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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-1203
)	
JESUS C. CAMACHO,)	Honorable
)	Joseph G. McGraw,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in sentencing defendant.

¶ 1 A jury convicted defendant, Jesus Camacho, age 19, of aggravated battery with a firearm. 720 ILCS 5/12-4.2(a)(1) (West 2008). The court sentenced defendant to 15 years' imprisonment, within a possible range of 6 to 30 years. On appeal, defendant contends that the trial court abused its discretion in imposing the 15-year sentence. We disagree and affirm defendant's sentence.

¶ 2 I. BACKGROUND

¶ 3 On April 20, 2009, defendant, a member of the Mafia gang, shot Jose Sanchez, a 16-year-old member of the Unknowns gang, in the left thigh. Sanchez was walking to the Auburn Freshman Campus in Rockford. After being shot, Sanchez proceeded to school. Sanchez testified that, initially, he did not tell anyone that he was shot because he did not want to have “a lot of chaos going on.” However, police were notified later that day.

¶ 4 Kevin Harris, a student at Auburn High School, testified that he was walking to school the morning of April 20, 2009, when he witnessed the passenger of a red SUV shoot a gun at Sanchez. Sanchez had been walking by Harris. After being hit, Sanchez dropped to the ground, holding his left leg. Harris called 911 on his cell phone, but his phone battery died before he was able to talk to anyone. Harris identified the man he believed to be the shooter from a color photo line-up, but, at trial, Harris could not recall the man he initially identified.

¶ 5 Defendant testified that he was part of the Mafia gang, and, on April 20, 2009, he picked up two other Mafia gang members, brothers Kevin and Ignacio Herrera, in his red SUV. Ignacio told defendant to move to the passenger seat, while Ignacio took the driver position and Kevin sat in the back. Defendant recalled that the three were driving when they saw Sanchez walking. Ignacio handed defendant a handgun and told him to shoot Sanchez or else his life and his daughter’s life would be in danger. Defendant further testified that Kevin was holding a different gun to the back of his neck. Defendant then shot Sanchez, who was standing about seven feet from the SUV. Defendant acknowledged that there were other students in the area during the shooting.

¶ 6 Kevin Herrera also testified that he and Ignacio were in the red SUV when defendant shot Sanchez, but denied holding a gun to defendant’s neck. Kevin thought defendant only wanted to fight Sanchez.

¶ 7 A series of events occurred the day before the shooting at issue that ultimately played a role in defendant's sentencing. Kevin Herrera testified that a van drove by the Herrera house, and the occupants of the van threw rocks at him and flashed the Unknown gang's sign. Shortly after, defendant and Brian Lazaro picked up Kevin and went to "Vicious's" house where defendant fired a gun at the house. Kevin testified that he knew "Vicious's" name to be "Jose" (Sanchez). Lazaro also testified that he was in the car with defendant and Kevin the day prior when defendant fired a gun at Sanchez's house. Sanchez confirmed that, the day prior, he heard gunshots outside of his house and saw defendant's red SUV drive off. Sanchez did not see who was in the SUV. Defendant testified that he lent his SUV to Lazaro the day before the incident at issue, while he remained at Lazaro's house and had nothing to do with the shooting that day.

¶ 8 Forensic scientist, David Welte, testified that 10 casings were found following the events on April 19, 2009, and April 20, 2009, and that these casings were from the same gun.

¶ 9 The jury convicted defendant of aggravated battery with a firearm. Defendant's case then proceeded to sentencing. At sentencing, defendant's mother, father, uncle, and neighbor testified that defendant is a good, hard-working young man who helps his family financially and does not cause trouble. Defendant also testified at sentencing that he was sorry and regretful, and that he would like to eventually take the General Educational Development test. The defense argued that defendant acted under strong provocation when committing the crime, that there was only minimal injury (where the bullet pierced only Sanchez's leg), and that defendant had strong rehabilitative potential.

¶ 10 The offense for which defendant was convicted was non-probationable with a range of 6 to 30 years' imprisonment. In assessing the mitigating factors, the trial judge found that the following

did *not* apply: (1) whether defendant's criminal conduct caused or threatened serious physical harm to others; (2) whether defendant contemplated that his criminal conduct would cause or threaten serious harm to another; (3) whether defendant acted under strong provocation; (4) whether there were substantial grounds tending to excuse or justify defendant's criminal conduct; and (5) whether defendant was induced or facilitated by someone else to commit the crime. The judge explained that, clearly, defendant's conduct caused harm to others because defendant fired the shots on a public street during a school day when students were present in a school area (factors one and two). The judge further found that he was not persuaded that defendant was provoked or compelled to commit the crime (factors three through five).

¶ 11 However, the trial judge found that the following mitigating factors did apply: (1) defendant did not have a history of significant prior criminality; (2) defendant's criminal conduct was a result of circumstances unlikely to recur; and (3) defendant was unlikely to commit another crime. Additionally, the court took into account the fact that defendant had a dependent daughter.

¶ 12 The trial judge determined that the most pertinent aggravating factor was the need to deter others from committing the same crime. The judge noted that the events on April 19, 2009, did occur and were relevant to the sentencing. The judge reasoned that the community was "being overwhelmed by people with guns" and, thus, a sentence "to deter others from committing the same type of crime" was needed. The judge noted a 30-year sentence would have been justified because defendant shot a person on the way to school, but, because defendant had rehabilitative potential, 15 years' imprisonment was appropriate. This appeal followed.

¶ 13

II. ANALYSIS

¶ 14 The issue on appeal is whether defendant's sentence for aggravated battery with a firearm was excessive. The sentence for aggravated battery with a firearm is 6 to 30 years' imprisonment. Defendant was sentenced to 15 years' imprisonment. Defendant argues that his sentence is disproportionate to the seriousness of the crime, and the trial judge failed to account for his rehabilitative potential. We disagree with defendant and affirm.

¶ 15 We first recognize that defendant did not file a post-sentencing motion, and, as a result, this argument is forfeited. However, although forfeiture may limit a party's ability to raise an argument, it does not limit the court's right to consider an argument. *People v. Benford*, 349 Ill. App. 3d 721, 734 (2004). As sentencing affects substantial rights, we address defendant's argument below.

¶ 16 The trial court has broad discretion when imposing a sentence, and, as a reviewing court, we give great deference to the court's sentence. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial judge has the ability to weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits. *Id.* The judge, "having observed the defendant and proceedings, has a far better opportunity to consider the factors than the reviewing court, which must rely on the 'cold' record." *People v. Fern*, 189 Ill. 2d 48, 53 (1999). Consequently, the reviewing court cannot substitute its judgment in sentencing only because it would have weighed the factors differently than the trial court. *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 17 As long as the trial court considers the relevant mitigating factors and the proper aggravating factors, it has wide latitude in sentencing a defendant within the statutory range for the offense. *People v. Dominguez*, 255 Ill. App. 3d 995, 1004 (1994). The weight the trial court gives to mitigating and aggravating factors is dependent on the circumstances of each case. *People v. Bilski*, 333 Ill. App. 3d 808, 819 (2002). However, the discretion of the trial court is not unrestrained.

Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967) allows a reviewing court to lessen the sentence imposed by a trial court where there is an abuse of discretion. A sentence is considered an abuse of discretion “where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.” *Stacey*, 193 Ill. 2d at 210. This power given to the reviewing court should always be used with caution. *People v. O’Neal*, 125 Ill. 2d 291, 300 (1988).

¶ 18 In the case at hand, we find that the trial court did not abuse its discretion in imposing a 15-year sentence. The sentence was within the statutory range for the crime defendant committed. Moreover, the record shows that the trial judge considered relevant mitigating factors, such as defendant lacking a history of criminal conduct and defendant’s criminal conduct being the result of circumstances unlikely to recur. 730 ILCS 5/5-5-3.1 (a)(7), (8) (West 2008). A sentencing judge is not required to impose a minimum term or reduce a term because of the existence of mitigating factors. *People v. Madura*, 257 Ill. App. 3d 735, 741 (1994). The court found that defendant should be sentenced to more than a minimum term of imprisonment due to the application of appropriate aggravating factors, including the need to deter others from committing the same crime. 730 ILCS 5/5-5-3.1 (a)(7) (West 2008). The proper consideration of these factors demonstrates that the trial judge did not abuse his discretion in sentencing defendant.

¶ 19 Defendant contends that the court did not adequately account for defendant’s rehabilitative potential, and that the sentence was disproportionate to the seriousness of the offense (Sanchez was shot only in the leg). These contentions are unfounded by the record. The trial judge found that the facts of the case alone justified a sentence of 30 years, but, because of defendant’s rehabilitative potential, a sentence of 15 years was sufficient. Further, the seriousness of the crime or the need to

protect the public can outweigh the goal of rehabilitation. *People v. Hindson*, 301 Ill. App. 3d 466, 475 (1998). As the trial judge made clear, the crime defendant committed was very serious because defendant shot a gun multiple times in a public area where students were walking to school.

¶ 20 Accordingly, we affirm the judgment of the trial court.

¶ 21 **III. CONCLUSION**

¶ 22 For the aforementioned reasons, we affirm the trial court's judgment.

¶ 23 Affirmed.