

NOTICE
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2012 IL App (4th) 110584-U

NO. 4-11-0584

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 13, 2012
Carla Bender
4th District Appellate
Court, IL

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | McLean County |
| MARC D. BRADBURY, |) | No. 10CF545 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | James E. Souk, |
| |) | Judge Presiding. |

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to an aggregate 50 years' imprisonment.

¶ 2 In January 2011, defendant, Marc D. Bradbury, pleaded guilty to two counts of predatory criminal sexual assault of S.W. In March 2011, the trial court sentenced him to consecutive 25-year prison terms for an aggregate sentence of 50 years' imprisonment.

Defendant appeals, arguing the court abused its discretion in sentencing him to 50 years in prison. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 16, 2010, the State charged defendant by indictment with four counts of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2008)) and two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2008)).

¶ 5 During defendant's January 6, 2011, plea hearing, the parties notified the trial court defendant had agreed to plead guilty to counts I and II (predatory criminal sexual assault) in exchange for the State's agreement to dismiss the remaining counts. There was no agreement as to sentence. Count I alleged on May 8, 2010, defendant, who was 58 years old at the time, committed an act of sexual penetration involving his penis and 8-year-old S.W.'s vagina. Count II alleged defendant committed an act of sexual penetration involving his mouth and S.W.'s vagina.

¶ 6 The trial court admonished defendant he was pleading guilty to Class X felonies and was ineligible for probation. The court explained he was eligible for an enhanced sentence of 6 to 60 years' imprisonment on each count and the sentences would have to be served consecutively. The court also advised defendant he would have to serve 85% of any sentence imposed. Defendant acknowledged he understood. The State then provided the following factual basis:

"The Defendant was a 58-year-old man at the time of these offenses. The victim was eight years old. The Defendant was a family friend of the victim's family and lived next door to her aunt for a period of time.

The victim would routinely spend weekends with her aunt and was friends with the Defendant's eight-year-old son. The victim disclosed to her mother that she no longer wanted to see the Defendant or go anywhere with him because he would do stuff to her.

During the interview that was conducted at the Children's

Advocacy Center, the victim disclosed that she would go to the Defendant's house next to her aunt, and his son would leave with his mother, and she would stay behind. She stated on one occasion the Defendant took her to the basement of his home and tried to get her to touch his penis and rub it with her hand by placing her hand on his penis and rubbing it.

She pulled her hand away, and then he tried to get her to suck on his penis by placing it on her mouth and moving it. She stated that she turned her head away and started to go up the stairs to leave the basement. She stated the Defendant followed her and told her that he could not get his wife to do this with him, so he had to do it with someone.

She stated that on another occasion the Defendant would take off her shoes and suck on her toes, and then on another occasion, this time at the Defendant's new residence in Normal, the Defendant picked her up from her mother's house, he told her mother that he was taking her to see his son drum, and her mother allowed her to go.

She stated this happened the day before Mother's Day 2010, and she stated he took her to his residence and no one was there, not even his son. She stated he took her to the bedroom and began rubbing his penis. He told her to take off her pants, she said no, so he took them off and placed her on the bed.

She stated that stuff came out of his penis and he rubbed it on her vagina with his penis, and he then bent over and licked her vagina. She stated she moved, but he pulled her back. She stated he placed his fingers on her vagina until she told him that it hurt to get him to stop.

She stated she moved and was able to get up and get dressed, and then he took her to Shoe Carnival and bought her some shoes before taking her back home. She stated he told her not to tell anyone because he would get in trouble. She stated she finally told her mother because she could not hold it in anymore.

The victim stated that [defendant] told her to tell people that she was giving him a foot massage."

Defendant stipulated to the State's factual basis. The court accepted defendant's guilty plea and set the matter for sentencing.

¶ 7 At the onset of defendant's March 4, 2011, sentencing hearing, defendant's attorney notified the trial court defendant wished to file a motion to withdraw his guilty plea. The court accepted defendant's motion, but stated it would consider the motion after sentencing.

¶ 8 During the hearing, the State introduced People's Exhibit No. 1, a digital video disc (DVD) of S.W.'s interview at the Advocacy Center, as evidence in aggravation. S.W.'s statements during the interview mirrored those contained in the State's factual basis.

¶ 9 The State also presented testimony from Rebecca Rogers. Rogers testified her sister Pam, who is nine years older than Rogers, was married to defendant in the mid-1970's.

Rogers testified she was alone in the house the summer she was 11 years old. She awoke one morning to find defendant in her room, sitting on her side of the bed, with his hand on her breast. According to Rogers' testimony, over "the next four years" defendant would "show up" in her bedroom when no one was home. Rogers testified, "he knew that I was home alone, and he knew that my parents were working, and he just helped himself inside." Rogers testified one such incident involved her waking up to see defendant standing at the foot of her bed "completely naked." Defendant tried to touch her on "50 or more" occasions but she always fought him off. Rogers recalled one instance where he forced her to kiss him and "stuck his tongue down [her] throat" while her family was downstairs. Another incident involved her fighting off defendant when he pinned her down and tore off her underwear.

¶ 10 Margaret Shirley, Rogers' mother, also testified at the sentencing hearing. Shirley testified she noticed the word "incest" written on a page of Rogers' diary. Shirley asked her daughter about it but Rogers did not want to discuss the matter. Shirley testified she consulted an attorney about reporting defendant. However, the attorney discouraged her from reporting him because they "had nothing to prove that [it] happened" and "it would be her word against his word." Shirley then spoke with defendant and told him if he did not "get some help" she would report him to the police. Shirley testified defendant went to his appointments for approximately five months but then stopped attending altogether.

¶ 11 The State argued, *inter alia*, defendant took advantage of his position of trust with regard to S.W. and a long sentence was necessary to deter others from committing similar acts. The State also argued defendant's rehabilitative potential was low, citing his failure to get help "over 30 years ago." The State requested a 60-year sentence (30 years on each count).

¶ 12 Defendant's counsel argued Rogers' allegations were based on actions occurring over 30 years ago. Counsel argued, other than a traffic ticket, defendant had a clean criminal record. Counsel pointed out defendant was gainfully employed, supported a family, and had no history of drug abuse. Counsel argued defendant's willingness to plead guilty indicated he took responsibility for his actions. Defendant's counsel also argued the likelihood defendant would reoffend was low because of how old he would be at the time of his eventual release. Defendant requested a 12-year sentence (6 years on each count).

¶ 13 At the conclusion of the hearing, the trial court sentenced defendant to 25 years' imprisonment for each count. Under the mandatory consecutive sentencing statute, the two 25-year terms would run consecutively.

¶ 14 Following an April 14, 2011, hearing, the trial court denied defendant's motion to withdraw his guilty plea.

¶ 15 On May 4, 2011, defendant filed a motion to reconsider sentence, which the trial court denied.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues the trial court abused its discretion in sentencing him to 50 years' imprisonment. Specifically, defendant contends the court placed too much emphasis on the prior uncharged allegations and too little emphasis on the fact he had a "clean record for his entire life." We note defendant does not argue Rogers' testimony was improper. Instead, defendant contends only that the court afforded it too much weight. We disagree.

¶ 19 A trial court has broad discretion in imposing a sentence. *People v. Patterson*, 217

Ill. 2d 407, 448, 841 N.E.2d 889, 912 (2005). " 'In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.' " *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)). "Because the trial court is in a better position to observe the witnesses and consider the relevant factors, its sentencing determination is entitled to great deference." *People v. Kenton*, 377 Ill. App. 3d 239, 245, 879 N.E.2d 402, 407 (2007). Thus, a trial court's decision as to the appropriate sentence will not be overturned on appeal "unless the court abused its discretion and the sentence is manifestly disproportionate to the nature of the case." *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1093-94 (2006). An abuse of discretion may be found where the sentence is excessive and cannot be justified by any reasonable review of the record. *People v. Phippen*, 324 Ill. App. 3d 649, 651-52, 756 N.E.2d 474, 477 (2001).

¶ 20 Defendant pleaded guilty to two counts of predatory criminal sexual assault of a child, both Class X felonies with a sentencing range between 6 and 60 years' imprisonment (720 ILCS 5/12-14.1(a)(1), (b) (West 2008)). We note the mandatory consecutive sentencing statute (730 ILCS 5/5-8-4(a)(ii) (West 2008) (now 730 ILCS 5/5-8-4(d)(2) (West 2010))) requires a consecutive sentence for predatory criminal sexual assault of a child. The trial court sentenced defendant to 25 years in prison on each count. Thus, defendant's aggregate 50-year prison sentence was within the statutory range. We will not disturb a sentence within the permissible range absent an abuse of discretion. *People v. Perruquet*, 68 Ill. 2d 149, 153, 368 N.E.2d 882, 883 (1977).

¶ 21 In this case, the trial court stated it considered "all the statutory factors in aggravation and mitigation" as well as the evidence presented, including the witnesses' testimony, the exhibits, and the victim-impact statements. The court also stated it reviewed S.W.'s videotaped interview. While the court recognized defendant had "no significant prior criminal record," it weighed that against the history of criminal activity testified to by Rogers, who the court found very credible. In doing so, however, the court acknowledged it also had to consider the fact "a substantial number of years ha[d] passed" between that activity and the instant activity. We see no indication the court placed undue emphasis on or afforded more weight to Rogers' testimony as compared to the severity of defendant's acts. Here, defendant was eligible for a maximum aggregate sentence of 120 years in prison. The court, after considering the aggravating and mitigating factors, fashioned an aggregate 50-year sentence, which was well within the statutory range. The court did not abuse its discretion in sentencing defendant to an aggregate term of 50 years in prison.

¶ 22 III. CONCLUSION

¶ 23 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 24 Affirmed.