2022 IL App (4th) 200414-U

NO. 4-20-0414

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 24, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
LUIS ROMAN,	)	No. 18CF72
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court did not abuse its discretion in (1) denying defendant's request to represent himself and (2) sentencing defendant to a term of 12 years' imprisonment.

¶ 2 In March 2018, the State charged defendant, Luis Roman, with one count of aggravated battery. In February 2020, the trial court found defendant guilty of aggravated battery. In June 2020, the court sentenced defendant to 12 years' imprisonment.

¶ 3 Defendant appeals, arguing (1) the trial court denied his constitutional right to represent himself at trial and (2) his 12-year sentence was excessive. For the following reasons, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. Pretrial Proceedings

¶ 6 In March 2018, the State charged defendant with one count of aggravated battery. Specifically, the State charged defendant with committing a battery on November 14, 2016, when he knowingly made physical contact of an insulting or provoking nature with Correctional Officer Anton Frazier, in that defendant bit Frazier about the arm and he knew Frazier was an employee of the Department of Corrections (DOC) who was engaged in the performance of his authorized duties. Defense counsel filed a motion for a pretrial subpoena for defendant's psychiatric records. The trial court granted the motion and ordered the production of the records to the court.

¶ 7 At a November 13, 2018, pretrial hearing, defendant asked to be heard on an issue concerning defense counsel. Defendant explained he had written to defense counsel numerous times and attempted to set up meetings to go over discovery. Defendant asked counsel to file a motion to challenge the indictment. Defendant stated, "I also asked him due to like 300-and-some documents that I sent him to file [a] motion for a challenge of arrest and my *Miranda* rights not being read along with other evidence and camera footage that is on this case. And I would like to know if I could fire counsel today under ineffective assistance of counsel." Defendant indicated he had an attorney that would probably take his case and he could proceed *pro se* until he retained alternate counsel.

¶ 8 Defense counsel indicated he had discussed many of the issues raised with defendant. Defense counsel stated defendant wanted him to file a motion to dismiss the indictment "because of a lack of *Miranda*." Defense counsel stated defendant had not confessed, "so there would not be anything to suppress and that would not at any rate cause a motion or a case to be dismissed." According to defense counsel, there was evidence that could be used for defense purposes at trial but not as grounds to have the case dismissed. Defense counsel also

indicated he was still reviewing defendant's mental health records to determine whether there was any additional defense.

¶ 9 Defendant stated, "Your Honor, there is no question. I know by law, by law I got the right to fire counsel ineffective." The trial court told defendant that if he fired counsel he would have to proceed *pro se*. The court further stated there was no basis for a finding of ineffective assistance of counsel because counsel was not filing the motions defendant requested. The court explained defendant did not have a right to pick his appointed attorney and it was his attorney's decision as to what motions to file. The court stated it would not appoint a new attorney. Defendant again complained about defense counsel's failure to show him the indictment and to visit him, but stated, "I don't have a problem him being my counsel." Defendant then stated he was firing defense counsel and proceeding *pro se*.

¶ 10 The trial court explained it had to go through a few admonitions before allowing defendant to proceed *pro se*. The court determined defendant was 30 years old, had completed high school, and could read and write. Defendant stated he had been hospitalized multiple times for mental health issues, had an "extensive mental health background," and was currently taking a medication for "bipolar, hypertension disorder, and mood swings." Defense counsel again stated he was going through defendant's mental health records to determine whether there was a fitness or sanity issue. The court then ruled as follows:

> "All right. At this point, [defendant], it is my understanding that [defense counsel] is looking into whether or not there is a fitness and/or sanity issue. He has gotten all of your documents and he indicated that he has started reviewing those. I

> am not going to go forward on your request to proceed *pro se* until that review has been completed.
>
> If it is determined that there are no fitness issues, then I will raise—I will bring this up again. But, so basically I am not going to—I can't find a knowing and voluntary waiver of the right to counsel when you may not have the mental capacity to make that decision."

The court stated, "Your *pro se* motion is stricken because your [*sic*] are represented by counsel. And it is denied at this time. Upon completion of the fitness eval, I will revisit it." Defendant asked the court to order counsel to schedule a visit and again reiterated, "I don't got no problem him being my counsel."

¶ 11 On November 15, 2018, defense counsel filed a motion for a mental examination "for purposes of determining a *bona fide* doubt as to [d]efendant's fitness, and for purposes of the defense of insanity[.]" The motion alleged that psychiatric records indicated defendant received mental health treatment and raised "material concerns as to the mental health of the defendant at the time of the alleged incident."

¶ 12 In December 2018, the trial court held a hearing on the motion for a mental health examination. Defense counsel noted both he and the trial court had doubts as to defendant's fitness based on "an incident on the video monitor with respect to" defendant. However, defense counsel went on to explain that he had another phone conference with defendant and went through matters in detail. Defense counsel stated that he was "not convinced there is a fitness issue at the present time." Defense counsel asked the court to continue the motion so he could have another phone conference with defendant and make a final determination as to whether a

fitness evaluation was necessary. At the next court hearing in February 2019, defendant waived his right to a jury trial.

¶ 13 B. Bench Trial

¶ 14 Over the course of three nonconsecutive days, the trial court held a bench trial. The court heard the following evidence.

¶ 15 1. *Anton Frazier*

¶ 16 Anton Frazier, a correctional officer at the Pontiac Correctional Center (Pontiac), testified that, on November 14, 2016, he and two other officers escorted defendant to his cell. According to Frazier, defendant refused to walk, so the officers had to "half carry him" to his cell. The officers placed defendant in his cell on his knees, facing the back of the cell. Defendant was restrained in handcuffs and leg irons, and Frazier crouched down to remove the leg irons. Once the leg irons were removed, defendant stood up suddenly and aggressively turned toward Frazier. According to Frazier, he put up his arm to block and push defendant away, and defendant bit Frazier's left forearm.

¶ 17 Frazier testified he and the other officers got defendant under control and escorted him to the back of the cell where they could remove defendant's restraints through the cuffing hatch. Once defendant's restraints were removed, he grabbed one of the officer's shirts and another officer's hand before the officers got defendant's hands back inside the cell and secured the cuffing hatch. After the incident, Frazier reported to the health care unit where he was instructed to fill out worker's compensation forms and get a tetanus shot. Frazier testified the bite left behind an "indentation" and a "slight scrape," but he was not bleeding.

¶ 18 2. *Steven Tutoky*

¶ 19 Steven Tutoky, a Pontiac correctional officer, testified that, on November 14, 2016, he escorted defendant to his cell. According to Tutoky, defendant did not want to cooperate and walk properly, so the officers had to assist him to his cell. Once in his cell, defendant was placed on his knees, and his leg irons were removed. As the officers backed out of defendant's cell, Tutoky testified he saw defendant turn around and bite Frazier's left arm. According to Tutoky, he and two other officers got defendant under control on the ground and then removed defendant's handcuffs through the "chuckhole." When asked if anything happened once defendant's handcuffs were removed, Tutoky responded, "He did end up grabbing my hand attempting to not want to go back in; and I do believe he was grabbing at [another officer's] shirt maybe just with his hands behind his back; and then his hands had to be placed back in the chuckhole."

¶ 20 3. *Adrian Corley*

¶ 21 Adrian Corley, a lieutenant with DOC, testified that defendant was agitated and uncooperative the day of the incident. Corley testified officers assisted defendant to his cell, where he was ordered to go down to his knees so the leg irons could be removed. According to Corley, Tutoky removed defendant's leg irons while Frazier had control of defendant's handcuff with a handle called a "D lead." After the leg irons were removed, defendant stood up, spun toward Frazier, and bit Frazier. Corley testified the officers placed defendant on the ground, eventually closed the cell door, and removed defendant's handcuffs through the door. Once the handcuffs were removed, defendant grabbed Corley's shirt and Tutoky's hand. After the incident, Corley observed imprints that looked like teeth marks on Frazier's arm.

¶ 22 4. *Alberto Colin*

¶ 23 Alberto Colin, an inmate at Pontiac serving a sentence for murder, testified he heard a conversation between defendant and Tutoky related to Frazier's bite mark. When asked what Tutoky told defendant during this conversation, the State objected because the question called for hearsay, and the court sustained the objection. Colin testified he was not present for the November 2016 incident and only overheard a conversation had after the fact.

¶ 24 5. *Defendant*

¶ 25 Defendant testified that, on November 14, 2016, he was a resident at Pontiac and Frazier escorted him from place to place. That morning, defendant was in cell 336, and he had a legal call. When he returned to his cell from the legal call, defendant realized his cell had been "shook down," and he asked officers where his pictures were. According to defendant, Frazier and Tutoky escorted him "in the air" to cell 102. Defendant testified his hands were cuffed behind his back and Frazier took the leg irons off and asked defendant to stand. According to defendant, he was pushed on top of the toilet and "Frazier closed his fist and punched [defendant] three times in the face." Defendant testified, "Then after that is when they started moving me towards the front of the cell backwards; and then Anton Frazier out of the middle of nowhere put his hands when he was going to close the door around my neck; and then he was trying to choke me." Defendant denied biting Frazier. Defendant testified his back was toward Frazier during the incident until the cell door was closed.

¶ 26 C. Verdict and Sentence

¶ 27 The trial court found defendant guilty of aggravated battery. The court ordered a presentence investigation (PSI) report and set a sentencing hearing. The PSI indicated defendant's continued denial of biting Frazier. The PSI indicated defendant suffered from asthma, arthritis, and seasonal allergies, and defendant was deaf in his left ear. Defendant had a

history of mental illness and had been diagnosed with bipolar disorder, depression, and anxiety. Defendant took a medication called Buspar for his mental problems. Defendant reported he had an "unbreakable" relationship with his mother who raised him with his stepfather. At age 13, defendant went to a juvenile rehabilitation center where he was sexually assaulted by another inmate. The PSI indicated defendant incurred a total of 212 disciplinary infractions while in DOC, including "fighting, sexual misconduct, drugs, dangerous contraband, assault, and assault on staff." Defendant completed several classes while in DOC and earned certificates in "anger management, problem solving skills, trauma management, decision making, panic management, dialectical behavior therapy 1 and 2 (anxiety management), and Safe T.E.A. Group."

¶ 28 The State recommended a sentence of 12 years' imprisonment because the aggravated battery conviction carried a mandatory Class X sentencing range because of defendant's prior criminal history. The State indicated defendant's prior history of delinquency included "his 2009 burglaries, 2010 robbery, 2013 possession of electronic contraband in a penal institution, as well as what's been noted as 212 disciplinary infractions while housed in DOC***." The PSI also showed a 2013 conviction for violation of sex offender registration. The State argued defendant could not comply with the rules while incarcerated and when he was released into the public, he committed felony offenses. The State argued deterrence was a strong factor because of defendant's recurrent criminal behavior and inability to follow rules and regulations when confined.

¶ 29 Defense counsel argued for the minimum sentence of six years' imprisonment. Defense counsel argued defendant was convicted in 2009 and 2010 of burglary and robbery but had been in DOC since then and "the violent actions that you see in the burglary and in the robbery had ended." Counsel also noted defendant's desire to see his parents showed a

recognition of the effect his convictions had on his family. Defense counsel argued defendant made efforts to better himself while in DOC and emphasized the certificates he earned. Counsel further argued "there was no testimony at any time regarding any injury, physical injury to the officers." Defendant made a statement in allocution, stating he was a changed man, maintaining his innocence, and stating a 12-year sentence was excessive.

¶ 30 The trial court noted defendant's offense carried a mandatory minimum sentence of six years' imprisonment. The court found deterrence was the strongest aggravating factor, noting it was imperative that officers have control of situations in prison and the rules in DOC were in place to protect the safety of the inmates and the correctional officers. The court also noted defendant had one of the worst disciplinary records it had seen with 212 violations. The court disagreed with defense counsel's argument that no one was injured. The court stated that, although the officer's skin was not broken, the offense was a physical encounter and defendant's disciplinary record showed violence as well. The court stated it did not find any statutory mitigating factors, but it acknowledged defendant's efforts to better himself while in DOC. The court again stressed the need for deterrence and sentenced defendant to 12 years' imprisonment followed by a 3-year term of mandatory supervised release. After the court imposed defendant's sentence and admonished him as to his right to appeal, defense counsel indicated defendant wished to appeal and act as his own appellate counsel. The court asked defendant if he wanted an attorney to assist him on appeal, and defendant responded, "Yeah. I want an attorney to assist me."

¶ 31 Defendant filed a motion to reconsider the sentence. The motion alleged the trial court failed to consider all mitigating factors and abused its discretion in imposing an excessive sentence. At an August 2020 hearing on the motion to reconsider the sentence, defense counsel

argued the court failed to properly weigh the mitigating factors, including that defendant's conduct did not cause serious physical harm. Counsel further argued the sentence was excessive and disproportionate to the spirit and purpose of the law where Frazier suffered no injuries, did not miss work, and required no medical treatment.

¶ 32 The trial court stated it considered all statutory factors in imposing defendant's sentence. The court noted the sentence was well within the statutory range and the aggravating factors greatly outweighed the mitigating factors. The court denied the motion to reconsider the sentence.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 On appeal, defendant argues (1) the trial court denied his constitutional right to represent himself at trial and (2) his 12-year sentence was excessive.

¶ 36 A. Self-Representation

¶ 37 Defendant first argues the trial court denied his constitutional right to represent himself at trial. Specifically, defendant asserts the court abused its discretion in refusing to honor defendant's request to represent himself because there was no *bona fide* doubt as to his fitness to stand trial and no indication that defendant was incapable of making a knowing and voluntary waiver of his right to counsel. The State asserts defendant forfeited this issue by failing to make proper objections at trial and to raise this issue in a posttrial motion. Alternatively, the State argues no error occurred. Although defendant forfeited this issue by failing to properly preserve the issue, we turn to the merits of his claim because we conclude no error occurred.

¶ 38 "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007). The first step in plain-error analysis is to determine whether error occurred. *Id.*

¶ 39 A person accused of a crime has a constitutional right to counsel at every critical stage of proceedings. *United States v. Wade*, 388 U.S. 218, 224 (1967). While a defendant also has the right to self-representation, he must act knowingly and intelligently when foregoing counsel. *Faretta v. California*, 422 U.S. 806, 835 (1975). Given the importance of the right to counsel, it "should not be lightly deemed waived." (Internal quotation marks omitted.) *People v. Langley*, 226 Ill. App. 3d 742, 749, 589 N.E.2d 824, 829 (1992). Waiver of counsel must be clear, unequivocal, and unambiguous. *People v. Baez*, 241 Ill. 2d 44, 116, 946 N.E.2d 359, 401 (2011). The court must determine whether a defendant truly wants to represent himself and has definitively invoked his right to self-representation. *Id.* "Courts must 'indulge in every reasonable presumption against waiver' of the right to counsel." *Id.* (quoting *Brewer v. Williams*, 430 U.S. 387, 404 (1977)).

¶ 40 If a defendant's decision to represent himself is made freely, knowingly, and intelligently, it must be accepted. *People v. Lego*, 168 Ill. 2d 561, 563-64, 660 N.E.2d 971, 973 (1995). "The requirement of knowing and intelligent choice 'calls for nothing less than a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.' " *Baez*, 241 Ill. 2d at 117 (quoting *Lego*, 168 Ill. 2d at 564). "Even if a defendant

gives some indication that he wants to proceed *pro se*, he may later acquiesce in representation by counsel." *Id.* (citing *People v. Burton*, 184 Ill. 2d 1, 23, 703 N.E.2d 49, 60 (1998)). "Under certain circumstances, defendant may acquiesce by vacillating or abandoning an earlier request to proceed *pro se*." *Burton*, 184 Ill. 2d at 23.

¶ 41 Here, at the November 13, 2018, pretrial hearing, defendant expressed his dissatisfaction with his appointed counsel based on counsel's failure to file certain motions and to visit defendant. Defendant stated, "And I would like to know if I could fire counsel today under ineffective assistance of counsel." Defendant also indicated he had an attorney that would probably take his case and he could proceed *pro se* until he retained alternate counsel. After defense counsel explained his reasons for not filing the requested motions, defendant stated, "by law I got the right to fire counsel ineffective."

¶ 42 The trial court told defendant that if he fired counsel, he would have to proceed *pro se*. The court further stated there was no basis for a finding of ineffective assistance of counsel because counsel was not filing the motions defendant requested. The court explained defendant did not have a right to pick his appointed attorney and it was his attorney's decision as to what motions to file. The court stated it would not appoint a new attorney. Defendant again complained about defense counsel's failure to show him the indictment and to visit him, but stated, "I don't have a problem him being my counsel." Defendant then stated he was firing defense counsel and proceeding *pro se*.

¶ 43 The trial court explained it had to go through a few admonitions before allowing defendant to proceed *pro se*. The court determined defendant was 30 years old, had completed high school, and could read and write. Defendant stated he had been hospitalized multiple times for mental health issues, had an "extensive mental health background," and was currently taking

medication for "bipolar, hypertension disorder, and mood swings." Defense counsel stated he was going through defendant's mental health records to determine whether there was a fitness or sanity issue. The court then ruled as follows:

> "All right. At this point, [defendant], it is my understanding that [defense counsel] is looking into whether or not there is a fitness and/or sanity issue. He has gotten all of your documents and he indicated that he has started reviewing those. I am not going to go forward on your request to proceed *pro se* until that review has been completed.
>
> If it is determined that there are no fitness issues, then I will raise—I will bring this up again. But, so basically I am not going to—I can't find a knowing and voluntary waiver of the right to counsel when you may not have the mental capacity to make that decision."

The court stated, "Your *pro se* motion is stricken because your [*sic*] are represented by counsel. And it is denied at this time. Upon completion of the fitness eval, I will revisit it." Defendant asked the court to order counsel to schedule a visit and again reiterated, "I don't got no problem him being my counsel."

¶ 44 Defendant first argues his statements at the November 2018 hearing were an unequivocal invocation of his right to represent himself. We disagree. Although defendant did state he was firing counsel and proceeding *pro se*, this statement was made shortly after defendant indicated he had alternate counsel and would proceed *pro se* until alternate counsel could be secured. Additionally, defendant twice stated that he had no problem with appointed

counsel being his counsel. We conclude defendant's contradictory statements do not amount to an unequivocal request to represent himself. Not only did he express a desire to represent himself only until alternate counsel could be secured, he also expressed having "no problem" with appointed counsel being his counsel. This equivocation does not demonstrate a true desire to represent himself or a definitive invocation of his right to self-representation. See *Burton*, 184 Ill. 2d at 22-23 (collecting cases).

¶ 45 Nevertheless, the trial court appeared prepared to accept defendant's decision and began admonishing defendant to determine whether the decision was knowing and intelligent. See *Lego*, 168 Ill. 2d at 563-64. In the course of these admonishments, it came to the court's attention that, in defendant's words, he had an "extensive" mental health history, including multiple hospitalizations for mental health issues. We cannot say the trial court abused its discretion in denying defendant's request to proceed *pro se* where it faced a serious question as to defendant's fitness to stand trial. Defendant asserts nothing in the record shows a *bona fide* doubt as to defendant's fitness to stand trial. In making this argument, defendant asserts nothing in the record demonstrates serious mental illness that would impair his ability to stand trial. Defendant further asserts he was able to advocate for sentencing credit at his sentencing hearing to demonstrate there was no *bona fide* doubt as to his fitness to stand trial. In rejecting defendant's argument, we are mindful of the fact that the trial court did not have the benefit of knowledge of future proceedings when it made its decision to deny defendant's request to represent himself. At the time the trial court denied defendant's request, it inquired as to defendant's mental health history and was told, by defendant, that history was extensive and involved multiple hospitalizations. We cannot say the court's caution in denying defendant's request to represent himself until a fitness evaluation could be completed was an abuse of

discretion. See *Baez*, 241 Ill. 2d at 116 ("Courts must 'indulge in every reasonable presumption against waiver' of the right to counsel.") (quoting *Williams*, 430 U.S. at 404).

¶ 46 The State argues defendant acquiesced to representation by appointed counsel where he never raised the issue of proceeding *pro se* after the November 2018 hearing. Defendant argues he did not acquiesce to counsel's representation because he was not required to futilely request to represent himself. In support of this argument, defendant cites *People v. Hunt*, 2016 IL App (1st) 132979, 55 N.E.3d 1227. In *Hunt*, defense counsel told a substitute judge the defendant wanted to represent himself and the defendant affirmed the statement. *Id.* ¶ 6. The substitute judge extensively admonished the defendant but declined to rule on the request; instead, the substitute judge continued the matter for five days so the trial judge could rule. *Id.* At the next hearing, the trial judge denied the defendant's request to proceed *pro se* and found the request to be a delay tactic. *Id.* ¶ 7. The appellate court reversed, finding defendant's request to proceed *pro se* was unequivocal and the record did not support a finding that the request was a delay tactic. *Id.* ¶ 21. The appellate court further found the defendant did not acquiesce to representation by appointed counsel by failing to raise the issue again because "a renewed request on a later date would have been fruitless where the trial court had already definitively indicated it would not grant his request for self-representation on a day the matter was set for trial." *Id.* ¶ 26.

¶ 47 We find *Hunt* distinguishable. Here, the trial court denied defendant's motion to proceed *pro se*. However, the court clearly indicated the request was denied in order to allow a fitness evaluation and not because it was a delay tactic. At the next hearing, defense counsel indicated he was not convinced there was a fitness issue and asked for a continuance to make a final determination as to fitness. Defendant never renewed his request to proceed *pro se*.

Defendant asserts this is because defendant was not present at the December hearing where counsel expressed his uncertainty as to whether defendant was unfit and did not know the motion for a fitness evaluation had been continued. However, at the November 2018 hearing, the trial court made it clear that it would revisit the issue of self-representation after a fitness evaluation if necessary. Nothing in the record indicates a fitness evaluation occurred. Under these circumstances, where the court made clear it would revisit the issue, a renewed request to proceed *pro se* would not have been fruitless. In this case, we find defendant abandoned his request to proceed *pro se*. *Burton*, 184 Ill. 2d at 23 ("Under certain circumstances, defendant may acquiesce by vacillating or abandoning an earlier request to proceed *pro se*.").

¶ 48 Defendant alternatively argues that the trial court abused its discretion in not ruling on defendant's request to proceed *pro se* after defense counsel indicated there was no *bona fide* doubt as to defendant's fitness. However, as the State correctly points out, the court did rule on defendant's request. As discussed above, the trial court denied defendant's motion to proceed *pro se* pending a fitness evaluation. The court's ruling indicated it would revisit the issue and address defendant's assertion of his right to self-representation after a fitness evaluation had been completed. As such, a renewed request to represent himself would not have been futile. Again, the court's caution in denying defendant's request to represent himself until a fitness evaluation could be completed was not an abuse of discretion and we cannot say no reasonable person would have adopted the view of the trial court in finding defendant's request to represent himself was not knowingly and voluntarily made. *People v. Perkins*, 2018 IL App (1st) 133981, ¶ 48, 163 N.E.3d 148 (finding denial of the defendant's request to proceed *pro se* was not an abuse of discretion where "[t]he record shows that at the time defendant made the request to represent himself, the trial court was aware there was an issue raised concerning

defendant's mental capacity and statements that defendant was schizophrenic and taking psychotropic medication.").

¶ 49 B. Excessive Sentence

¶ 50 Defendant next argues his 12-year sentence was excessive where his conduct, though harmful, did not justify such a lengthy sentence. Specifically, defendant argues his conduct did not break Frazier's skin or otherwise cause injury. The State argues the court did not abuse its discretion in imposing a sentence well within the statutory guidelines of 6 to 30 years' imprisonment.

¶ 51 A trial court's sentencing decisions are given substantial deference. *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656. We will disturb a sentence within the statutory limits for the offense only if the trial court abused its discretion. *People v. Flores*, 404 Ill. App. 3d 155, 157, 935 N.E.2d 1151, 1154 (2010). "A sentence within the statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Crenshaw*, 2011 IL App (4th) 090908, ¶ 22, 959 N.E.2d 703.

¶ 52 The trial court is not required to explicitly outline the factors considered for sentencing, and we presume the court considered all mitigating factors absent explicit evidence to the contrary. *People v. Meeks*, 81 Ill. 2d 524, 534, 411 N.E.2d 9, 14 (1980). Each sentencing decision must be based on a consideration of factors including "the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). The trial court is better able to weigh these factors, having observed the defendant and proceedings. *Id.* We will not substitute our judgment for that of the trial court merely because we would have balanced the factors differently. *Id.*

¶ 53 Here, the trial court noted defendant's offense carried a mandatory minimum sentence of six years' imprisonment. The court found deterrence was the strongest aggravating factor, noting it was imperative that officers have control of situations in prison and the rules in DOC were in place to protect the safety of the inmates and the correctional officers. The court also noted defendant had one of the worst disciplinary records it had seen, with 212 violations. The court disagreed with defense counsel's argument that no one was injured. The court stated that, although the officer's skin was not broken, the offense was a physical encounter and defendant's disciplinary record showed violence as well. The court stated it did not find any statutory mitigating factors, but it acknowledged defendant's efforts to better himself while in DOC. The court again stressed the need for deterrence and sentenced defendant to 12 years' imprisonment followed by a 3-year term of mandatory supervised release.

¶ 54 Our review of the record shows the trial court considered the relevant statutory factors and imposed a sentence well within the statutory guidelines of 6 to 30 years' imprisonment. In support of his excessive sentence argument, defendant cites *People v. Stacey*, 193 Ill. 2d 203, 737 N.E.2d 626 (2000). In *Stacey*, the defendant was convicted of two counts of aggravated criminal sexual abuse and was eligible for a Class X statutory sentence of 6 to 30 years' imprisonment. *Id.* at 210. The trial court sentenced the defendant to consecutive terms of 25 years' imprisonment on each count. *Id.* at 209. The supreme court found the 50-year aggregate sentence was manifestly disproportionate to the offense where the defendant "momentarily grabbed the breasts of two young girls, who were fully clothed at the time, and he made lewd comments and gestures." *Id.* at 210. Although it found the behavior "appalling and harmful," the supreme court determined it was not severe enough to warrant a 25-year sentence on each count. *Id.*

¶ 55 We find defendant's reliance on *Stacey* unpersuasive. First, defendant was convicted of a single count of aggravated battery and was not subject to consecutive sentences for multiple offenses. Second, he was eligible for a term 6 to 30 years' imprisonment and was sentenced to 12 years' imprisonment, not to an aggregate sentence of 50 years' imprisonment. Defendant argues his 12-year sentence is excessive where his conduct did not break Frazier's skin or otherwise cause injury. However, the record shows the trial court disagreed with defense counsel's argument that no injury occurred. Although Frazier's skin was not broken, he testified the bite left an indentation and slight scrape on his arm—testimony which was corroborated by Corley, who testified Frazier had what appeared to be teeth marks on his arm. Frazier also testified he was instructed to get a tetanus shot after the incident. While the injury may have been minor, we agree with the trial court that defendant's conduct caused an injury.

¶ 56 Moreover, the trial court found deterrence was the most significant factor in sentencing defendant, particularly in light of his disciplinary record while in DOC. The record shows that, in addition to multiple felony convictions, defendant incurred 212 disciplinary infractions while in DOC, including "fighting, sexual misconduct, drugs, dangerous contraband, assault, and assault on staff." Under these circumstances we cannot say a 12-year sentence within the statutory limits was greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Crenshaw*, 2011 IL App (4th) 090908, ¶ 22. Accordingly, we find the trial court did not abuse its discretion in sentencing defendant to a term well within the statutory guidelines, and we affirm the trial court's judgment.

¶ 57 III. CONCLUSION

¶ 58 For the reasons stated, we affirm the trial court's judgment.

¶ 59 Affirmed.