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2012 IL App (3d) 110287-U

Order filed August 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 14th Judicial Circuit,
Plaintiff-Appellee,) Henry County, Illinois,
)
v.) Appeal No. 3-11-0287
) Circuit No. 09-CF-321
LEVI J. SANDERS,)
) Honorable
Defendant-Appellant.) Charles H. Stengel,
) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

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

¶ 2 Defendant, Levi J. Sanders, was convicted of one count of criminal sexual assault (720 ILCS 5/12-13(a)(4) (West 2008)), three counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2008)), and one count of battery (720 ILCS 5/12-3(a)(1) (West 2008)). He was sentenced to concurrent terms of three years' imprisonment on the aggravated criminal sexual abuse counts. Those sentences were set to run consecutively with a seven-year sentence for criminal sexual assault.

Defendant was also sentenced to 364 days in jail on his battery conviction. Defendant appeals, arguing that his aggregate 10-year sentence was excessive because it was at variance with the spirit and purpose of the law and disproportionate to his conduct. We affirm.

¶ 3

FACTS

¶ 4 Defendant was indicted on two counts of criminal sexual assault (720 ILCS 5/12-13(a)(4) (West 2008)), three counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2008)), one count of unlawful delivery of alcoholic liquor to a minor (235 ILCS 5/6-16(a)(iii) (West 2008)), and one count of battery (720 ILCS 5/12-3(a)(1) (West 2008)). The cause proceeded to a bench trial.

¶ 5 At trial, K.R.F. testified that she was 14 years old at the time of the incidents with defendant. On one occasion, K.R.F. was watching a movie with defendant's two sons when defendant sat next to her and placed a blanket around the two of them. Defendant placed his hand on K.R.F.'s breasts and vagina. He also grabbed K.R.F.'s wrist and forced her hand to make contact with his penis. About three weeks after the first incident, K.R.F. was sleeping over at defendant's house when he woke her up in the middle of the night, removed her clothes, and attempted to have intercourse with her. During this encounter, defendant's penis came into contact with K.R.F.'s vagina. K.R.F. told defendant to stop; however, he ignored her request and tried to forcefully penetrate her. Eventually, defendant's wife woke up, and K.R.F. was able to get away.

¶ 6 C.H. also testified for the State. She stated that she was 16 years old when defendant approached her and threw his arms around her. Defendant then pulled her against him and put his hand inside her sweatshirt pocket. Thereafter, defendant put his hand underneath C.H.'s shirt and placed his fingers inside of her jeans. At that point, C.H. was able to break away from defendant, and the encounter ended.

¶ 7 The trial court eventually convicted defendant of one count of criminal sexual assault, three counts of aggravated criminal sexual abuse, and one count of battery. Prior to the sentencing hearing, a presentence investigation report (PSI) was ordered. At the sentencing hearing, the court considered the PSI as well as arguments made by the State and defendant. While pronouncing its sentence, the trial court stated that it had considered the factors in mitigation and aggravation. In mitigation, the court noted that defendant's conduct did not cause or threaten serious physical harm and that defendant: (1) had shown remorse; (2) had no criminal history; (3) had a problem and needed treatment; and (4) was likely to comply with the terms of probation. In aggravation, the court found that a sentence was necessary to deter others from committing the same crime and that defendant had been in a position of trust with the victim and had violated that trust.

¶ 8 The court sentenced defendant to concurrent terms of three years' imprisonment on each of the aggravated criminal sexual abuse counts. Those sentences would run consecutively with a seven-year sentence for criminal sexual assault. Defendant was also sentenced to 364 days in jail pursuant to his battery conviction. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 Defendant argues that his aggregate 10-year sentence is excessive and should be reduced. 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.*

¶ 11 Criminal sexual assault is a Class 1 felony (720 ILCS 5/12-13(b)(1) (West 2008)) with a sentencing range of not less than 4 years and not more than 15 years (730 ILCS 5/5-8-1(a)(4) (West 2008)). Defendant's sentence for criminal sexual assault was seven years, near the low end of the range. Aggravated criminal sexual abuse is a Class 2 felony (720 ILCS 5/12-16(g) (West 2008)) with a sentencing range of not less than 3 years and not more than 7 years (730 ILCS 5/5-8-1(a)(5) (West 2008)). Defendant was sentenced to three years, the minimum, on each of his three aggravated criminal sexual abuse convictions. Finally, battery is a Class A misdemeanor (720 ILCS 5/12-3(b) (West 2008)) with a possible sentence of 364 days in jail (730 ILCS 5/5-8-3(a)(1) (West 2008)). Defendant's sentence for battery was 364 days.

¶ 12 We find that the trial court did not abuse its discretion when it sentenced defendant to an aggregate term of 10 years' imprisonment. Defendant claims that the sentence was disproportionate to his conduct. Initially, we note that defendant's conduct, which involved multiple acts of sexual contact with minors, was very serious. We also note that the trial court sentenced defendant near or at the low end of the statutory range for criminal sexual assault and aggravated criminal sexual abuse. Further, the record establishes that the trial court reviewed the PSI and considered the proper factors in aggravation and mitigation. Therefore, based on our review of the record, we do not find that the trial court abused its discretion when it sentenced defendant.

¶ 13

CONCLUSION

¶ 14 The judgment of the circuit court of Henry County is affirmed.

¶ 15 Affirmed.