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2012 IL App (3d) 100789-U

Order filed November 14, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-10-0789
)	Circuit No. 08-CF-2956
)	
ANTHONY MATTHEWS,)	Honorable
)	Stephen D. White,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant.
- ¶ 2 Defendant, Anthony Matthews, was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) and aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)). The trial court sentenced defendant to an aggregate term of 68 years' imprisonment for both offenses. Defendant appeals, arguing that: (1) his sentence was excessive because the trial court failed to consider factors in mitigation; and (2) the trial court improperly considered a

factor in sentencing defendant for aggravated battery with a firearm. We affirm.

¶ 3

FACTS

¶ 4 On December 15, 2008, the State filed a five-count criminal complaint against defendant.

The complaint alleged two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)), two counts of attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2008)), and one count of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)).

According to the complaint, defendant committed the murder of LaDeana Hite and the attempted first degree murder of Jeanette Morgan and Ashli Hite. The offense of aggravated battery with a firearm was committed against Morgan.

¶ 5 The cause proceeded to a jury trial. At trial, the State's evidence established that defendant, Morgan, and LaDeana used crack cocaine the night of the incident. At some point, defendant became upset and started accusing people of taking his drugs. LaDeana told defendant to leave her house, and defendant took out a gun. Morgan witnessed defendant fire the gun, and she attempted to run out of the house. Before she could exit, defendant shot her, and she began to bleed. LaDeana ran into the bedroom of her daughter, Ashli. Defendant followed and shot her. Ashli witnessed her mother fall against the dresser. Thereafter, defendant pointed the gun at Ashli and pulled the trigger. The gun jammed, and defendant left the room. Ashli and Morgan made it outside to safety. LaDeana died as a result of the gunshot.

¶ 6 Defendant also testified. He admitted that he, Morgan, and LaDeana used crack cocaine the night of the incident. However, defendant testified that LaDeana became confrontational and hit him with a spoon and attempted to stab him with a knife. Thereafter, an intruder entered the residence with a gun and demanded money. Defendant claimed that he managed to escape the

intruder and later found LaDeana, who had been shot, in Ashli's bedroom. Defendant did not call the police because he was afraid that the intruder would return.

¶ 7 At the conclusion of the trial, defendant was found guilty of first degree murder of LaDeana and aggravated battery with a firearm against Morgan, but he was acquitted of the attempted first degree murders of Morgan and Ashli. The jury also found that defendant personally discharged a firearm which proximately caused death to another person.

¶ 8 At the sentencing hearing, defense witnesses testified that the 47-year-old defendant was a hardworking individual who took care of his family. He allowed his parents to live rent-free in a home he owned, and his siblings looked to him for emotional and financial support. Witnesses also stated that defendant had rarely been in trouble with the law prior to his convictions in this case. His sole prior conviction was in 1990, for filing a false report. In addition, he had been gainfully employed at a nursing home and a correctional facility for a number of years.

¶ 9 Upon sentencing defendant, the trial court stated that it had "taken into account all the factors in aggravation and mitigation as outlined by statute and case law including the rehabilitating potential of the defendant[.]" The court sentenced defendant to 27 years' imprisonment for first degree murder. It noted that because the jury had found defendant personally discharged a firearm which proximately caused death to another person, an additional 25 years was required. When discussing defendant's sentence for aggravated battery with a firearm against Morgan, the court made reference to defendant's actions toward Ashli. The court then sentenced defendant to 16 years for aggravated battery with a firearm. The sentences were to be served consecutively, resulting in an aggregate sentence of 68 years' imprisonment. Defendant appeals.

¶ 10

ANALYSIS

¶ 11 Defendant first argues that his sentence was excessive. The Illinois Constitution mandates that all penalties be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. However, the determination and imposition of a sentence involves considerable judicial discretion, and we will not reverse a trial court's sentence unless we find that the court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203 (2000). A sentence that falls within the statutory range does not amount to an abuse of discretion unless it is manifestly disproportionate to the nature of the offense. *People v. Jackson*, 375 Ill. App. 3d 796 (2007). Although the reviewing court may reduce a sentence where an abuse of discretion has occurred, the reviewing court should proceed with great caution and care and must not substitute its judgment for that of the trial court simply because it would have weighed the factors differently. *Id.*

¶ 12 In this case, defendant was convicted of first degree murder and aggravated battery with a firearm. First degree murder is punishable by a term of imprisonment of not less than 20 years and not more than 60 years. 730 ILCS 5/5-4.5-20(a) (West 2008). Defendant's sentence for first degree murder was 27 years, near the low end of the range. Because the jury found that defendant personally discharged the weapon that caused death or great bodily harm, an additional 25 years' imprisonment had to be added to defendant's sentence for murder. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2008). Aggravated battery with a firearm is a Class X felony (720 ILCS 5/12-4.2(b) (West 2008)) with a sentencing range of not less than 6 years and not more than 30 years (730 ILCS 5/5-4.5-25(a) (West 2008)). Defendant was sentenced to 16 years for aggravated battery with a firearm. The total range for defendant's crimes was not less than 51

years and not more than 115 years. Defendant's aggregate sentence was 68 years' imprisonment, near the lower end of the range.

¶ 13 Defendant claims that the trial court abused its discretion when it sentenced him to an aggregate term of 68 years' imprisonment because the court failed to consider certain factors in mitigation. We find this argument unpersuasive. First, the mere existence of mitigating factors does not mandate imposition of the minimum sentence. *People v. Flores*, 404 Ill. App. 3d 155 (2010). Second, there is a presumption that a trial court considered all relevant factors, including defendant's potential for rehabilitation, in determining a sentence. *Id.* To overcome that presumption, the defendant must present explicit evidence from the record that the trial court did not consider mitigating factors. *Id.* In this case, the record does not overcome that presumption. In fact, the record demonstrates that the trial court stated that it had considered the factors in mitigation, including defendant's potential for rehabilitation. Therefore, based on the explicit words of the trial court and the circumstances of the offense, we conclude that the trial court did not abuse its discretion when it sentenced defendant to an aggregate term of 68 years' imprisonment.

¶ 14 Defendant next argues that the trial court improperly considered his actions towards Ashli when it sentenced him for aggravated battery with a firearm committed against Morgan. However, we note that defendant did not object to the trial court's comments at sentencing, nor did he raise this issue in a postsentencing motion. He raises this issue for the first time on appeal, and he does not argue for an exception to the waiver doctrine. As such, defendant has failed to preserve the issue for our consideration. See *People v. Blanton*, 2011 IL App (4th) 080120.

¶ 15

CONCLUSION

¶ 16 The judgment of the circuit court of Will County is affirmed.

¶ 17 Affirmed.