2016 IL App (5th) 130282-U

NO. 5-13-0282

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Hamilton County.
	)	
v.	)	No. 07-CF-28
	)	
CYRUS CHARLES WOOD,	)	Honorable
	)	Barry L. Vaughan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's aggregate sentence of 37 years.

¶ 2 Defendant, Cyrus Charles Wood, entered an open plea in the circuit court of Hamilton County to the offenses of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)) (count II) and aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2006)) (count III) and was sentenced to 30 years and 7 years respectively with the sentences to run consecutively. The trial court denied defendant's motions to vacate guilty plea and to reconsider the sentence. The only issue on appeal is whether the aggregate sentence of 37 years is excessive. We affirm.

¶ 3 FACTS

¶ 4 Defendant was charged by information with two counts of predatory criminal sexual assault of a child and two counts of aggravated criminal sexual abuse. The victims were defendant's stepdaughters, C.D. and A.D. The abuse went on for over 10 years until the younger child, A.D., asked defendant to stop. Defendant entered an open plea to two counts (counts II and III) in exchange for two counts being dismissed (counts I and IV).

¶ 5 At the plea hearing, the trial court admonished defendant that count II is a Class X felony with a possible sentence of not less than 6 years or more than 30 years "or, if you are eligible for extended term sentence, not less than 30 or more than 60 years." The trial court further explained, "There is no probation or conditional discharge or supervision or periodic imprisonment available for a Class X sentence to a plea." The trial court further admonished defendant that count III is a Class 2 felony with a possible sentence of not less than 3 years or more than 7 years, and, if eligible for an extended term not less than 7 years or more than 14 years. The trial court pointed out the worst case scenario would be that defendant "could receive a 60 year extended term to be followed by 14 years extended term sentence" and counts II and III could be stacked one after another. Defendant stated on the record that he understood the trial court's admonishments.

¶ 6 A sentencing hearing was held during which Rick White, a special agent with the Illinois State Police, testified he interviewed defendant prior to his arrest and defendant admitted he sexually abused the victims monthly. Defendant said the abuse started shortly after he married the victims' mother. The abuse was progressive and continued until the victims were teenagers.

¶ 7 Ron Weedon, defendant's friend, testified he visited defendant in jail and found defendant to be sorry. Defendant told him his behavior was wrong. Weedon said he did not know details of the abuse until the sentencing hearing when he heard Agent White testify.

¶ 8 Everett Lemke, another friend of defendant, testified he attended church with defendant and vacationed with him. He noticed the victims "had a little problem" with defendant, but Lemke thought it was because defendant was a stricter disciplinarian than the victims' mother.

¶ 9 Defendant's mother, age 84, testified that she and her husband, age 91, relied on defendant before his arrest and need him more than ever, as both she and her husband are "not too well." She said defendant took them to doctors' appointments regularly and grocery shopping. They are now relying on their grandson for help. She testified her daughter brought her to court.

¶ 10 Defendant's wife testified she was not aware of the abuse until her daughters told her about it. When she confronted her husband, "[h]e bowed his head, and began to cry." He said it was the truth and he did not deny it. She said she and her daughters have been in counseling. A.D. no longer goes to counseling, but she and C.D. still attend counseling every other week. She testified she did not think prison time would help defendant and it would waste resources to put him behind bars. She wanted to see defendant get help through a treatment program and go live with his parents. She said she would not let him live in her home because she was putting her girls first.

¶ 11 The State asked for a sentence of 40 years on count II and 7 years on count III with the sentences to run consecutively. Defense counsel alleged defendant had been molested as a child and this contributed to his actions. Counsel further noted that defendant scored a maximum risk for pedophilia on the sex offender evaluation, but was at low risk to reoffend and was neither violent nor antisocial. Defense counsel asked for the minimum sentence of six years followed by probation. The trial court refused to impose the sentence recommended by the State and instead imposed a sentence of 30 years on count II and 7 years on count III with the sentences to run consecutively.

¶ 12 Defendant filed a motion to withdraw guilty plea, arguing he bargained for a sentence of less than natural life, but because he was 57, a sentence of 37 years amounted to a sentence of natural life. Defendant also filed a motion to reconsider sentence, arguing his sentence was excessive for a first-time offender who was remorseful and unlikely to reoffend.

¶ 13 After a hearing, the trial court denied defendant's motion to withdraw guilty plea and took the motion to reduce sentence under advisement. Defense counsel filed a memorandum of law in which he asked the trial court to reduce the sentence to 20 years so defendant would be eligible to transfer to a facility with sex offender treatment programs. The trial court denied the motion to reconsider, and defendant filed an appeal. In an unpublished order, we reversed the trial court's orders denying defendant's postplea motions to withdraw guilty plea and to reduce sentence and remanded with directions for defendant's attorney to fully comply with Supreme Court Rule 604(d). *People v. Wood*, No. 5-08-0554 (Mar. 10, 2011) (unpublished order under Supreme Court Rule 23).

¶ 14 During pendency of the first appeal, defendant's original attorney died. On remand, new counsel was appointed to assist defendant. New counsel obtained defendant's medical records and filed a Rule 604(d) certificate, but chose not to amend the previously filed postplea motions. The trial court conducted a new hearing on defendant's motion to withdraw guilty plea or, in the alternative, reduce sentence.

¶ 15 During the hearing defendant admitted he had no agreement with the State as to what his sentence would actually entail. He testified that while he believed "there was a possibility" he would serve the sentences at the same time, he also knew there was a possibility he would serve the sentences back to back. If he had known there was no chance to serve the sentences concurrently, then he "probably [would] not" have pled guilty. He admitted he had a clear understanding of the possible sentences he was facing, but said he was confused as to whether they would be served concurrently or consecutively. On cross-examination, defendant admitted that the plea agreement meant he was no longer eligible for natural life in prison. Ultimately, the trial court again denied both the motion to withdraw guilty plea and the motion to reduce sentence. Defendant filed a timely notice of appeal.

¶ 16 ANALYSIS

¶ 17 The only issue raised in this appeal is whether the aggregate sentence of 37 years is excessive. Defendant contends the sentence is excessive and that the trial court failed to consider the factors in mitigation and placed too much emphasis on his score for child molestation potential. Defendant asks us to reduce his sentence or remand for resentencing. We decline to do so.

¶ 18 While we may reduce a sentence when the trial court has abused its discretion, we are not to substitute our judgment for the trial court merely because we would have weighed the sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13, 940 N.E.2d 1062, 1066 (2010); *People v. Stacey*, 193 Ill. 2d 203, 209, 737 N.E.2d 626, 629 (2000). A sentence within the statutory guidelines is presumed proper, and we will only find a sentence excessive if it varies greatly from the spirit or purpose of the law or when it is manifestly disproportionate to the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90, 871 N.E.2d 1, 16 (2007); *People v. Hamilton*, 361 Ill. App. 3d 836, 846, 838 N.E.2d 160, 169 (2005). We give great deference to a trial court's sentencing decision because the trial court is in a far better position than a reviewing court, which sees only a "cold" record, to weigh such factors as credibility, demeanor, mentality, habits, and age. *Alexander*, 239 Ill. 2d at 213, 940 N.E.2d at 1066.

¶ 19 In the instant case, the State recommended 40 years on count II and 7 years on count III with the sentences to run consecutively. The trial court declined to impose the 40-year extended term sentence recommended by the State, but instead imposed a 30-year sentence on count II and 7 years on count III with the sentences to run consecutively. The sentence imposed was well within the legislative parameters for such offenses. Moreover, the record reflects defendant was properly admonished that any sentence imposed could be made to run consecutively.

¶ 20 In support of his argument that his sentence is excessive, defendant cites *People v. Stacey*, 193 Ill. 2d 203, 737 N.E.2d 626 (2000). In that case, our supreme court reduced a defendant's two Class X sentences from 25 years each to 6 years each. *Stacey*, 193 Ill. 2d

at 205-06, 737 N.E.2d at 630. In *Stacey*, the defendant was convicted of aggravated criminal sexual abuse and criminal sexual abuse following incidents where he approached teenage girls on their way to school and forcibly grabbed their breasts. Despite the defendant's eight previous convictions and poor record of rehabilitation, the court found the sentence manifestly disproportionate to the nature of the offense, where "defendant momentarily grabbed the breasts of two young girls, who were fully clothed at the time," and "made lewd comments and gestures." 193 Ill. 2d at 208, 210, 737 N.E.2d at 628, 630. The instant case is factually distinguishable from *Stacey*.

¶ 21 Here, the offenses were not a one-time transgression against a stranger, but entailed 10 years of ongoing sexual abuse against defendant's two stepdaughters. By defendant's own admission, the abuse began almost immediately after he married the victims' mother. In imposing the sentence, the trial court explained:

> "I believe although [defendant] was remorseful, this happened over a long period of time. This wasn't a onetime deal, no, what have I done, I'll never do it again. This happened over a ten-year period of time.
>
> I believe the victim impact statement indicates the [victims] basically wanted to be safe from [defendant], did not care if he went to prison or not. They're leaving that up to me. But I believe part of that is because they're aware of the impact it's going to have on their mother. They desire to support their mother. But the Court's in the position of not only taking into account the victim impact but also taking into account the impact to society. Sentences are not personal to defendant only and the victims in this case, but it is also, as the state's attorney said, sends a

message to the community that we view this behavior seriously and find it reprehensible."

In imposing defendant's sentence, the trial court focused not only on the long period of time over which the abuse occurred, but also on discouraging others from sexually abusing family members. However, these were not the only factors the trial court took into consideration.

¶ 22 The trial court specifically stated it considered the presentence investigation report with attachments including the sex offender evaluation and victim impact statements, the statutory factors, the arguments of counsel, and the testimony presented. The trial court noted it was "not an easy decision" and it would be "my preference if I never had to send anyone to prison." The court also considered defendant's parents' advanced age and the fact that defendant was remorseful. It also noted additional factors in mitigation and aggravation. Accordingly, the record does not support defendant's argument that the trial failed to consider factors in mitigation or placed too much emphasis on his score for child molestation potential.

¶ 23 The truth is defendant is a pedophile. While tests show he is at low risk to reoffend, there is nothing in the record to suggest he is incapable of reoffending. After careful consideration, we cannot say that either the length of the sentences or the consecutive nature of the sentences imposed by the trial court varies greatly from the spirit or purpose of the law, is manifestly disproportionate to the offenses, or is an abuse of the trial court's considerable discretion.

¶ 24 For the foregoing reasons, we affirm the judgment of sentence of the circuit court of Hamilton County.

¶ 25 Affirmed.