2024 IL App (5th) 220601-U

NO. 5-22-0601

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 18-CF-3488
	)	
ANDREA LEISGANG,	)	Honorable
	)	Kyle A. Napp,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court's sentence of 75 years was not an abuse of discretion.

¶ 2 Defendant, Andrea Leisgang, appeals the Madison County circuit court's denial of her motion to reconsider sentence on remand.[1] Defendant argues on appeal that the court erred by refusing to consider defendant's motion to reconsider sentence on the merits and by imposing a sentence grossly disproportionate to defendant's codefendant and husband, Jeremy Leisgang.[2] For the following reasons, we affirm.

[1]This court previously vacated the circuit court's order denying defendant's motion to reconsider her sentence and remanded the case back to the circuit court with directions, where defense counsel failed to file a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). *People v. Leisgang*, No. 5-21-0339 (2022) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

[2]Jeremy is not a party to this appeal.

¶ 3 I. Background

¶ 4 We limit our recitation to those facts relevant to our disposition of this appeal. We will recite additional facts in the analysis section as needed to address defendant's specific arguments.

¶ 5 On November 20, 2018, the State charged defendant by information with eight counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(3) (West 2016)), a Class 1 felony, alleging that defendant, on or about March 16, 2016, through November 20, 2017, committed an act of sexual penetration upon her minor child, B.L., a person under 18 years of age, in that defendant inserted her fingers (counts I, V) and her tongue (counts III, VII) into the sex organ of B.L. Additionally, the State alleged that defendant, during the same time frame, committed an act of sexual penetration upon B.L., in that defendant inserted B.L.'s fingers (counts II, VI) and had B.L. insert her tongue (counts IV, VIII) into defendant's sex organ.

¶ 6 The State also charged defendant with four counts of predatory criminal sexual assault of a child (*id.* § 11-1.40(a)(1)), a Class X felony, alleging that defendant, on or about April 1, 2018, through October 31, 2018, committed an act of sexual penetration upon her minor child, H.S., a person under 13 years of age, in that defendant inserted H.S.'s penis into her mouth (counts IX, X) and her sex organ (counts XI, XII).

¶ 7 On December 20, 2018, a Madison County grand jury indicted defendant on 15 counts, including the charges contained in the State's November 20, 2018, information. The three additional charges against defendant included one count of criminal sexual assault (*id.* § 11-1.20(a)(3)), a Class 1 felony, alleging defendant inserted B.L.'s fingers into defendant's sex organ (count XIV), and two counts of predatory criminal sexual assault of a child (*id.* § 11-1.40(a)(1)), a Class X felony, alleging that defendant directed H.S. to insert his penis into the sex organ of B.L. (count XIII) and defendant's mouth (count XV).

¶ 8 On December 21, 2018, defendant entered pleas of not guilty to each and every count against her. The circuit court set defendant's trial date for January 24, 2019, and assigned Judge Richard Tognarelli to defendant's case. The court continued defendant's jury trial, at the request of defendant, on six separate occasions.

¶ 9 On May 29, 2019, the State offered defendant a negotiated plea deal. The terms included offering defendant 40 years in the Illinois Department of Corrections (IDOC) for defendant's pleas of guilt to count I, criminal sexual assault, a Class 1 felony (*id.* § 11-1.20(a)(3)), and count IX, predatory criminal sexual assault of a child, a Class X felony (*id.* § 11-1.40(a)(1)). In exchange, the State would dismiss the remaining 13 charges against defendant. Defendant rejected the State's plea offer.

¶ 10 On October 2, 2019, defendant filed a "First Affirmative Defense," claiming that she performed the acts against B.L. and H.S. "under the compulsion of threat or menace of the imminent threat of infliction of great bodily harm" by Jeremy. Defendant claimed she reasonably believed Jeremy would inflict death or great bodily harm upon her, B.L., and H.S. if she did not perform the sexual acts at issue.

¶ 11 On February 5, 2020, following several continuances, defendant entered open guilty pleas before Judge Neil Schroeder on count I, criminal sexual assault (*id.* § 11-1.20(a)(3)), and count XI, predatory criminal sexual assault of a child (*id.* § 11-1.40(a)(1)). Judge Schroeder admonished defendant that, in exchange for her guilty pleas, she agreed to concurrent sentences on counts I and XI. Defendant agreed to a sentencing range of 10 to 15 years on count I, and a sentencing range of 10 to 60 years on count XI, with mandatory supervised release (MSR) ranging from 3 years to a term of natural life on both counts. Defendant acknowledged that she understood. Judge Schroeder further admonished defendant that she could receive a sentence ranging from 20 to 75

years in the IDOC on both counts. Defendant acknowledged that she understood. Judge Schroeder informed defendant several times that Judge Tognarelli would deliver her sentence "because this case is actually assigned to him." Defendant acknowledged that she understood. Judge Schroeder then read the nature of the charges against defendant, and the State presented its factual basis.

¶ 12 The State would present the testimony of T.L., Jeremy's niece, who would testify that she and her younger sister, M.L., lived with defendant and Jeremy from August 2016 to September 2016 and April 2017 to May 2017. During this time, Jeremy, in the presence of defendant, sexually abused 14-year-old T.L. and 15-year-old B.L. T.L. would testify that defendant "would be in the room watching, would help the girls undress, and show [T.L.] and [B.L.] what to do, how to position their legs and hands, and how they should lay during the assault perpetrated by Jeremy." The State would also present M.L.'s testimony that Jeremy sexually assaulted her while defendant watched.

¶ 13 Next, B.L. would testify that she witnessed Jeremy and defendant engage in sexual acts with H.S. B.L. would also testify that defendant engaged in sexual acts with her by inserting her fingers into B.L.'s sex organ. Additionally, B.L.'s testimony would corroborate T.L.'s testimony regarding Jeremy's sexual abuse during the time periods stated above.

¶ 14 Next, H.S. would testify that defendant inserted H.S.'s penis into defendant's sex organ. H.S. would also testify that he was forced to engage in sexual acts with his sister, B.L., defendant, and Jeremy.

¶ 15 Lastly, Detective Lee Brousseau of the Pontoon Beach Police Department would testify that he interviewed defendant three times in November 2018. During the recorded interviews, defendant admitted that she saw Jeremy sexually assault T.L. and B.L. Defendant also admitted that she engaged in sexual acts with B.L. and H.S., claiming that Jeremy forced her. Defendant

also "admitted to writing letters between her and her husband regarding the sexual abuse that was occurring in the home." According to Detective Brousseau, the letters, which police found in the home, contained "no indication" that Jeremy forced defendant's participation.

¶ 16 Following the State's factual basis, Judge Schroeder, again, repeated the possible minimum and maximum sentences that the court could impose at defendant's sentencing. Defendant acknowledged that she understood. Defendant pled guilty, and Judge Schroeder accepted defendant's pleas of guilt.

¶ 17 On March 20, 2020, Judge Tognarelli held defendant's sentencing hearing. Following witness testimony and the presentation of evidence, Judge Tognarelli addressed defendant, stating the following:

> "Well, this is certainly one of the most horrific cases and factual patter[n]s that I have seen in 45 years of practicing law as an attorney and as a judge. I have considered all the factors in aggravation and mitigation. Certainly[,] I am aware of factor 15 regarding domestic violence and its effect—and its effect on your life. But you did have various opportunities here to protect your children, and that's the difficult part that I am having. I can see you being concerned about yourself, but when I look at factor 14[,] aggravating circumstances, that the defendant held a position of trust or supervision to a family member, you were their mother."

Judge Tognarelli proceeded to state that he reviewed B.L. and H.S.'s statements, which demonstrated that both children, who were forced to engage in sexual acts with defendant, Jeremy, and each other, failed to understand "why [defendant] didn't do anything about [the sexual abuse]." Judge Tognarelli stated further:

> "I do think a significant sentence is necessary to deter others. I think we have to send a message. I think the factors in aggravation overcome the factors in mitigation.
>
> I am troubled by your, I guess, abuse and the domestic violence that occurred to you, but I can't understand for myself how you could let anything happen to your children, such horrific things to happen to your children."

Judge Tognarelli subsequently sentenced defendant to 75 years' imprisonment, followed by 3 years to natural life of MSR on both counts. Following the imposition of sentence, Judge Tognarelli stated:

> "But I think you had a break already in the fact that there were 13 out of these 15 charges that were dismissed. I understand the sentence is harsh, but I do think that it's appropriate in this case."

¶ 18 On April 8, 2020, defendant filed a motion to reconsider sentence. Defendant requested that the circuit court reconsider certain statutory mitigation factors, including that Jeremy, defendant's codefendant, induced and/or facilitated her criminal conduct, defendant's lack of a criminal history, and that defendant, herself, was a victim of domestic violence at the time of the offenses. Shortly thereafter, on April 24, 2020, defendant filed a *pro se* motion for reduction of sentence, arguing that "[t]he main person (my husband) only got 40 years for four children," and "the judge didn't consider all the domestic violence I was put through in[ ]front of my children." The court set a hearing on defendant's motion to reconsider sentence for June 29, 2020, but later cancelled this hearing.

¶ 19 On February 2, 2021, due to Judge Tognarelli's retirement, the circuit court entered an order reassigning defendant's case to Judge Kyle Napp for disposition of defendant's pending motions to reconsider.

¶ 20 On October 27, 2021, Judge Napp held a hearing on defendant's motions to reconsider. At the hearing, defense counsel urged Judge Napp to reconsider several factors in mitigation. Defense counsel argued that defendant lacked a criminal history and that Judge Tognarelli failed to consider defendant's claims of domestic violence perpetrated by Jeremy, who had multiple prior felony arrests for domestic battery, but received a much lower sentence than defendant.

¶ 21 In response, the State argued that Judge Tognarelli considered all factors in aggravation and mitigation. In doing so, Judge Tognarelli determined that the serious nature of the crimes outweighed the fact that defendant did not have a criminal history. In addition, the State argued that the evidence demonstrated that defendant facilitated these crimes against her children outside the presence of Jeremy. The State next argued that, although evidence existed that defendant was the victim of domestic violence within her home, "any abuse that may have been inflicted upon [defendant] by Jeremy was completely outweighed by the pain, suffering, and mental anguish that she herself inflicted upon her children." Furthermore, the State asserted that the record demonstrated that Judge Tognarelli considered all appropriate factors, especially deterrence and that defendant held a position of supervision with her children to protect, not abuse, them.

¶ 22 Lastly, the State offered, and the circuit court admitted into evidence, the State's May 29, 2019, negotiated plea deal, in which the State offered defendant 40 years in prison in exchange for defendant pleading guilty to counts I and count IX. The State noted that defendant rejected the State's offer, while Jeremy, who received a plea offer of 40 years in prison in exchange for pleading guilty to four counts of criminal sexual assault, accepted the State's offer.[3] In response, defense counsel indicated that defendant rejected the State's negotiated plea deal because defendant had "virtually no record" and was "a victim of domestic violence."

¶ 23 Following argument by the parties, Judge Napp stated the following:

> "I read through the sentencing and the exhibits and letters and statements from the minor children. And I can say I agree with Judge Tognarelli. That it's the most horrific case of sexual abuse that I've ever encountered as a judge, or as a prosecutor for that matter, as I was one for many years and I prosecuted child sex abuse crimes. So[,] in my decades of hearing these cases, these cases were hands-down the worst I'd ever encountered.
>
> And I'm in a really awkward position that I am not a Court of review. I am a trial Court. That is what I am to do. I am to make decisions based on the law, based on the

[3]Judge Napp presided over Jeremy's case and accepted Jeremy's pleas of guilty.

evidence, based on the statutes. And yet today I am being placed in the awkward position of having to review a decision by another judge. And that's not what I am supposed to do. I am sitting here having to review what Judge Tognarelli did, and decide if what he did was right or wrong. And I really believe that that's not what I am supposed to be doing.

And the difficult thing is as I sit here right now is that I agree with both Mr. Griffin [defense counsel] and Miss Foley [the State]. I agree with you both on different points. [Defendant] apparently was given the same offer that [Jeremy] was given. And she turned it down. She rolled the dice. And Judge Tognarelli sentenced her to 75 years. Jeremy *** decided to take the deal and took 40.

Mr. Griffin makes the record, and I understand why, he had things to argue about why [defendant] shouldn't be given as harsh a sentence as Jeremy ***; no priors, a victim of domestic violence, and I don't think that's disputed, remorseful, all true. And in the eyes of an attorney, something definitely to be able to argue—and fully cooperated with the police from the moment that they began investigating this case; gave a full confession; consented to a search of her house. Completely and 100 percent cooperated, which most child sex offenders don't. So[,] he had things to argue as to why she should be given better consideration than Jeremy ***. And why it was better to plead a case open with range than to take a deal.

On the other hand, [defendant], you're a child sex offender and you did terrible things; to allow Jeremy *** to abuse all of your children, but you yourself also were a perpetrator. There is no it was all him and not you. You were a part of it. And you were an accomplice. You're just as guilty as he is.

So[,] I'm left with trying to review a decision by a sitting judge where he, apparently, pursuant to this transcript, considered all of the factors and he made the decision that you deserved 75 years. And I am not going to modify Judge Tognarelli's sentence. I believe that if his sentence is to be modified that is a decision for the Appellate Court.

I'm looking at did he follow all of the requirements of a sentencing hearing. I believe that he did. And I am not going to insert my opinion for his. So[,] the motion to reconsider sentence is denied."

Defendant filed a timely notice of appeal.

¶ 24 On direct appeal, defendant filed a motion for summary relief,[4] arguing that the circuit court's October 27, 2021, order must be vacated and the cause remanded because defense counsel failed to file a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

[4]Defendant did not file briefs on direct appeal.

People v. Leisgang, No. 5-21-0339 (2022) (unpublished summary order under Illinois Supreme Court Rule 23(c)). The State did not object to defendant's motion. *Id.* As such, this court vacated the circuit court's order and remanded the case back to the circuit court with directions, allowing defendant, if she wished and defense counsel concluded it necessary, to file a new postplea motion and have a hearing on any new motion. *Id.* ¶ 5.

¶ 25 On September 13, 2022, defense counsel filed a Rule 604(d) certificate of compliance. That same day, the circuit court held a hearing on remand concerning compliance with Rule 604(d) and defendant's motion to reconsider. From the outset, Judge Napp, after explaining the nature of the case, stated the following with regard to her denial of defendant's motion to reconsider on October 27, 2021:

> "I put on the record then *** [that] part of my reason [for denying her motion] is that I am not a Court of review. That is what the Appellate Court does. I am a trial court judge and when I reviewed the sentence handed down by Judge Tognarelli, when I reviewed it I looked at it, I read all the transcripts, I reviewed everything to do with the case, my consideration was did he consider all the factors in aggravation and mitigation, did he consider the evidence presented, did he consider all of the things that he's required to consider as a judge, and it would appear that he did.
>
> Whether or not I would have given [defendant] 75 years in my mind was not the consideration. It's whether or not Judge Tognarelli, who I wish had heard the Motion to Reconsider Sentence, would have reconsidered his sentence. And I couldn't find anything in the record that would lead me to believe that he didn't follow the rules or the law and that I would be inserting my opinion for his opinion, which isn't what we as trial courts are supposed to do. *** Whether or not I think it's fair that [defendant] got 75 years when the co-defendant got 40 is not the relevant consideration for this Court. That's not to say it's not important, but for me to make that determination that is what I'm not in the position to do. I don't believe I am, but I will always rely upon the Appellate Court to review it in the manner they should and make the decisions they believe are appropriate, and if somebody doesn't like what they say they can appeal it to the Supreme Court if they wish, but that's why we have Courts of review."

Defense counsel informed Judge Napp that defendant stood on her previous motion to reconsider. Judge Napp subsequently denied defendant's motion to reconsider sentence, and defendant filed a timely notice of appeal.

¶ 26 II. Analysis

¶ 27 Defendant first argues on appeal that the circuit court erred by refusing to consider defendant's motion to reconsider sentence on the merits. Specifically, defendant asserts that Judge Napp "*refused to consider*" defendant's motion to reconsider, due to the retirement of Judge Tognarelli. (Emphasis in original.) We disagree.

¶ 28 We note that the parties disagree on the appropriate standard of review. Defendant contends that "[s]ince the facts underlying this issue are undisputed—the court's rationale is clearly stated in the transcripts—this issue raises a purely legal question, which should be reviewed *de novo*." The State argues that the correct standard of review on a motion to reconsider sentence is abuse of discretion.

¶ 29 It is well established that " '[t]he purpose of a motion to reconsider is to bring to the [trial] court's attention a change in the law, an error in the trial court's previous application of existing law, or newly discovered evidence that was not available at the time of the hearing.' " *People v. Jenkins*, 2023 IL App (5th) 210085, ¶ 22 (quoting *People v. $280,020 United States Currency*, 372 Ill. App. 3d 785, 791 (2007)). In general, the circuit court's ruling on a motion to reconsider will be reviewed by this court for an abuse of discretion. *Id*. If, however, the motion to reconsider asks the circuit court only to reevaluate its application of the law to the case as it existed at the time of the judgment, we review the ruling *de novo*. *Id.*

¶ 30 Here, defendant's motion to reconsider sentence requested the circuit court to reconsider certain statutory mitigation factors, including that Jeremy, defendant's codefendant, induced and/or facilitated her criminal conduct, defendant's lack of a criminal history, and that defendant, herself, suffered domestic violence at the time of the offenses. At defendant's hearing on her motions to reconsider, defense counsel argued that the court did not correctly weigh these three

mitigating factors in fashioning defendant's sentence—an issue which this court would review under the abuse-of-discretion standard. Before this court, however, is whether Judge Napp, the successor judge, failed to rule on the merits of defendant's motion to reconsider by refusing to reconsider Judge Tognarelli's decision following his retirement. Defendant argues that this is a legal issue. We address this issue *de novo*. *$280,020 United States Currency*, 372 Ill. App. 3d at 791 (If a motion to reconsider is based on "purported misapplication of existing law, as opposed to a motion to reconsider that is based on new facts or legal theories not presented in the prior proceedings, our standard of review is *de novo*.").

¶ 31 In a criminal case, the circuit court possesses the inherent power to reconsider and correct its own rulings, even when there is no rule or statute that grants it that authority. *Jenkins*, 2023 IL App (5th) 210085, ¶ 22. This is true even if a different judge of the circuit court entered the ruling under reconsideration. *Id.* (citing, *e.g.*, *People v. Brown*, 2018 IL App (4th) 160288, ¶ 38). That said, "although a successor judge clearly has the power to correct orders that the successor judge finds to be erroneous, a successor judge must 'exercise careful consideration'—or, put another way, must exercise, ' "considerable restraint in reversing or modifying previous rulings," '—when the previous rulings of the other judge involve discovery rulings or other matters that involve the exercise of the previous judge's sound discretion." *Id.* (quoting, *e.g.*, *Brown*, 2018 IL App (4th) 160288, ¶¶ 42-44, quoting *Balciunas v. Duff*, 94 Ill. 2d 176, 187-88 (1983)).

¶ 32 Here, a review of the record reveals that Judge Napp vocalized hesitation in modifying the sentence that Judge Tognarelli imposed. While we agree that Judge Napp made several confusing statements referring to her limitations in reviewing the sentence imposed by Judge Tognarelli, the record demonstrates that Judge Napp engaged in a detailed review of the record in rendering her decision. In referencing her review of all transcripts and "everything to do with the case," Judge

Napp indicated that Judge Tognarelli properly reviewed the evidence presented and considered all statutory factors in mitigation and aggravation before sentencing defendant. With this in mind, Judge Napp refused to modify Judge Tognarelli's sentence by inserting her own opinion as to whether or not she, herself, would have sentenced defendant to 75 years. Judge Napp also refused to modify defendant's sentence because Judge Tognarelli "considered all of the things that he's required to consider as a judge." Thus, Judge Napp properly recognized her limitations and exercised restraint in modifying defendant's sentence because the record did not indicate that Judge Tognarelli's decision was erroneously entered.

¶ 33 Therefore, we cannot conclude that Judge Napp failed to address defendant's motion to reconsider on the merits, where Judge Napp reviewed the record and concluded that Judge Tognarelli followed the law and properly weighed the statutory factors in aggravation and mitigation.

¶ 34 Next, defendant argues that the circuit court erred by imposing a sentence grossly disproportionate to the 40-year sentence imposed on Jeremy, "whose offenses were at least as abhorrent, if not more, and who played at least some role in encouraging or compelling her to engage in the criminal acts for which she was convicted, in part by his use of violence against her." We disagree.

¶ 35 The circuit court has broad discretionary powers in imposing a sentence, and its sentencing decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The arbitrary and unreasonable disparity between the sentences of similarly situated codefendants is impermissible. *People v. Taylor*, 318 Ill. App. 3d 464, 477 (2000). Fundamental fairness, however, is not violated simply because one defendant is sentenced to a greater term than another. *People v. McCann*, 348 Ill. App. 3d 328, 339 (2004). While defendants similarly situated should not receive

grossly disparate sentences, equal sentences are not required for all participants in the same crime. *People v. Spriggle*, 358 Ill. App. 3d 447, 455 (2005). A sentencing disparity may be justified by differing degrees of involvement in the crime or any differences in the codefendants' criminal history, character, or rehabilitative potential. *People v. Grisset*, 288 Ill. App. 3d 620, 634 (1997). "It is not the disparity that controls, but the reason for the disparity." *Spriggle*, 358 Ill. App. 3d at 455. This court may not substitute its judgment for that of the circuit court merely because we would have weighed these factors differently. *Stacey*, 193 Ill. 2d at 209. A sentence within statutory limits will not be disturbed absent abuse of discretion. *People v. Cox*, 82 Ill. 2d 268, 279-80 (1980). "An abuse of discretion occurs only if a sentence greatly varies from the spirit and purpose of the law or where it is manifestly disproportionate to the nature of the offense." *People v. Bunning*, 2018 IL App (5th) 150114, ¶ 16.

¶ 36 In applying these principles to the present case, we cannot say that the circuit court abused its discretion by imposing a 75-year term in prison. First, we note this court has held that codefendants are not similarly situated where they have not been convicted of the same set of crimes. *People v. Martinez*, 372 Ill. App. 3d 750, (2007) (citing, *e.g.*, *People v. Eubanks*, 283 Ill. App. 3d 12, 25 (1996)); see also *People v. Stroup*, 397 Ill. App. 3d 271, 275 (2010)). Here, the State offered Jeremy a fully negotiated plea deal of 40 years in the IDOC on four counts of criminal sexual assault, a Class 1 felony, which Jeremy accepted. As a result, the State dismissed 28 remaining counts against him. Defendant, however, rejected the State's fully negotiated plea offer of 40 years in the IDOC, in which the State would dismiss 13 charges against defendant, in exchange for defendant's pleas of guilt to count I, criminal sexual assault, a Class 1 felony (720 ILCS 5/11-1.20(a)(3) (West 2016)), and count IX, predatory criminal sexual assault of a child, a Class X felony (*id.* § 11-1.40(a)(1)). Prior to trial, however, defendant entered into an open plea.

Defendant and Jeremy were not similarly situated, specifically, where defendant pled guilty to Class 1 and Class X felonies, and Jeremy pled guilty to four Class 1 felonies. See *Taylor*, 318 Ill. App. 3d at 477 (the arbitrary and unreasonable disparity between the sentences of similarly situated codefendants is impermissible). As such, the circuit court sentenced defendant to an additional crime that carried with it a more serious consequence.

¶ 37 Moreover, similar to *People v. Anderson*, 2021 IL App (2d) 191001, which both defendant and the State cite in their briefs, this court lacks the ability to meaningfully compare defendant's sentence to her codefendant. In *Anderson*, the defendant argued that his sentence was disproportionate to the 14-year sentences his codefendants received for the same crime. *Id.* ¶ 20. The defendant's codefendants entered into a fully negotiated plea to armed robbery and each received a 14-year sentence. *Id.* ¶ 3. The defendant rejected two negotiated plea offers by the State. *Id.* ¶ 4. Before trial, however, the defendant entered into an open plea for the offense of armed robbery with the removal of the 15-year firearm enhancement. *Id*. The circuit court ultimately imposed an 18-year sentence on the defendant, rejecting the defendant's insistence to compare his sentence—imposed following an open plea of guilty—to his codefendants' sentences—imposed under a fully negotiated plea. *Id.* ¶¶ 18-19.

¶ 38 On appeal, our colleagues in the Second District determined that it lacked the ability to meaningfully compare the defendant's sentence to his codefendants' sentences without a record that contained the codefendants' criminal, social, family, school, and employment histories, and the information that the circuit court had available when sentencing the codefendants. *Id.* ¶ 28. Declining to decide whether any unfair sentencing disparity existed, the appellate court could not meaningfully compare defendant's and his codefendants' sentences, where defendant failed to produce a record sufficient to support his claim. *Id.* ("A defendant who contends that his sentence

is unfairly disparate to that of a codefendant has the burden to produce a record sufficient to support the claim." (citing *People v. Horta*, 2016 IL App (2d) 140714, ¶ 52)).

¶ 39 Similar to *Anderson*, here, defendant failed to provide us with a record from Jeremy's case that would enable this court to compare defendant's and Jeremy's sentences to decide the fairness of the sentencing disparity. See *id*. Defendant argues that Judge Napp, who presided over Jeremy's sentencing, "was in the best position to *make* a finding on the question of whether [defendant's] sentence was disproportionate in comparison to Jeremy's." (Emphasis in original.) Defendant, however, carries the burden, not the circuit court, to produce a record sufficient to support the claim. See *id.*

¶ 40 Because we lack sufficiently detailed information about Jeremy, we cannot say that defendant's sentence was disproportionate to Jeremy's sentence. Moreover, we cannot say that the sentence imposed by the court "greatly varies from the spirit and purpose of the law" or that "it is manifestly disproportionate to the nature of the offense." *Bunning*, 2018 IL App (5th) 150114, ¶ 16. Thus, we conclude that the court did not abuse its discretion by sentencing defendant to a 75-year term in prison for criminal sexual assault and predatory criminal sexual assault of a child.

¶ 41 III. Conclusion

¶ 42 For the reasons stated, we affirm the judgment of the circuit court of Madison County.

¶ 43 Affirmed.