doors, worrying about who's going to viciously attack them and pistol-whip them, and almost kill them, and then tie them up in their own kitchen."

Defendant carried a gun, knew loaded guns were involved, and "helped restrain and extract information from the Rigdons." The court recognized defendant loosened Diane's restraints and offered her water, even though it was a "hollow gesture" considering he had put a pillowcase

over her head. Defendant also showed remorse and apologized for his actions. However, defendant also stood right next to Robert as he lay bleeding on the floor, struggling to breathe, and did nothing to help him. Further, defendant "help[ed] himself to a soda and calmly [sat] there and quenche[d] his thirst, while [Robert was] bleeding out on the kitchen floor and [Diane was] begging them to help him."

¶ 23 After considering all relevant factors, the trial court sentenced defendant to 21 years in prison, of which defendant must serve at least 85%.

¶ 24 In early November 2009, a notice of appeal was filed. On November 23, 2009, defendant filed a *pro se* motion to reconsider sentence, alleging defense counsel failed to file the motion to reconsider sentence as defendant requested. In February 2010, this court remanded to the trial court "with directions to strike the notice of appeal; determine whether defendant is represented by counsel, and if defendant is indigent and desires counsel, appoint counsel to assist defendant" in preparing, amending, and presenting his motion to reconsider sentence, and to hear the motion. *People v. Evans*, No. 4-09-0857 (Mar. 10, 2010) (unpublished order under Supreme Court Rule 23). On remand, the trial court appointed defendant counsel, who was given leave to file an amended motion. In August 2010, a motion to reconsider sentence was filed alleging defendant's sentence was excessive because (1) it was disproportionate to the negotiated 21-year sentence given to codefendant Todd who was the "mastermind" behind the plan, (2) the trial court gave too much weight to aggravating factors, and (3) the court gave too little weight to the mitigating factors. In September 2010, the court denied the motion, stating:

> "I have carefully considered all the issues raised in the motion in light of the matters that were presented both at the plea and sen-

tencing hearing held in this case. I did make very detailed and specific findings for the record in considering all the statutory and nonstatutory factors in aggravation and mitigation. I also believe I did carefully consider the questions of proportionality and the role that [defendant] played in relationship to the other participants in this crime and the appropriate sentences.

Again I made detailed findings for the record. I will stand on those findings and incorporate them now. Having carefully reviewed those findings I find nothing raised in this motion that would support a contention that the Court erred in law or fact and I find that the motion is not well taken. The sentence that I imposed carefully accommodated and considered each of those factors appropriately and was the correct sentence."

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 Defendant argues his sentence is excessive in light of (1) his young age, (2) his good character, and (3) his little to no prior criminal record.

¶ 28 A. Standard of Review

¶ 29 A trial court has broad discretionary powers in determining an appropriate sentence for a defendant. *People v. Jones*, 168 Ill. 2d 367, 373, 659 N.E.2d 1306, 1308 (1995). This is because the trial court is better able to assess the credibility of witnesses and to weigh evidence presented during the sentencing hearing. *Id*. (citing *People v. Younger*, 112 Ill. 2d 422,

427, 494 N.E.2d 145, 147 (1986)). Where the sentence imposed by the trial court falls within the statutory range permissible for the offense, a reviewing court will disturb the sentence only if the trial court abused its discretion. *Jones*, 168 Ill. 2d at 373-74, 659 N.E.2d at 1308. An abuse of discretion exists where the sentence imposed is "greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54, 723 N.E.2d 207, 210 (1999).

¶ 30 B. Excessive-Sentence Analysis

¶ 31 Defendant agrees the trial court properly considered both the nature of the offenses and defendant's culpability in imposing the 21-year sentence but asserts the court failed to consider factors defendant had in mitigation codefendant Todd may not have had. Defendant accuses the court of simply determining he should have the same sentence as Todd, and thus, failing to strike the proper balance between defendant's culpability and his potential rehabilitation. Specifically, defendant contends the trial court did not properly weigh the following factors in mitigation: (1) his young age, (2) lack of significant criminal history, (3) graduation from high school and attendance at Parkland College on a basketball scholarship, (4) his prior employment at Fed Ex, (5) the fact he did not drink alcohol or consume illegal drugs, and (6) the support of his family and friends. He argues "[t]he court's heavy reliance on Mr. Todd's sentence as a guidepost for [his] sentence was insufficient to show compliance with the legislative mandate that the specific statutory factors 'shall' be accorded weight in favor of withholding or minimizing a sentence of imprisonment." 730 ILCS 5/5-5-3.1(a) (West 2008). Particularly, defendant points to the following factors in favor of minimizing a sentence of imprisonment:

"(5) The defendant's criminal conduct was induced or

facilitated by someone other than the defendant.

***

(7) The defendant has no history of prior delinquency or criminal activity and has led a law-abiding life for a substantial period of time before the commission of the present crime[.]

* * *

(10) The defendant is particularly likely to comply with the terms of probation." 730 ILCS 5/5-5-3.1(a)(5), (a)(7), (a)(10) (West 2008).

Additionally, defendant argues the court used his background and "good character" as aggravating rather than mitigating factors. We disagree.

¶ 32 The trial court recognized defendant's youth and lack of prior criminal history. At sentencing, the court stated defendant was "a relatively young man" and "[y]outh is a factor in mitigation, although that can be attenuated by other factors before the court." The court noted defendant "has no history of any problems with the law until he came to Champaign-Urbana, and he has no significant prior court involvement, other than the misdemeanor resisting offense." The court heard evidence of defendant's graduation from high school, attendance at college on a sports scholarship, his prior employment with Fed Ex which was terminated at the suggestion of defendant's basketball coach, and defendant's abstinence from drugs and alcohol. Additionally, the court was very impressed with the testimony of defendant's family and friends, all of whom clearly showed their support for defendant. Further, the court acknowledged defendant was not the "mastermind" behind the operation but noted he voluntarily chose to affiliate with the three

codefendants, even after he knew of the illegal activities going on. In fact, defendant voluntarily agreed to participate in these crimes to get "easy money."

¶ 33 The offense defendant was convicted of is a nonprobational offense (720 ILCS 5/12-11(a)(2) (West 2008)), so this would not have been a factor in mitigation and it is unclear why defendant includes this factor in his brief.

¶ 34 While defendant apologized for his part in the home invasion and acknowledged remorse, the trial court noted "remorse comes relatively cheaply once a criminal is caught." Further, the court stated the acts defendant engaged in after leaving the Rigdons' home "demonstrates a true window into his soul." Defendant could have made an anonymous call to 9-1-1 but he did not. Instead, defendant went to visit a college offering him an opportunity to play basketball, then he came back to town and again joined in with two codefendants and "viciously attack[ed] another innocent person" and again accepted proceeds from the robbery, which "belies any claim that [defendant] felt badly or remorseful" for his earlier actions.

¶ 35 While mitigating factors were considered by the trial court and weighed in defendant's favor, aggravating factors were also considered by the court and weighed in favor of a more severe sentence. The home invasion itself was a particularly vicious act, and defendant's conduct caused serious harm (730 ILCS 5/5-5-3.2(a)(1) (West 2008)). Additionally, Robert was 72 years old and Diane was 68 years old at the time of sentencing. See 730 ILCS 5/5-5-3.2(a)(8) (West 2008)) (Committing a crime against a person 60 years of age or older is a factor in aggravation weighing in favor of imposing a more severe sentence). Robert was forced to lie bleeding on the floor for hours, struggling for breath, while defendant thought Robert might die from his wounds. Robert still suffers dizziness and loss of memory. Diane was stuck in a closet,

her hands bound so tightly she lost feeling in them, some of which had not returned at the time of defendant's sentencing. Although defendant loosened Diane's bindings, he callously stood by and drank a soda while Diane, fearing her husband was having a heart attack, sat with a pillow case over her head and begged defendant to call 9-1-1.

¶ 36 While noting a variety of factors in mitigation, the trial court again reiterated defendant "was a willing part of this wave of brutal, senseless attacks on innocent human beings" and defendant "does present an untenable risk to the community." The court determined, "having regard to the nature and circumstances of the offense, and to the character and rehabilitative potential, and history of the defendant, that certainly a significant sentence is necessary for the protection of the public." Because codefendant Todd was sentenced to 21 years in prison as part of a negotiated plea, the court felt defendant should not be sentenced to more than Todd, mainly because they both cooperated with authorities. Todd's sentence may have worked in favor of defendant, because the court could have sentenced defendant more severely.

¶ 37 The 21-year sentence imposed for the Class X felony where defendant was facing up to 30 years in prison reflects the seriousness of the offense, and properly considers all mitigating and aggravating factors. Defendant's sentence falls within the statutory range permissible for the offense and upholds the spirit and purpose of the law. The trial court did not abuse its discretion and we will not disturb the sentence.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as cost of this appeal.

¶ 40 Affirmed.