

No. 1-12-3095

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. 10 CR 14466
)	
TORENZO DILLON,)	Honorable
)	Rosemary Grant Higgins,
Defendant-Appellant.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Judgment affirmed over defendant's sole contention that his sentence was excessive.
- ¶ 2 Following a jury trial, defendant Torenzo Dillon was convicted of aggravated battery with a firearm and sentenced to 20 years' imprisonment. On appeal, he solely contends that his sentence was excessive, given his limited non-violent criminal history and his potential for

rehabilitation.

¶ 3 The evidence at trial showed that on July 18, 2010, Michelle Dudley was having a birthday party for her son, Earis Phillips, Jr., at Grand Crossing Park in Chicago. Defendant, Dudley's boyfriend Earis Phillips, Sr., who was the father of Dudley's child, and Adonnius Vickers and her 18-month-old daughter Akira Vickers, were among the attendees.

¶ 4 About 11:30 p.m., when about 20 people were still present and the park was still well lit, defendant and Phillips Sr., got into an argument. Defendant then ran to his car, which was parked close by, and pulled out a gun. Persons nearby yelled, "he's getting a gun," and Phillips Sr. fled from defendant and ran towards Adonnius and Akira who were playing in the park. Defendant fired the gun in their direction, and as the shots rang out, Adonnius dove to the ground with Akira in her arms and covered her with her body. When the gunfire stopped, Adonnius noticed that blood was gushing from Akira's face. She took Akira to the hospital where she underwent a blood transfusion, surgery and was chemically paralyzed to prevent further injury.

¶ 5 Medical reports showed that Akira sustained a gunshot wound to her upper jawbone, which caused the bone to fracture into multiple pieces. She also had contiguous wounds through her tongue, and the bullet exited under the right side of her jaw. She had a separate entry wound to her right clavicle (collarbone), which may have been caused by a second bullet, and was broken, and an exit wound in her right shoulder blade, which was shattered. Akira was released from the hospital two weeks later, but required follow-up care. As a result of the shooting, she has permanent scarring to her face, neck, shoulder and back, and is afraid of loud noises. Defendant was positively identified as the shooter in a lineup by several individuals who were present in the park on the night in question.

¶ 6 At the sentencing proceeding, the State informed the court that defendant had a prior conviction for theft of \$744 in public money for unemployment benefits to which he was not entitled, and was issued an I-Bond. While he was out on bond, he committed this offense. Defendant was sentenced in the theft case to 36 months' of federal probation and ordered to pay \$19,548 in restitution. Defendant also had a prior conviction for aggravated unlawful use of a weapon in a vehicle, for which he was sentenced to one year of probation. In that case, defendant was found with a gun in his car that had a bullet loaded in the chamber. Defendant claimed that he did not recall the gun being there when he was stopped by police, and, according to the arresting officer, he cooperated with them.

¶ 7 In her victim impact statement, Adonnius stated that before this incident, Akira was a fearless little girl who had won a beauty pageant, but afterwards she was afraid of loud noises, has nightmares and is permanently scarred. Akira also had to learn how to walk again, and her family has been emotionally and financially impacted by the incident.

¶ 8 In mitigation, defendant presented a multitude of letters from friends, family members, his employer and coworkers with the general theme that whenever something needed to be done, defendant was there to help out. The writers further stated that defendant went to church and was in the church choir, and always helped his grandmother, and the elderly. He also made sure that his ex-girlfriend who was the mother of two of his children was taken care of, and he was always employed, provided for his children and was a family man.

¶ 9 Counsel informed the court that defendant does not use drugs and has close family ties, and defendant's cousin testified that defendant was always there to help out, supported his family and helped raise his children. Darryl Ross, who was like a father to defendant, testified that

defendant would never intentionally harm a child, worked for Meads Packaging for six years, but was laid off occasionally depending on the volume of business, and when he is released from prison, his family will support him.

¶ 10 The State noted in further aggravation that defendant had a loving family and had all these positive influences in his life, but chose to lead a life of crime, and chose to be armed with a firearm, and shot into a public park. The State noted that defendant also did not indicate in the presentence investigation report (PSI) that he was laid off now and then, but stated that he worked for six years. The State further noted that defendant "cheat[ed]" the State of Illinois by getting paid unemployment benefits while he was employed, and that defendant is not only a violent person, but a thief and a liar. The State also noted the numerous injuries and permanent effects of the shooting on the 18-month-old victim, and the fact that defendant fled after the shooting, and did not stay to help. The State asserted that his criminal history contradicted every single mitigation letter and the mitigation testimony.

¶ 11 In further mitigation, counsel noted that defendant was at the birthday party supporting a child who was not even his own, and claimed that it would be a tragedy to throw away defendant's life where he takes care of his children and helps out his family and others, has no history of violence, and can become a productive part of society. Defendant then spoke in allocution that he prays that Akira makes a full recovery, and would never want to see any child hurt. He claimed that the incident has brought him closer to the Lord and made him a better person.

¶ 12 The court sentenced defendant to 20 years' imprisonment. In announcing its sentencing decision, the court stated that it did not believe the letters written on defendant's behalf about him

being an upstanding human being. The court noted that defendant took advantage of the State when he claimed unemployment benefits, which he did not deserve, and that when he was out on bond for that federal crime, he committed this crime, which was his second crime involving a gun. The court noted that defendant fired a gun in a public park with many people present, including his family, and that his intent to harm followed the bullet which struck Akira, who will suffer the trauma of defendant's actions for the rest of her life. The court found that defendant has no consideration for other people. The court saw no evidence that defendant is not aggressive, preaches positivity and believes in the Bible as the mitigation letters claimed, and that defendant's life did not show that he believed in the Bible and followed the tenets that the family professed in its letters.

¶ 13 The court further stated that defendant was employed on and off, and perhaps there was a side to him that was rehabilitative, but that it saw very little potential. Defendant's family will suffer greatly because he has no concern for them in committing this crime, which was very serious and very grave. The court considered that defendant attended church and loves his family but found these factors considerably outweighed by the harm defendant caused Akira and her mother. Defendant subsequently filed a motion to reconsider sentence, which the court denied.

¶ 14 On appeal, defendant solely contends that his sentence of 20 years' imprisonment was excessive. He claims that the trial court failed to consider mitigating evidence that he had a limited, nonviolent criminal history, had a consistent work history, provided financial and familial support not only for his three children, but to the mother of his eldest two children, and her children by another man as well. Defendant also cites his strong family ties, plan to return to school and start a career as an auto mechanic, and his remorse and his becoming involved in

community service. Defendant also contends that the court failed to consider the financial impact of his 20 years of incarceration, and the overcrowding of the prison, and abused its discretion in dismissing and disbelieving his mitigation evidence where the State did not provide any evidence to prove that his mitigation evidence was not true.

¶ 15 There is no dispute that the sentence of 20 years falls within the sentencing range of 6 to 30 years' imprisonment (730 ILCS 5/5-4.5-25 (West 2010)), on his Class X conviction. As a result, we may not disturb that sentence absent an abuse of discretion. *People v. Bennett*, 329 Ill. App. 3d 502, 517 (2002).

¶ 16 Defendant first claims that the court failed to adequately consider a number of mitigating factors, however, in the absence of evidence to the contrary, we presume that the trial court considered the mitigating evidence before it. *People v. Burnette*, 325 Ill. App. 3d 792, 808 (2001)). Moreover, the record here belies defendant's contention that the court failed to consider the mitigating factors presented (*Burnette*, 325 Ill. App. 3d at 808) and affirmatively shows that it gave careful consideration to that evidence. The court specifically cited defendant's gainful employment history as well as his love for his family and his attendance at church, and acknowledged the letters written on his behalf. That said, the court found these testimonies wanting and subject to question given the aggravating factors in the case, which called for a more lengthy sentence. These included the fact that defendant fired a gun in a public park where children were present and severely injured 18-month-old Akira. In addition, the court cited his deceit in collecting unemployment benefits to which he was not entitled, and found that his activities contradicted the tenets he professed to believe.

¶ 17 Defendant, nonetheless, maintains that the State was required to prove that his mitigation

letters were not believable for the court to conclude that they were not. However, there is no such requirement, and the court was free to find the letters and defendant incredible. *People v. Somers*, 2012 IL App (4th) 110180, ¶24, citing *People v. Newbill*, 374 Ill. App. 3d 847, 854 (2007). The trial court was also not required to give greater weight to defendant's rehabilitative potential than to the seriousness of the offense (*People v. Phillips*, 265 Ill. App. 3d 438, 450 (1994)), which involved shooting into a crowded park and striking a small child that caused numerous permanent injuries to her. In addition, he committed this offense while on probation for another offense, thereby showing his poor rehabilitative potential. *Somers*, 2014 IL App (4th) 110180, ¶25. As to the financial impact of defendant's incarceration and the overcrowding of the prison, in the absence of evidence to the contrary, we presume that the court considered these factors. *People v. Acevedo*, 275 Ill. App. 3d 420, 426 (1995).

¶18 Based on our review of this record, we are satisfied that the trial court gave proper consideration to the factors in aggravation and mitigation (*People v. Perruquet*, 68 Ill. 2d 149, 156 (1977)), find no abuse of discretion in the sentence imposed, and thus have no cause for interfering with the sentencing determination entered by the court. *People v. Almo*, 108 Ill. 2d 54, 70 (1985).

¶19 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶20 Affirmed.