2012 IL App (4th) 110094-U

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NO. 4-11-0094

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRENT A. VEST, Defendant-Appellant.	)	Appeal from Circuit Court of Macon County No. 08CF1701 Honorable Timothy J. Steadman, Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Cook concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court held that (1) the trial court did not abuse its discretion by sentencing defendant to 60 years' imprisonment and (2) defendant's claim the trial court improperly considered aggravation evidence did not warrant plain error review.

¶ 2 On December 4, 2009, defendant, Brent A. Vest, entered a partially negotiated guilty plea to first degree murder (720 ILCS 5/9-1 (West 2008)). In February 2010, the trial court sentenced defendant to 60 years' imprisonment.

¶ 3 Defendant appeals, arguing the trial court abused its discretion by (1) giving inadequate weight to mitigating factors and (2) improperly considering aggravating factors not supported by the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 On November 19, 2008, defendant was arrested for the first degree murder of his

wife, Christina Vest. Defendant married Christina in 2005, and lived together in Decatur with two children, D.V., 7 years old (child of defendant and Christina), and H.C., 11 years old (child of Christina). Defendant had another child, A.D., 12 years old, from a previous relationship, who would visit. Defendant was charged in Macon County case No. 08-CF-1701 with three counts of first degree murder (720 ILCS 5/9-1 (West 2008)), aggravated kidnaping (720 ILCS 5/10-1(a)(1) (West 2008)), and seven counts of predatory criminal sexual assault of H.C. (720 ILCS 5/12-14.1(a)(1) (West 2008)).

¶ 6 In August 2009, defendant was adjudicated unfit to stand trial and remanded to McFarland Mental Health Center. In October 2009, the trial court found defendant restored fit to stand trial.

¶ 7 In December 2009, defendant pleaded guilty to one count of first degree murder. In exchange, the State agreed to dismiss all other charges in case No. 08-CF-1701. The factual basis for the plea stated on or about November 18, 2008, defendant killed Christina in their bedroom by bludgeoning her with a tire iron and stabbing her in the head with a knife. Christina's body showed her throat had been cut and her upper chest had numerous stab wounds, and multiple sharp and blunt force injuries caused her death.

¶ 8 At a February 2010, sentencing hearing the State presented evidence in aggravation, summarized as follows:

¶ 9 Denise D. testified she is A.D.'s mother and defendant is A.D.'s biological father. After information about the murder aired on television, Denise asked A.D. whether defendant had hurt her. A.D. replied defendant put his privates in her "middle area between [her] legs" eight or nine times. A.D. told Denise the sexual abuse started in early 2007 soon after they

moved to Decatur.

¶ 10 A.D., who was 13 years old at the time of the hearing, testified defendant's "middle touched [her] middle." Defendant would take A.D. into his bedroom and take off her pants and underwear; he would then remove his pants and touch A.D. between her legs with his penis. Defendant also used drugs in front of A.D.

¶ 11 H.C. testified she was Christina's daughter, and previously lived with her mother and defendant. While Christina was at work, defendant would touch H.C.'s breasts and vagina. Defendant would touch H.C.'s vagina with his penis "[w]henever [H.C.'s] mom wasn't there." Defendant penetrated H.C. with his penis six or seven times. Defendant told H.C. not to tell anyone about the abuse. After the murder, defendant instructed D.V., his son, to have sexual intercourse with H.C. (D.V.'s half-sister). D.V. cried and tried to avoid acting as instructed but eventually complied with defendant's demands.

¶ 12 Defendant smoked marijuana in front of H.C. every day and gave her marijuana to smoke. She also witnessed defendant use cocaine. On the day defendant fled Decatur with the children, "he put [cocaine] on his finger and told [H.C.] to lick his finger."

¶ 13 Defendant told H.C. that Christina left the family because she "just left and didn't really care." Thereafter, H.C. wrote several notes to her mother. In one letter, H.C. pleaded for her mother to return home and promised she would "not grow up to be a [w]hore like you said and if you come back I will listen to you more do whatever you say and appreaseate [*sic*] you a lot more and I saved you a [*sic*] ice cream bar." In another note, H.C. wrote, "Why did you say dad can hurt me and D[.V.]? What's wrong w/ us? Why did you make us all cry? I love you!" Defendant told H.C. that Christina called her a "whore."

¶ 14 Decatur Police juvenile detective Carin Reed testified she interviewed A.D. and D.V. after Christina's death. D.V. told Reed defendant touched him in an inappropriate manner, and D.V saw defendant touch H.C. inappropriately. D.V. told Reed, after the murder, D.V. was not allowed into the bedroom his mother and father shared because it was roped off to the bathroom door. A.D. told Reed defendant touched her breasts and vaginally penetrated her at least seven times.

¶ 15 Decatur Police juvenile detective James Dellert testified he interviewed H.C., who told him defendant sexually assaulted her since she was nine years old. H.C. told Dellert defendant put his penis in her vagina, and threatened to kill her, her brother, her mother, and anyone she told about the abuse. H.C. told Dellert in the days after the murder, defendant instructed D.V. to sit and watch defendant sexually assault H.C. because D.V. was old enough and needed to learn. When defendant finished assaulting H.C., defendant told D.V. to try to place his penis in H.C.'s vagina. H.C. did not know whether D.V. actually penetrated her.

¶ 16 Sara Cothern testified she was a foster care manager and interviewed defendant in December 2008. Defendant admitted he killed Christina. Defendant claimed he could not recall obtaining the tire iron or starting to hit Christina with it, but he remembered he did not stop once he became conscious of his actions. He admitted sexually abusing A.D, H.C., and D.V., and using marijuana and cocaine with them. Defendant alleged he was sexually abused between the ages of 8 and 14 by several older neighborhood boys.

¶ 17 Decatur Police Officer Ronald Borowczyk testified he examined a computer defendant sold to a pawnshop. The examination revealed child pornography on the hard drive. Borowczyk testified the computer showed an account name of "Brent."

¶ 18 James Atkinson, detective for the Decatur police department, testified he interviewed defendant after the murder. Defendant told Atkinson he was using the bathroom on the day of the murder when he suddenly went into the bedroom and began beating Christina with a tire iron while she slept in bed. When defendant first struck Christina, she awakened. After beating her to death, defendant wrapped her with a blanket, then a shower curtain. He then tied a piece of cable to the bedroom door to tie it shut because he did not want the children to enter the bedroom and find Christina. Afterward, defendant told the children Christina left. Defendant could not explain the motivation for his actions. Defendant was aware children were present in the house at the time of the murder.

¶ 19 Decatur Police Detective Scott Cline testified he observed the crime scene. On the bedroom door, he observed an electronic cord wrapped around the doorknob. Inside the bedroom, bloodstains were on the floor and wall and blood spatter was on the ceiling. A tire tool was located in the bloodstains on the floor. Christina's body was on the floor wrapped in a shower curtain and a green comforter, and her head wrapped in a shirt. Once the shirt was removed from around her head, Cline observed a knife handle sticking out from the right side of Christina's head.

¶ 20 Dr. John Ralston conducted a necropsy examination on Christina. He observed multiple incised wounds flowing together on her neck, and at least six crosswise wounds across the throat. According to Dr. Ralston, the cut to the jugular would cause someone to bleed to death in a "very few minutes." He found 30 identifiable stab wounds with most concentrated around the upper-chest, face, and neck. The amount of "overlapping and criss-crossing within the wound" made it difficult to determine the exact number of stab wounds. The knife,

discovered in the back of Christina's head, was consistent with the other stab wounds and some wound abrasions were consistent with the hilt of the knife. Additionally, wounds to the back and buttocks were consistent with the tire iron. He discovered blood in Christina's airway, and the examination showed injuries consistent with defensive wounds to the back of the hands. Dr. Ralston opined Christina would have been conscious and moving during part of attack. Based on his opinion, Christina died because of multiple blunt and sharp force trauma.

¶ 21 In mitigation, defendant presented testimony from his father and a friend. His father, Robert Vest, testified defendant had never been known as a violent person. Vest suspected defendant abused drugs, but defendant told his father he did not. Joel Astramski testified defendant had not been violent in the 18 years he knew defendant. Defendant told Astramski he was using cocaine and marijuana, and Astramski noticed that defendant's cocaine usage was making him "very irritating."

¶ 22 The presentence investigation report (PSI) stated defendant (1) previously worked full-time for approximately 7 1/2 years for a construction company (2) completed the tenth grade and later obtained his high school equivalency certificate in 1996, and (3) did not reveal a criminal history.

¶ 23 Defendant made a statement in allocution, wherein he said, "I know what I did was my fault. I didn't want any of this to happen. *** Just want to atone for what I done."

¶ 24 At the conclusion of testimony and evidence, the trial court reviewed the PSI, the aggravating and mitigating evidence, and stated:

> "[Defendant's counsel] points out that defendant has no prior history of criminality. That's a factor which the law says the

Court shall consider in arriving at an appropriate sentence.

The Court in this case, however, has to also consider that not only was the victim murdered, but she was murdered in an especially brutal manner that we heard about through the evidence in aggravation.

We know from the number of knife wounds and the abrasions on the victim's body *** that she was repeatedly stabbed and repeatedly bludgeoned by the defendant. The evidence in this case shows that the *** victim was, in fact, *in my views*, *sadistically killed and perhaps mutilated after she expired*.

On top of that, we have further evidence which has convinced the Court that this *defendant has sexually abused at least three children*, *not just any children*, *but his own children and a stepchild*. ***

It normally is a good policy to provide some consideration to those who plead guilty, but there are times when the facts and circumstances surrounding the crime and the history and character of the offender is such that anything less than the maximum sentence is inappropriate. I believe this is such a case." (Emphases added.)

Thereafter, the court sentenced defendant to 60 years' imprisonment.

¶ 25 In March 2010, defendant filed a motion to reconsider, arguing the trial court

improperly " 'considered the other crimes testified to at his sentencing hearing as aggravating circumstances beyond the consideration that it was relevant as to whether Defendant would commit other crimes.' " Defendant did not argue the evidence was insufficient to support the aggravating factors.

¶ 26 At the January 2010 motion to reconsider hearing, defendant testified, in part, as follows:

> [DEFENDANT'S COUNSEL: Do you feel that you should have been given some kind of *** acknowledgment or credit in that you did what little you could in the situation you were in to try to prevent the children from suffering further damage?
>
> [DEFENDANT]: Yes.
>
> [DEFENDANT'S COUNSEL]: In fact, through that part of the process, that was your main focus on all the decisions that were made by you at that time; is that right?
>
> [DEFENDANT]: Yes, sir."

¶ 27 The trial court denied the motion to reconsider.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Defendant appeals, arguing the trial court abused its discretion by (1) giving inadequate weight to mitigating factors and (2) improperly considering aggravating factors not supported by the evidence. We address defendant's contentions in turn.

¶ 31 A. Trial Court's Consideration of Mitigating Factors

¶ 32 Defendant argues although he committed a "heinous offense," given the mitigating evidence, he should not have been sentenced to the maximum term for first degree murder. Defendant contends the court did not consider he (1) "left high school after the [tenth] grade but later obtained his [high school equivalency certificate]"; (2) worked full-time for approximately seven years; and (3) "attempted to mitigate the results of his crime as best he could." Defendant asserts he attempted to mitigate the results of his crime by (1) pleading guilty, (2) showing a willingness to assume responsibility for his conduct, (3) voluntarily surrendering his parental rights, and (4) pleading guilty to relieve the children of the burden of testifying at trial. We disagree.

¶ 33 The nonextended sentencing range for first degree murder is between 20 years and not more than 60 years. 730 ILCS 5/5-4.5-20 (West 2008). A reviewing court may not alter a defendant's sentence absent an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010). A sentence is an abuse of discretion when the sentence is greatly at variance with the spirt and purpose of the law or manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212, 940 N.E.2d at 1066 (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000)).

¶ 34 A sentencing court need not accord greater weight to mitigating factors than to aggravating factors. *People v. Nussbaum*, 251 Ill. App. 3d 779, 781, 623 N.E.2d 755, 757 (1993); *People v. Shaw*, 351 Ill. App. 3d 1087, 1093-94, 815 N.E.2d 469, 474 (2004). The 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). Where the record shows the defendant presented evidence in mitigation, this court will presume

the trial court considered the evidence, absent contrary evidence in the record. *People v. Mitchell*, 395 Ill. App. 3d 161, 168, 916 N.E.2d 624, 630 (2009).

¶ 35 " 'A trial court's sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age.' " *People v. Harris*, 359 Ill. App. 3d 931, 934, 835 N.E.2d 902, 904 (2005) (quoting *People v. Kennedy*, 336 Ill. App. 3d 425, 433, 782 N.E.2d 864, 871 (2002)). "In fact, the seriousness of the crime committed is considered the most important factor in fashioning an appropriate sentence." *People v. Weatherspoon*, 394 Ill. App. 3d 839, 862, 915 N.E.2d 761, 781 (2009).

¶ 36 The trial court expressly considered the mitigating evidence at the sentencing hearing. We presume this included what defendant categorizes as his attempts to "mitigate the results of his crime." We reject defendant's contention he deserves "something less than the maximum sentence" as a result of his attempts to "mitigate the effect of his crime." Defendant's argument is fundamentally flawed as it ignores facts: after the murder, he hid the body for two days and then attempted to flee Illinois, acts inconsistent with an attempt to mitigate the effect of his crimes.

¶ 37 This is a serious offense committed in a brutal manner with surrounding circumstances appalling in a civilized society. The trial court did not abuse its discretion when it sentenced defendant to a statutorily authorized 60-year prison term for first degree murder. The sentence is justified.

¶ 38 B. Defendant's Claim the Trial Court Improperly Considered Erroneous Factors in Aggravation

¶ 39 Defendant argues the trial court erroneously considered aggravating factors not supported by the evidence. Specifically, defendant contends the trial court specifically found defendant (1) mutilated his wife's body after she was dead, and (2) may have sexually assaulted more than his two children and stepdaughter, and thus because these acts are "extremely repugnant" they "were likely given significant weight by the court in imposing" the maximum available sentence. Defendant concedes he failed to raise this issue in his motion to reconsider but contends plain error has occurred. We disagree.

¶ 40 Despite having forfeited his claim the trial court improperly considered certain evidence in aggravation, defendant contends his default may be excused because of the plain-error doctrine. Defendant argues his sentence constitutes plain error under the second prong because he has the fundamental right to not be sentenced upon improper factors in aggravation.

¶ 41 Supreme Court Rule 615(a), the basis for the plain-error doctrine, provides the appellate court may review plain errors affecting substantial rights, although not brought to the attention of the trial court. Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999); *People v. Kitch*, 239 Ill. 2d 452, 461, 942 N.E.2d 1235, 1241 (2011). The plain-error doctrine is a narrow and limited exception. *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010). To show plain error in the sentencing context, a defendant must show (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *Hillier*, 237 Ill. 2d at 545, 931 N.E.2d at 1187; *People v. Rathbone*, 345 Ill. App. 3d 305, 312, 802 N.E.2d 333, 339 (2003). Under both prongs, defendant has the burden of persuasion. *Hillier*, 237 Ill. 2d at 545, 931 N.E.2d at 1187. The first step in plain error review is to determine whether any error occurred. *Kitch*, 239 Ill. 2d at 462, 942 N.E.2d at 1241.

¶ 42 A trial court may consider nonstatutory factors in aggravation when determining an appropriate sentence. *People v. Scott*, 363 Ill. App. 3d 884, 892, 844 N.E.2d 429, 436 (2006). When balancing aggravating and mitigating factors, a sentencing judge may consider all relevant and reliable testimony, including testimony not resulting in prosecution. *People v. Richardson*, 189 Ill. 2d 401, 417, 727 N.E.2d 362, 372 (2000). A trial court may consider the force employed and the physical manner in which a victim's death was brought about. *People v. Thomas*, 171 Ill. 2d 207, 227, 664 N.E.2d 76, 87 (1996) (citing *People v. Saldivar*, 113 Ill. 2d 256, 271, 497 N.E.2d 1138, 1144 (1986)).

¶ 43 In determining whether the trial court based the sentence on proper aggravating factors, a reviewing court should not focus on a few words or statements made by the trial court during sentencing, but must consider the record as a whole. *People v. Sims*, 403 Ill. App. 3d 9, 24, 931 N.E.2d 1220, 1234 (2010); *People v. Dowding*, 388 Ill. App. 3d 936, 943, 904 N.E.2d 1022, 1028 (2009).

¶ 44 Defendant has not shown the trial court's statements to be error. The court's statement defendant mutilated Christina's body after she died, when considered in context, was not an improper finding of fact as defendant contends. Defendant's argument is undermined by Dr. Ralston's testimony Christina would have survived only a "very few minutes" after defendant cut her jugular, and she suffered 30 identifiable stab wounds to her head, face, neck, chest, and buttocks. Additionally, he testified Christina would have been conscious "during part of these wound inflictions." Thus, the logical inference from this testimony would support a finding that Christina expired prior to the conclusion of defendant's attack.

¶ 45 Equally unpersuasive is defendant's argument the trial court improperly

considered he sexually assaulted children other than his own. The trial court stated defendant had "sexually abused at least three children, not just any children, but his own children and a stepchild." Contrary to defendant's selective reading of the record, when considered in context, this statement does not indicate a finding defendant abused more than three children, but rather is a summary of the evidence presented that defendant assaulted a minimum of three children, namely his own children and a stepdaughter. The record shows two of the children testified about their abuse at the hands of defendant, several people testified about defendant's abuse of his son, and defendant admitted abusing all three children. Defendant has no basis to suggest there was no evidence he abused these children.

¶ 46 Both of these comments show the court summarizing the manner and circumstances surrounding the offense. The circumstances in the cases cited by defendant are distinguishable. In both, the trial court expressly stated during sentencing it relied on prior convictions that did not actually exist. Here, the trial court was summarizing nonstatutory aggravating evidence supported by the record.

¶ 47 Defendant has not shown (1) the evidence presented at the sentencing hearing was closely balanced, or (2) these comments undermined the fairness of the sentencing proceedings or the integrity of the judicial process. Defendant has failed to show these comments were improper when considered in context. No error occurred.

¶ 48 Assuming *arguendo* the trial court erred by considering improper information in aggravation, we conclude defendant's sentencing hearing, in light of the evidence presented, was not fundamentally unfair. We do not deem defendant's claims sufficient to warrant plain-error review.

¶ 49 We note the record from the sentencing hearing also shows the trial court considered the overwhelming aggravating evidence presented against defendant, factors relating to the nature of the offense, and the manner in which it occurred. No errors occurred during defendant's sentencing hearing and nothing jeopardized the integrity or reputation of the judicial process.

¶ 50 III. CONCLUSION

¶ 51 We affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 52 Affirmed.