2013 IL App (1st) 112036-U

FIRST DIVISION
SEPTEMBER 16, 2013

No. 1-11-2036

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 6721
	)	
JACER MEDINA,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Connors and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 56-year sentence for first-degree murder is not excessive where it is within the normal sentencing range for the offense, and the record shows the trial court gave proper consideration to all of the factors in aggravation and mitigation.

¶ 2 Following a 2011 jury trial in the circuit court of Cook County, defendant Jacer Medina was convicted of first-degree murder for the 1994 shooting of Ricky McDaniel. The trial court found that the "overwhelming" evidence showed that defendant committed a "cold-blooded murder" that amounted to "an execution" of McDaniel, and sentenced defendant to a term of 56 years of imprisonment. On appeal, defendant solely contends that his sentence is excessive because the trial court failed to give adequate consideration to his mitigating evidence, including his youth at the time of the offense and his high potential for rehabilitation. We affirm the judgment of the circuit court of Cook County.

¶ 3 Defendant does not challenge his murder conviction and acknowledges that McDaniel died

as a result of the six gunshot wounds inflicted by him. Consequently, as the facts in this case are undisputed, a detailed discussion of the evidence presented at trial is unnecessary. The evidence established that in February 1994, defendant was a passenger in a car driven by Eduardo Flores that sped through the streets of a trailer park in Harvey, Illinois, sideswiped a parked car and fled the scene. Several minutes later, defendant and Flores returned to the area, and McDaniel and Grady Bell blocked Flores's car with their cars. The four men, all of whom resided in the trailer park, became engaged in a heated verbal confrontation. When the police arrived, McDaniel and Bell left the scene.

¶ 4 On the evening of April 9, 1994, McDaniel was driving on Dixie Highway near the trailer park with his fiancee, Dawn Adcock, in the passenger seat, and Adcock's seven-year-old daughter, Victoria, in the back seat. Flores drove past them in the opposite direction and sounded his car horn. Defendant rode in the passenger seat of Flores's car, and a third unidentified man was also in the car. Flores made a U-turn and followed McDaniel, who briefly stopped at a gas station. When McDaniel left the gas station, Flores drove slowly ahead of him and moved into a left turn lane. After McDaniel passed him, Flores got behind McDaniel, then pulled alongside the driver's side of McDaniel's car. Defendant yelled at McDaniel, "I'm going to kill you motherfuckers." Flores rammed the passenger's side of his car into the driver's side of McDaniel's car twice, and pushed McDaniel's car with the side of his car. Flores' actions forced McDaniel's car to stop on a curb, where it was blocked by a fence and a pole. Defendant then pulled out a revolver. McDaniel unsuccessfully tried to back up his car. When McDaniel tried to drive forward, Flores rammed his car into McDaniel's car a third time, pinning McDaniel's car against the fence. Defendant then extended his arm into the open window of McDaniel's car and shot McDaniel from a distance of two feet. McDaniel reached into the backseat and told Victoria to lay down, then leaned on top of Adcock and covered her with his body. Defendant continued shooting, firing a total of six shots at McDaniel. McDaniel crawled out the passenger door of his car. Defendant then pointed the gun at

Adcock's head and pulled the trigger, but the gun was empty. Subsequently, defendant and Flores fled the area.

¶ 5 In February 2008, defendant was arrested in Memphis, Tennessee, after being profiled on the television show "America's Most Wanted." After waiving his *Miranda* rights, defendant gave a video-recorded statement in which he admitted firing five gunshots at McDaniel. In his video-recorded statement, defendant stated he was 20 years old at the time of the shooting. After the shooting, defendant and Flores drove straight to Texas. Over the next four years, defendant moved to various locations including North Carolina, Florida, Mexico, and Dallas, Texas. Defendant then moved to Memphis, where he lived for 10 years. During that time, defendant married, had two children, and was employed as a dishwasher and drywall finisher.

¶ 6 At sentencing, Adcock read her victim impact statement describing her pain and suffering, and the "hell on earth" McDaniel's murder had been for her and her family. Defendant's niece, Jessica Garcia, read a statement explaining that defendant had lived in a small village in Mexico where his father abandoned the family, and defendant came to the United States when he was 16 years old in search of a better life. Garcia asked the court to have mercy on defendant for the sake of his children.

¶ 7 The State asked the court to impose the maximum sentence of 60 years of imprisonment, expressly noting that defendant would serve only 50% of any term imposed because the murder was committed in 1994, prior to the enactment of the truth-in-sentencing laws. The State pointed out that if defendant received a 60-year sentence, he would actually serve only 30 years, and argued that 30 years is not a long sentence for the murder he committed.

¶ 8 In aggravation, the State asked the court to consider that McDaniel did not have the opportunity to marry and have children as defendant did during the years he was free and evading capture. The State argued that defendant emptied his gun into McDaniel, and, believing he still had one bullet left, attempted to shoot Adcock in the head. The State further argued that defendant had

no consideration for seven-year-old Victoria, who was in the back seat. The State acknowledged that defendant had no felony convictions since the murder, but argued that he never took responsibility for his actions, and instead, fled and lived his life as he pleased. In addition, the State argued that the fact that defendant was older and wiser now did not diminish the fact that he "brutally murdered" McDaniel.

¶ 9 Defense counsel argued that, although defendant had to be punished for his actions, the court still had to consider his rehabilitative potential. Counsel argued that defendant obeyed the law while he was "hiding," which was proof he could be rehabilitated. Counsel noted that the presentence investigation report (PSI) showed that defendant used to drink. In addition, counsel argued that defendant's health was deteriorating, and a 30-year sentence would be harsh for him.

¶ 10 In allocution, defendant stated that the only person he had problems with in his life was McDaniel. Defendant claimed he used to hide from McDaniel because McDaniel stalked him and blocked his path wherever he went. Defendant further claimed that McDaniel tried to run him over with his motorcycle. Defendant said that McDaniel once wrongly accused him of disrespecting McDaniel's girlfriend. Defendant stated that while people now characterize McDaniel as a perfect person, they did not know the reality and truth of what occurred. Defendant stated that he was drunk at the time of the offense, that he did not know exactly what happened, and that he did not leave the area voluntarily. Defendant claimed he had never been arrested nor had he committed any other mistakes in his life. He further stated that he respected everyone, and never got into a fight in jail. Defendant said it was his bad luck to run into a person like McDaniel who caused him to act differently than he would normally act.

¶ 11 The trial court expressly stated that it considered all the factors in aggravation and mitigation, as well as all the information contained in the PSI, Adcock's victim impact statement, Garcia's statement, and letters written on behalf of defendant that defense counsel gave to the court. The court then stated:

"To say that the evidence in this case was overwhelming would be an understatement. The evidence was so overwhelming that Mr. Medina committed this, for lack of a better word, cold-blooded murder of Mr. McDaniel.

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But to say that this is anything short of an execution, again, would be – that would be an understatement also. This is something that came out of a TV show. Driving down the highway, Western Avenue, bumping into the car, bumping into the car; when the car finally stops, leaning out and killing – cold-blooded killing of Mr. McDaniel. What I also find aggravating is the – What does the Defendant do right after this, is he goes over to Ms. Adcock and attempts to, I assume, cause great-bodily harm to her. But he apparently miscounted his bullets because the gun was empty.

Mr. Medina, you say that you respect everyone – you always respect everyone. You certainly did not respect everyone on that day. If this man was causing you problems, then you either go to the police or you move. You haven't told me anything that would be – that you could justify in the least your actions of that day where, again, you committed this cold-blooded murder of Mr. McDaniels [*sic*].

Again, it's absolutely senseless violence. And you talk about drinking during the time period, but I disagree with your – I don't agree with you when you say that because obviously your statement that you gave to the Assistant State's Attorney indicated you knew exactly what was happening when you committed the crime."

The trial court then sentenced defendant to a term of 56 years of imprisonment.

¶ 12 The trial court subsequently denied defendant's motion to reconsider his sentence, by stating "this was an execution style slaying of this unfortunate young man in the presence of family members, his fiancee, and fiancee's daughter. I think the sentence is more than fair."

¶ 13 On appeal, defendant solely contends his sentence is excessive because the trial court failed to give adequate consideration to his mitigating evidence, including his youth at the time of the offense, his proven ability to be rehabilitated, his six years as a family man, his lack of a significant prior criminal history, and the fact that he had no felony convictions since McDaniel's murder. Defendant argues that while the trial court said it had considered all the factors in aggravation and mitigation, the court focused only on the seriousness of the offense. Defendant further argues that he was only three to four years older than a 17-year-old juvenile, and his behavior in committing this murder was an impulsive, reckless act influenced by Flores and "the product of his youthful immaturity."

¶ 14 Defendants convicted of first-degree murder are subject to a sentencing range of 20 to 60 years of imprisonment. 730 ILCS 5/5-8-1(a)(1)(a) (West 1994). The trial court has broad discretion in imposing an appropriate sentence, and a sentence that falls within the statutory range will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Sentencing decisions are entitled to great deference on appeal because the trial court is in a superior position to determine the appropriate sentence based on its personal observation of defendant and the proceedings, and its opportunity to weigh the relevant sentencing factors including defendant's credibility, demeanor, moral character, mentality, social environment, habits and age. *Id.* at 213. It is presumed the trial court considered the mitigating evidence contained in the record, and although defendant's potential for rehabilitation must be considered, it is not given

greater weight than the seriousness of the offense. *People v. Anderson*, 325 Ill. App. 3d 624, 637 (2001). Furthermore, when the trial court determines a severe sentence is warranted, defendant's age has little import. *People v. Rivera*, 212 Ill. App. 3d 519, 526 (1991). It is not this court's function to weigh the sentencing factors differently and substitute our judgment for that of the trial court. *Alexander*, 239 Ill. 2d at 213.

¶ 15 Here, we find that defendant's sentence was not excessive and the trial court did not abuse its discretion when it imposed the 56-year prison term. As acknowledged by defendant, the record shows that the trial court expressly stated that it considered all the factors in aggravation and mitigation, as well as the information contained in defendant's PSI, the statement from defendant's niece, and letters written on behalf of defendant that defense counsel provided to the court. The trial court, however, found that a severe sentence was warranted in this case based on the seriousness of the offense where defendant committed a "cold-blooded murder" that amounted to "an execution style slaying" of McDaniel in the presence of his family. The court found additional aggravating evidence in the fact that defendant had attempted to shoot Adcock in the head.

¶ 16 The record further shows that the trial court considered defendant's statement in allocution and found no credibility in his claim that he was drunk at the time of the shooting and did not know what happened. The court found this claim to be directly contradicted by defendant's video-recorded statement in which he indicated he knew exactly what had occurred. The court also noted defendant's contention that McDaniel had caused him problems, but found that none of defendant's claims justified his "cold-blooded murder" of McDaniel.

¶ 17 We reject defendant's attempt to minimize his actions by characterizing McDaniel's murder as an impulsive, reckless act that was "the product of his youthful immaturity." Defendant's attempt to equate himself with a 17-year-old juvenile is unpersuasive where the record shows that defendant committed this murder one month before his 21st birthday. During his video-recorded statement, defendant specifically stated that he "was gonna be 21" at the time of the murder. Defendant was

not a juvenile when he made the decision to repeatedly shoot McDaniel. Based on this record, we find no abuse of discretion by the trial court in sentencing defendant to a term of 56 years of imprisonment, which is within the statutory range.

¶ 18 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.