

NOTICE

Decision filed 02/02/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 100539-U

NO. 5-10-0539

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

RANDALL S. WHITE,

Defendant-Appellant.

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Appeal from the
Circuit Court of
Edwards County.

No. 10-CF-1

Honorable
David K. Frankland,
Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Donovan and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion when it sentenced defendant to 18 years' imprisonment and 3 years' mandatory supervised release for aggravated battery of a child.

¶ 2 Defendant, Randall S. White, was charged with four counts of aggravated battery of a child. Counts I and II alleged that defendant broke the right humerus of the child, M.W., and counts III and IV alleged that defendant broke M.W.'s femur. On April 6, 2010, defendant pled guilty to one count of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2010)). Defendant was sentenced to 18 years' imprisonment with 3 years' mandatory supervised release. He subsequently filed a motion to reduce sentence on May 6, 2010. On October 26, 2010, the circuit court denied the motion to reduce sentence. Defendant filed a notice of appeal on November 5, 2010. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 In the early morning of December 20, 2009, defendant arrived at his girlfriend's

sister's home after a shift at work. His seven-week-old child, M.W., was in a car seat as M.W.'s mother and defendant's girlfriend, Bethany Mendenhall, was asleep on the couch. As M.W. started to cry, defendant picked him up. Moments later, M.W. started screaming and defendant became hysterical, stating that he had broken M.W.'s arm. In an interview with a special agent of the Illinois State Police, defendant said that he could not get M.W. to calm down, and grabbed M.W.'s right arm and bent it backwards. After forcefully trying to wake Bethany while still holding M.W., defendant heard a "pop." After inspection, it appeared that M.W.'s right arm was broken. Defendant and Bethany took M.W. to the hospital. After taking X rays of M.W., the hospital staff found that M.W.'s arm was indeed broken and that he also had a fracture in his femur. Defendant admitted that he sometimes became frustrated when M.W. would cry and would become physical with M.W. as a result of his frustration. He stated that his girlfriend would not help with any of the parenting responsibilities and he was forced to take care of M.W. whenever he was not working, which further frustrated defendant. He admitted that he would forcefully jerk M.W.'s leg down, forcefully twist M.W.'s arm behind his back, push on M.W.'s tongue to quiet him down, pinch M.W.'s "gurgler box" to stop him from crying, and push M.W.'s legs over his head. Bethany also testified that defendant accidentally ran M.W. into the wall, more than once, while playing "airplane."

¶ 5 Defendant had two previous convictions at the time of this offense. Both convictions involved theft, one in Illinois and another in Indiana. Defendant had been sentenced to probation but, at the time of this offense, had only completed 42 out of the required 240 hours of community service work.

¶ 6 On April 6, 2010, defendant pled guilty to one count of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2010)) pursuant to an agreement between himself and the State. After hearing testimony from two special agents, defendant's probation officer,

defendant's sister, defendant's mother, defendant's pastor, and the foster care case manager, the court sentenced defendant to 18 years' imprisonment with 3 years' mandatory supervised release. Defendant filed a motion to reduce his sentence on May 6, 2010, which the court denied on October 26, 2010. This timely appeal followed.

¶ 7

ANALYSIS

¶ 8 Defendant argues that his 18-year prison sentence is excessive in light of the circumstances surrounding his offense. He argues that he was 22 years old at the time and was unprepared to be a father. Further, he argues that he did most of the child-rearing and that M.W.'s mother did not help. He also argues that he did not harm M.W. maliciously.

¶ 9 The circuit court has considerable discretion when imposing a sentence, and such decisions will not be overturned unless there has been an abuse of discretion. *People v. Wilson*, 143 Ill. 2d 236, 250-51 (1991). Indeed, the circuit court is in the best position to determine an appropriate sentence. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). As the circuit court is in the best position to determine an appropriate sentence, a reviewing court may not substitute its own judgment for that of the circuit court. *Id.* Further, "[e]ven where there is evidence in mitigation, the court is not obligated to impose the minimum sentence." *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010) (citing *People v. Madura*, 257 Ill. App. 3d 735, 740-41 (1994)). When a sentence falls within the statutory sentencing range, the circuit court has not abused its discretion unless the sentence is manifestly disproportionate to the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007).

¶ 10 As a Class X felony, the statutory minimum sentence for aggravated battery of a child is 6 years' imprisonment, and the maximum is 30 years' imprisonment. 720 ILCS 5/12-4.3(a) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). Defendant was sentenced to 18 years' imprisonment, which is far below the statutory maximum. We must therefore determine, per *Hauschild*, whether the sentence is manifestly disproportionate to the nature of the offense.

¶ 11 Defendant had been previously convicted of two different theft offenses, one in Illinois and another in Indiana. He was placed on probation but failed to comply with the terms of his probation because he did not complete his community service. Defendant admitted that he would take out his frustration on M.W. by jerking M.W.'s leg down, twisting M.W.'s arm behind his back, and pinching his "gurgler box," among other various acts of harmful behavior. When defendant caused M.W.'s fractured arm, it was not the first time defendant had physically harmed M.W. The abuse was ongoing. The court noted that frustration was not an excuse for harming M.W., nor was it an excuse that defendant felt that the other parent was not sharing in any parenting responsibility. The circuit court was in the best position to determine an appropriate sentence. It was able to hear testimony from defendant's family during court proceedings. Further, at the motion to reduce sentence hearing, the court noted that it was persuaded by defense counsel's argument at the sentencing hearing and gave defendant less time of imprisonment than it had originally intended. As such, it is clear that the court considered not only defendant's criminal history and the need for deterrence, but also factors in mitigation presented during the sentencing hearing. In light of defendant's prior criminal record and the need for deterrence, defendant's sentence was not disproportionate to the offense.

¶ 12 CONCLUSION

¶ 13 For the foregoing reasons, the judgment of the circuit court of Edwards County is affirmed.

¶ 14 Affirmed.