

No. 1-12-3342

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. 96 CR 10027
)	
RODNEY SULLIVAN,)	Honorable
)	Lawrence P. Fox,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Judgment affirmed over defendant's challenge to the sufficiency of the evidence and propriety of the sentence; mittimus corrected.
- ¶ 2 Following a bench trial in 1999, Rodney Sullivan, the defendant, was found guilty of the first degree murder of Leonard Smith, then sentenced to 60 years' imprisonment. Defendant did not file a direct appeal, but in 2010, he filed a *pro se* petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)), contending, *inter alia*, that his trial counsel was ineffective for failing to file a notice of appeal. Consistent with the supreme court ruling in

People v. Ross, 229 Ill. 2d 255, 271 (2008), that a late notice of appeal may be filed where defendant demonstrates that the failure to file is due to counsel's ineffectiveness ((725 ILCS 5/122-6 (West 2012)); Ill. S. Ct. Rule 606 (eff. Feb. 6, 2013)), the circuit court allowed defendant to file a late notice of appeal from the judgment entered on his conviction. Defendant now challenges the sufficiency of the evidence to sustain his conviction and the propriety of his sentence, and requests that his mittimus be corrected to show that he was convicted of only one murder.

¶ 3 The incident giving rise to the charges filed against defendant took place in mid-March 1996. At trial, Lewis Rogers testified that he had known the victim, Leonard Smith, and defendant since grade school, that they were members of the Traveling Vice Lords gang and close friends. Rogers also testified that at the time of the incident, he lived with Darlene Ford, who was like a mother to him.

¶ 4 At 10 p.m. on March 12, 1996, Rogers was at his home at 4500 West West End Avenue in Chicago when defendant came over, and asked him to go for a ride. As they drove around, they saw people they knew talking on Monroe Street and got out of the car to speak with them. While talking to the people, the victim pulled up in a car, called Rogers over to talk to him, and asked him if he could package some crack cocaine at his house. Rogers told him he would page him when Ford went to sleep. While they were talking about the narcotics, defendant was standing two feet away from them. Defendant then dropped Rogers off at the end of Harding Avenue, and when Rogers arrived home, he paged the victim, and told him to come over. About

20 minutes later, the victim arrived, asked to use his phone, and called the mother of his children, Beverly Pittman.

¶ 5 Rogers and the victim then packaged crack cocaine for 30 minutes, with Rogers helping the victim open the bags because his arm was injured. Rogers noted that the victim often came over to his home to package narcotics, but that he received no compensation. After the victim called Pittman again, he left through the back door with the packaged crack cocaine. Shortly thereafter, defendant arrived at the front door, used the house phone, and asked Rogers if the victim was still there. Rogers told him that he had just left, and defendant laughed and stated he was "[f]ixing to stick him up." Rogers did not take him seriously, then looked out his back window, and saw defendant and the victim talking near the victim's car. When the victim turned away, defendant pointed a gun at his head, and fired it. The victim stumbled and fell, and defendant fled. As soon as he heard the gunshot, Rogers stopped looking out the window.

¶ 6 Rogers testified that he did not call police because he was frightened that defendant would also harm him. Rogers tried to sleep, but could not, and threw up. When police came to his home the next day, he identified the body outside his home as the victim, and told police that they were close friends, but lied when he said that he had not seen him for three days because of his fear of defendant.

¶ 7 On March 16, 1996, detectives Whalen and Munos met with Rogers, and he told them he had not seen the victim for several days. When the detectives told him they had telephone records from the evening in question, he told them that the victim came over and packaged crack cocaine at his home, and that he initially lied to them because he was afraid he would get in

trouble because of the narcotics. Rogers did not tell the detectives that defendant came over and shot the victim because he was afraid of defendant. Rogers explained that defendant killed one of their friends, and would not have any remorse for killing anyone else.

¶ 8 On March 17, 1996, detectives came to Rogers' home, and he went to the police station with them. He did not tell them that defendant killed the victim, but did inform them that the victim kept a gun in a compartment in his dashboard. While he was in the interview room alone, he tried to slit his wrists and tied a string around his neck because he did not know how to deal with this situation, and was afraid that defendant would come after his family. While Rogers was at the police station, Officer Nelson, who was a father figure he trusted and part of a youth group at his church, came into the interview room. After he talked to Officer Nelson, Rogers told police that he saw defendant shoot the victim.

¶ 9 Rogers was then taken to the hospital where he told hospital personnel that the police called him a "lying nigger," but testified that he did not remember if police used that word. Rogers noted that he did not receive any stitches, and when he later talked to a licensed clinical social worker, he told him that police wanted to lock him up, called him a degrading word, and placed him in a windowless room for a couple of hours. He further stated that he thought he would go to jail for no reason, so he took a string from his shorts and pretended to get some attention so the police would listen to him, but he "[w]ant[ed] to live [and] didn't do it to die."

¶ 10 Rogers also testified that the victim and defendant were standing near the victim's car at the time of the shooting, and that the victim did not fall where he was depicted in the photograph which showed the victim lying several feet behind the car. Rogers did not know how the victim's

body was moved. Rogers further testified that between March 13 and 17, defendant kept calling his house, and he believed that if he told police that he saw defendant kill the victim, defendant would kill him.

¶ 11 Detective Allen Jaglowski testified that in the early morning hours of March 13, 1996, he investigated the murder. He observed that the driver's side door of the victim's car was slightly open, and the victim was lying north of the vehicle in the alley. The area was well lit, and he observed two sets of keys near the victim; one set was close to his feet and another set was 12 feet to the east of him. No narcotics were found on the victim, and he did not recall any blood or tissue on or near the car. The detective talked to Rogers who told him about a gun in a compartment in the victim's vehicle, but a search of the vehicle revealed none.

¶ 12 Chicago police officer Julius Nelson testified that he was a friend of Rogers through a church program, and on March 17, 1996, he went to the police station to talk to him. He had trouble opening the door to the interview room that Rogers was in because Rogers' body was blocking it. When he opened the door, he noticed a string tied around Rogers' neck and attached to the door knob, and Rogers appeared semi-unconscious. When the officers removed the string, Rogers regained consciousness, and Officer Nelson noted that Rogers was very nervous.

¶ 13 David Jones testified that the victim was his nephew. At 11 p.m. on March 12, 1996, he was outside talking to some friends near 4535 West Monroe Street when Rogers and defendant drove up. The victim arrived a few minutes later, and talked to defendant and Rogers, then talked with Rogers while defendant was standing a few feet away from them.

¶ 14 The parties stipulated that Ms. Pittman would testify that she received three phone calls from the victim in the early morning hours of March 13, 1996, from Ford's home. The parties further stipulated that telephone records revealed incoming and outgoing calls from Ford's home in the early morning hours of March 13, 1996.

¶ 15 At the close of evidence, the court found the question to be whether he believed the State's evidence as a whole and the testimony of Rogers. The court noted that the identification of defendant as the shooter was made by his grammar and high school friend and fellow gang member, and that the issue was whether he believed Rogers was lying or telling the truth under the circumstances. After observing Rogers' demeanor, the court found him to be a "candid and credible witness." The court also found that whether Rogers tried or did not try to kill himself was irrelevant, and that his actions can be simply explained as an attempt to avoid interrogation about what he had seen because he was afraid.

¶ 16 The court further found that there was no evidence that Rogers was involved in the murder, and that it did not make sense for Rogers to shoot his childhood friend and gang member, who he allowed to bag cocaine in his house, and then go back into his house and wait for police. There was also no animosity or motive of any kind shown between Rogers and defendant for Rogers to identify defendant as the shooter. On the other hand, the court found that defendant had a motive after overhearing the earlier conversation between the victim and Rogers concerning the drugs, then going to Rogers' house and telling him he was going to rob the victim. The court commented that drugs were so important to defendant that he would kill a friend for them, and found him guilty as charged.

¶ 17 The court subsequently denied defendant's motion for a new trial, and the sentencing hearing followed. During that proceeding, the State informed the court that defendant had told the probation officer who was preparing a presentence investigation (PSI) report, that he had one child named Taylor, but then later stated that he had one child named Jessica, and listed a different mother. Defendant also changed stories on how much marijuana he smoked. The State further informed the court that defendant was convicted of second degree murder in 1999, and had a 1993 robbery conviction. The State asked the court to consider an extended sentence between 60 and 100 years' imprisonment, and if it did not, that it should impose a substantial period of time, close to 35 years' imprisonment.

¶ 18 In mitigation, counsel stated that defendant has a family that supports him, that he was only sentenced to eight years' imprisonment on the second degree murder conviction, and probation for the robbery. Counsel further stated that defendant is a young man with good rehabilitative potential.

¶ 19 The court sentenced defendant to a nonextended term of 60 years' imprisonment. In doing so, the court noted that defendant had killed two people, that he cannot keep his story straight regarding his social history when interviewed by the probation officer for the PSI reports, and he indicated that he chases women and parties during his spare time. The court found there was "no mitigation for this guy." The court also found that a considerable sentence was necessary to protect the public from defendant, who was a very dangerous person, with "very little mitigation in his favor and lots of aggravation against him." The court then ordered his 60-years sentence to run consecutively to the eight-year sentence imposed on his second degree murder conviction.

Defendant filed a motion to reconsider the denial of his motion for a new trial and a motion to reconsider the sentence, both of which were denied.

¶ 20 In this court, defendant contests the sufficiency of the evidence to prove him guilty of murder beyond a reasonable doubt. He maintains that there is no physical evidence linking him to the crime, and what physical evidence there was linked Rogers to the crime. He maintains that Rogers was a self-admitted liar to the point where he faked his own suicide, and that his version of events was impossible and improbable in light of the physical evidence and common sense.

¶ 21 When a defendant challenges the sufficiency of the evidence to sustain his conviction, our duty is to determine whether all of the evidence, direct and circumstantial, when viewed in the light most favorable to the prosecution, would cause a rational trier of fact to conclude that the essential elements of the offense have been proved beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). A criminal conviction will be reversed only if the evidence is so unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297. For the reasons that follow, we do not find this to be such a case.

¶ 22 When the evidence is viewed in the light most favorable to the prosecution (*People v. Campbell*, 146 Ill. 2d 363, 374 (1992)), the record shows that the victim, defendant and Rogers were childhood friends and members of the same gang. On the night in question, the victim and Rogers discussed packaging cocaine at Rogers' home, while defendant was standing a couple of feet away from them. The victim later went to Rogers' home, packaged cocaine with Rogers' help, then left the house with the cocaine on him. Shortly thereafter, defendant arrived at Rogers' home asking if the victim was still there, and when Rogers told him he just left, defendant told

Rogers he was going to stick him up. Rogers did not take defendant seriously because he was laughing, but when he looked out the back window, he saw defendant and the victim talking near the victim's car, then saw defendant shoot him in the head. Rogers did not immediately call police or tell them for several days that defendant shot the victim because he was afraid that defendant would shoot him or hurt his family. After speaking with Officer Nelson, who told him that he should tell police what happened, Rogers did so five days after the murder. This evidence, if believed by the court, the trier of fact, was more than sufficient to sustain defendant's conviction of first degree murder. *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009).

¶ 23 In announcing its decision, the court inferred from the evidence that defendant found the drugs more important than his friendship with the victim, and noted that the police found no drugs on the victim. In weighing the evidence, the trial court was not required to disregard the inferences which naturally flowed from the evidence, or to search out all possible explanations consistent with innocence and raise them to the level of a reasonable doubt. *People v. Moore*, 394 Ill. App. 3d 361, 364-65 (2009).

¶ 24 Defendant, nonetheless, maintains that Rogers' testimony was not credible because the physical evidence shows that the victim's body was found at a location different from where Rogers placed him, and the undisputed physical evidence showed that he was the last person to see the victim before he died. Defendant also points out that Rogers admitted that he faked the attempted suicide, that he lied to police on multiple occasions following the victim's death, and that his claim that he packaged narcotics for no compensation is spurious.

¶ 25 Contrary to defendant's argument, the evidence did not show that Rogers was the last person to see the victim alive, but rather, that defendant pursued him after he left Rogers' home. The record also shows that the court was aware of, and considered at length the evidence in light of Rogers' initial lies to police regarding whether he witnessed the shooting, the fake suicide attempt, and the location of the body (*People v. Werhollick*, 22 Ill. App. 3d 810, 815-16 (1974)), but concluded, that these factors did not call into question Rogers' internally consistent testimony that he witnessed the defendant shoot the victim in the head. *People v. Ward*, 49 Ill. App. 3d 780, 783 (1977). We find no reasonable doubt of defendant's guilt arising from the disparity between Rogers' testimony as to where the victim fell, and where the body was found, just north of the car in the alley. The location of the victim's body was a peripheral matter with no bearing on the central issue of whether defendant murdered the victim. See *People v. Bofman*, 283 Ill. App. 3d 546, 553 (1996); *People v. Reed*, 80 Ill. App. 3d 771, 780 (1980).

¶ 26 We further observe, as did the trial court, that the victim had no motive to identify defendant as the shooter, and waited days to implicate the defendant because he was afraid of him. Under these circumstances, we find that Rogers' admission at trial that he had previously lied to police about the events on March 13, 1996, did not destroy the credibility of his testimony about the murder. *People v. Hayes*, 70 Ill. App. 3d 811, 822 (1979). His fear clearly explains why he did not initially tell police what he observed, especially when he was receiving calls from the defendant during the days he met with the police. *Hayes*, 70 Ill. App. 3d at 822. Therefore, we find no reason to disturb the trial court's credibility determinations (*People v. Berland*, 74 Ill.

2d 286, 306-07 (1978)), or its finding of guilt. *People v. Bofman*, 283 Ill. App. 3d 546, 553 (1996).

¶ 27 Defendant next contends that his sentence was excessive where the State asked for a term close to 35 years' imprisonment if an extended term was not entered. He maintains that the sentence reflects the court's lack of consideration of the mitigating evidence, which includes his family ties, youth, educational background, the fact that he was working to obtain his GED and his potential for rehabilitation.

¶ 28 There is no dispute that defendant's sentence of 60 years' imprisonment fell within the statutory range of 20 to 60 years for his murder conviction. 730 ILCS 5/5-8-1 (West 2012). When a sentence falls within the statutory range, a reviewing court may not disturb that sentence unless the trial court abuses its discretion. *People v. Bennett*, 329 Ill. App. 3d 502, 517 (2002).

¶ 29 The record shows that the trial court considered the mitigation evidence presented, but found it minimal, if mitigating at all, in light of defendant's history of killing two people, and also committing a robbery, and indicating the necessity of a longer term to protect the public. Defendant's criminal history clearly showed his resistance to correction (*People v. Garcia*, 241 Ill. 2d 416, 421-22 (2011)), and impacted the court's decision on his rehabilitative potential (*People v. Romero*, 387 Ill. App. 3d 954, 981 (2008)), particularly given the facts of the case where defendant killed a "friend" and fellow gang member ostensibly for the drugs he was carrying. The court was 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)), and considering the totality of the circumstances, we find that the trial court did not abuse its

sentencing discretion by imposing a term which fell within the sentencing guidelines. *Bennett*, 329 Ill. App. 3d at 517.

¶ 30 Finally, defendant contends, the State concedes, and we agree that defendant may only be convicted of one count of first degree murder where there was only one victim under the one-act, one-crime doctrine. *People v. Plummer*, 151 Ill. App. 3d 94, 98 (1986). Accordingly, we correct the mittimus to reflect one conviction for first degree murder, Count I, which carried the most culpable mental state. *People v. Fields*, 199 Ill. App. 3d 888, 902 (1990).

¶ 31 In light of the foregoing, we affirm the judgment of the circuit court of Cook County, and correct the mittimus as indicated.

¶ 32 Affirmed.