

NOTICE

Decision filed 03/12/12. 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) 110191-U

NO. 5-11-0191

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.

JOHNNY GARCIA,

Defendant-Appellant.

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Appeal from the
Circuit Court of
Madison County.

No. 08-CF-23

Honorable
James Hackett,
Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion when it sentenced the defendant to serve a 44-year term of imprisonment on his first-degree murder conviction.

¶ 2 The defendant, Johnny Garcia, was convicted of first-degree murder pursuant to section 9-1(a) of the Criminal Code of 1961 (720 ILCS 5/9-1(a) (West 2008)) and was sentenced to 44 years' imprisonment. Appealing from the denial of his motions to withdraw his plea and to reduce his sentence, the defendant argues that his sentence was excessive in light of his young age and criminal history. For the following reasons, we affirm the sentence imposed by the circuit court.

¶ 3 **BACKGROUND**

¶ 4 The defendant was father to the victim, two-year-old Maxwell Eyer. On December 26, 2007, Linsey Eyer, Maxwell's mother, brought Maxwell to the defendant's grandfather's home, where the defendant was staying with his girlfriend, Jeanine Lansdon. Maxwell was

acting normally at the time Linsey brought him to the defendant's home. Jeanine told authorities that around 3 a.m., she, the defendant, and Maxwell were all in the same room. The defendant and Maxwell were eating chips on a bed. Jeanine stated that Maxwell spit some of the chips out of his mouth, which enraged the defendant. She saw the defendant strike Maxwell so hard that Maxwell fell off the bed, hitting his head on some object; either the wall, register, mirror, or floor. Maxwell was crying, and the defendant picked him up and placed him back on the bed. Maxwell slept from that time until 2 p.m. the next day, when Linsey, Jeanine, and the defendant had to force him to wake up. Maxwell could not focus his eyes, and he was stiff. A physician later referred to this as "posturing." Maxwell also vomited. Further, when Jeanine and Linsey tried to feed Maxwell, he could not eat or drink. Maxwell could not sit up on his own, nor could he walk. He remained lethargic throughout the day. Linsey wanted to take Maxwell to the hospital, but the defendant told her not to and that if Maxwell was still sick the next day, she could take him to the hospital then. At midnight on December 27, the defendant called Linsey and Jeanine, who left Maxwell in the care of the defendant while they searched for drugs for the defendant, and told them to come home because something was wrong with Maxwell. Linsey took Maxwell to the hospital at 12:10 a.m. and he was pronounced dead at 12:50 a.m. The cause of death was determined to be a closed head injury resulting from blunt force trauma.

¶ 5 The defendant pled guilty to first-degree murder on May 29, 2009. In exchange for his guilty plea, the State agreed to recommend a sentence of 50 years' imprisonment. At his sentencing hearing on August 4, 2009, both parties presented testimony and evidence in support of their respective positions. The State presented testimony from the forensic pathologist who conducted Maxwell's autopsy. The pathologist testified that Maxwell died of a closed head injury due to bilateral subdural hematoma from inflicted trauma. The pathologist further testified that Maxwell had suffered four different blows to his head that

caused his death and that those blows were inflicted within 24 hours of his death. The pathologist also noted that Maxwell had an old fracture in his sternum. The State also presented photographs of Maxwell after his death, where it was apparent that he had multiple bruises about his whole body. Linsey and Jeanine also testified on behalf of the State. Jeanine stated that she had witnessed the defendant strike Maxwell on at least 10 different occasions in the past. Further testimony from Linsey and Jeanine indicated that Maxwell was under the care of the defendant during the time in which he could have received the injuries that caused his death. Citing the fact that this was not the first time the defendant had harmed Maxwell, that the defendant's criminal history included four felony convictions, that Maxwell was physically handicapped due to his hearing impairment when the defendant murdered him, and that the defendant was on mandatory supervised release at the time of the offense, the State asked the court to sentence the defendant to a 50-year term of imprisonment.

¶ 6 The defendant's counsel presented evidence that the defendant was not likely to commit such a crime again because he would likely never be allowed to be around children again. Further, defense counsel argued that the defendant did not contemplate that his conduct would cause or threaten to cause serious physical harm. Citing the fact that the defendant would pay for his crime for many years and would spend the remainder of his adult life in prison, the defendant's counsel asked the court to sentence the defendant to 35 years' imprisonment or less.

¶ 7 According to the presentence investigation report, the defendant had four felony convictions and three misdemeanor convictions, as well as a juvenile record. He also had a felony charge for home invasion which was dismissed as part of a plea agreement in the instant case. In one felony conviction, the defendant was charged with aggravated domestic battery for beating and burning Linsey, Maxwell's mother, while she was pregnant with

Maxwell's sister.

¶ 8 When imposing the defendant's 44-year prison sentence, the circuit court referenced the presentence investigation report, the evidence, and the testimony of the witnesses both for the State and the defendant all as potential factors in mitigation and aggravation. The aggravating factors that the court considered were that the defendant caused serious bodily harm to a physically handicapped individual, the defendant's criminal history, the need to deter others from committing a similar crime, the fact that the defendant was on mandatory supervised release at the time of the offense, the legislative intent in setting the sentencing standards for first-degree murder, and the defendant's knowledge and reaction to Maxwell's well-being, specifically his need to obtain drugs rather than take Maxwell to the hospital when it was apparent that Maxwell was in serious condition.

¶ 9 On August 11, 2009, the defendant filed a motion to withdraw his guilty plea and a motion to reconsider his sentence, both of which were denied following a hearing on September 8, 2009. The defendant filed a notice of appeal on September 11, 2009, but his counsel failed to file a certificate required by Supreme Court Rule 604(d) (eff. July 1, 2006). This court remanded the cause and the certificate was subsequently filed. See *People v. Garcia*, No. 5-09-0497 (Dec. 20, 2010) (unpublished order under Supreme Court Rule 23 (eff. May 30, 2008)). After determining that a new hearing was not necessary, the circuit court again denied both motions. This timely appeal followed.

¶ 10 ANALYSIS

¶ 11 The defendant argues that his sentence is excessive in light of his young age, which was 23 at the time of the offense, and criminal history and that the court abused its discretion when it found no factors in mitigation when imposing the defendant's sentence. We start off by noting that the sentencing court is in the best position to determine an appropriate sentence. *People v. Wilson*, 143 Ill. 2d 236, 250-51 (1991). A sentencing court has

considerable deference when imposing a sentence. *Id.* In determining an appropriate sentence, a sentencing court must consider all relevant factors in aggravation and mitigation and "balance them against each other." *People v. Mays*, 230 Ill. App. 3d 748, 758 (1992). This court will not overturn a sentence absent an abuse of discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A circuit court has a far better opportunity to observe the defendant and consider the relevant factors, whereas a reviewing court must rely on a "'cold' record." *People v. Fern*, 189 Ill. 2d 48, 53 (1999). When an imposed sentence is within the statutory 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). "An abuse of discretion will be found only where the circuit court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the circuit court's view." *People v. Ursery*, 364 Ill. App. 3d 680, 686 (2006).

¶ 12 Here, the circuit court very plainly laid out which factors it was considering and why it considered those factors when it imposed the defendant's sentence. That it could not find any factors in mitigation does not mean the circuit court abused its discretion. See *People v. Evans*, 373 Ill. App. 3d 948, 967 (2007) (where defendant was charged with first-degree murder and was sentenced to a 55-year sentence with an enhancement of 45 years and the circuit court could not find any factors in mitigation, the circuit court did not abuse its discretion).

¶ 13 As per the plea agreement, the maximum sentence the court could have imposed was a 50-year term of imprisonment. The defendant's 44-year sentence falls below that maximum possible sentence; therefore, the circuit court did not abuse its discretion unless the sentence is manifestly disproportionate to the nature of the offense. *Hauschild*, 226 Ill. 2d at 90. It is evident from the record that the sentence was not disproportionate to the offense. The court considered the presentence investigation report, which noted that the

defendant had a criminal history and that history included crimes of violence. The court further considered that the defendant committed the offense while on mandatory supervised release. The circuit court even noted that it was not going to sentence the defendant to the maximum term possible under the plea agreement because "not all murders are to be punished in the most extreme sentence available, but this comes very close." We reiterate the circuit court's shock at the defendant's interest in obtaining drugs while his son was dying, and though this was not a significant factor, it is relevant to show the defendant's lack of responsibility in the face of the likelihood of serious injury or death of his son. Further, the court considered that Maxwell was physically disabled because of his hearing impairment. All of this information was properly considered by the circuit court, and we cannot agree that it abused its discretion. Accordingly, the circuit court was in the best position to make the sentencing determinations, and we will not disturb its reasoned judgment.

¶ 14

CONCLUSION

¶ 15 All of these factors and the factors presented in the record and the presentence investigation report were properly considered when the circuit court imposed the defendant's sentence. For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 16 Affirmed.