

No. 1-13-1569

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 3426
	)	
HERIBERTO RAMIREZ,	)	Honorable
	)	Kay M. Hanlon,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

**O R D E R**

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 45 years' imprisonment for first-degree murder.

¶ 2 Following a jury trial, defendant Heriberto Ramirez was convicted of first-degree murder and sentenced to 45 years' imprisonment. On appeal, defendant argues his 45-year sentence was excessive and that the trial court did not accord sufficient weight to the evidence in mitigation. We affirm.

¶ 3 The evidence at trial showed that on February 14, 2011, defendant and his wife, Alicea Ramirez, were arguing in their mobile home located at 422 West Touhy Avenue in Des Plaines. During the argument, nine-year-old Greta Ramirez, the daughter of defendant and Alicea, saw

defendant push Alicea into a bathroom. Greta heard her mother yell "stop," but could not see what was happening in the bathroom. Greta called 9-1-1 because she thought defendant was hitting Alicea.

¶ 4 When the police arrived, defendant told them nothing was wrong, but Greta indicated that defendant hit Alicea and that Alicea was in the bathroom. When the police entered the bathroom, they found Alicea unresponsive and cut or stabbed 34 times, including a fatal wound to her aorta. Defendant testified that he was on various medications and did not remember the incident.

¶ 5 After the trial, the jury found defendant guilty of first-degree murder and the trial court ordered a presentence investigation (PSI) report. The PSI report showed that defendant and Alicea were married in 1985 and they had three children together. Defendant attended college in Mexico for one year but quit when he got married because he needed to find work. Defendant had been employed for several years as a seasonal landscaper and worked at temporary employment agencies from 2001 to 2006. Defendant had no prior convictions.

¶ 6 At the sentencing hearing, the State, in aggravation, presented the testimony of Karen Ramirez, the 21-year-old daughter of defendant and Alicea. Karen testified that at the time of sentencing, she was responsible for providing for her sister Greta, and was attempting to obtain legal custody of her. However, defendant had not consented to Karen obtaining legal custody of Greta as he had not signed the necessary documents. On cross-examination, Karen testified that prior to the incident, defendant and Alicea had a "normal" relationship, and that defendant was a "great dad."

¶ 7 The State argued that defendant's actions had left Karen alone to raise Greta, and emphasized the violent nature of the attack. The State also requested that the trial court impose

"a substantial sentence" and consider the deterrent effect defendant's sentence would have on other offenders who might commit acts of domestic violence.

¶ 8 In mitigation, defense counsel argued defendant was a good father, was married to Alicea for 25 years, and that he had no prior criminal record. Defense counsel requested a 20-year sentence noting defendant: was 50-years old; would have to serve the full length of his sentence; and, upon release, defendant would be 70-years old. In allocution, defendant stated that he was willing to sign the papers giving Karen legal custody of Greta, but had not done so because he did not understand English and did not know what he was signing. Defendant further stated that the incident in question was an accident, that he never intended to harm Alicea, and he asked the trial court to have pity on him.

¶ 9 The trial court stated that it had considered all the statutory factors in aggravation and mitigation, the PSI report, and defendant's allocution. The trial court sentenced defendant to 45 years' imprisonment and denied defendant's oral motion to reconsider his sentence.

¶ 10 On appeal, defendant argues that his sentence is essentially a life sentence and is excessive in light of his potential for rehabilitation demonstrated by, not only his lack of prior criminal convictions and lengthy history of employment, but by his expression of remorse. Defendant requests this court exercise its authority under Illinois Supreme Court Rule 615(b)(4) (Ill. S. Ct. R. 615(b)(4) (eff. Aug. 27, 1999)), and reduce his sentence to the minimum of 20 years' imprisonment, or by vacating his sentence and remanding this cause for resentencing.

¶ 11 A trial court has broad discretion in the determination of an appropriate sentence. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A reviewing court may reverse only where the trial court has abused that discretion. *Id.* A reviewing court should not substitute its judgment for that of the trial court simply because it would have balanced the appropriate sentencing factors

differently. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010). A sentence within the statutory range does not constitute an abuse of discretion unless it varies greatly from the purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Henderson*, 354 Ill. App. 3d 8, 19 (2004). Where mitigating evidence is presented to the trial court, it is presumed, absent some indication to the contrary other than the sentence itself, that the trial court considered it. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004).

¶ 12 The sentence for first-degree murder "shall be a determinate term of not less than 20 and not more than 60 years." 730 ILCS 5/5-4.5-20(a)(1) (West 2010).

¶ 13 The trial court clearly stated it had considered appropriate factors in mitigation and aggravation. At defendant's sentencing hearing, the trial court stated:

"Well, the court has considered all the statutory factors in aggravation and mitigation \*\*\*. I have considered the PSI that I have read extensively many times. I've considered the evidence that I heard at the trial, the facts of the case, the jury having found [defendant] guilty of first-degree murder. I've also considered the evidence that I've heard here during the sentencing hearing, the testimony from the daughter, Karen Ramirez. I've considered aggravation and mitigation at the hearing, the arguments by counsel, and certainly I have considered the statement made by [defendant].

To say that the facts of this case are harrowing really does not do justice to the case. Several things I think I must mention prior to sentencing you, [defendant].

The first thing is not only did you take the life of your wife \*\*\* but you also robbed your children \*\*\* of both of their parents.

As [defense counsel] says, this is a tragedy. But it is a tragedy that was caused by no one but yourself, and you have no one to blame here but yourself.

Consider the fact that the child Greta was 9 years old at the time of this brutal stabbing, that she testified in front of a jury when she was 11 years old, that your daughter Karen also testified, and now she's 21 years old and she's forced to become a mother. Again, by the decisions and the actions and the choices, as [the State] said, that you have made.

I've also considered the testimony of the medical examiner, and I think that that's very telling in this case. Not only did you stab your wife 34 times, but the brutality of that attack was very clear by the testimony of Dr. Cina. He described all these 34 stab wounds, especially to the aorta. He talked about the significant force that was used in that regard.

[Defendant], you testified at trial that you did not remember this event. You remembered everything that happened before and you remembered everything that happened afterward, but you did not remember what happened to your wife on that Valentine's Day. The jury found you guilty of first-degree murder. They didn't believe you. They found your testimony incredible, as do I.

I am glad to hear today that you are showing a little bit of remorse. At the trial you showed none. No sorrow, no regret, absolutely no emotion. And I am glad that you have shown some here today, and I am considering that as a factor in mitigation."

¶ 14 From these statements, it is clear that the trial court thoughtfully weighed the appropriate mitigating and aggravating factors and sentenced defendant to a term within the permissible sentencing range. We, thus, do not find the trial court abused its discretion.

¶ 15 In reaching this conclusion, we find *People v. Williams*, 196 Ill. App. 3d 851 (1999), and similar cases relied upon by defendant showing that reviewing courts have found sentences

excessive distinguishable from the case at bar. In *Williams*, this court held that the trial court abused its discretion in sentencing the defendants on their convictions for murder and armed robbery because it failed to consider the fact that they were minors, the lack of substantial criminal histories, and their rehabilitative potential. *Id.* at 867. We, thus, reduced the sentence of the defendant accountable for the acts of his cooffender from 30 to 20 concurrent-year terms, and the sentence of his cooffender from 40 to 30 years' imprisonment. *Id.* at 867-68.

¶ 16 Unlike the trial court in *Williams*, here the record shows that the trial court considered the mitigating factors at issue in light of defendant's offense. Moreover, our supreme court has expressly rejected the practice of comparing a sentence to sentences imposed in unrelated cases. *People v. Fern*, 189 Ill. 2d 48, 55 (1999). Further, we note that "[o]ccasionally, certain conduct may warrant a harsher penalty than other conduct, even though both are technically punishable under the same statute." *People v. Hunter*, 101 Ill. App. 3d 692, 695 (1981). We are, likewise, unpersuaded by defendant's argument that his sentence should be reduced because statistics suggest that it is unlikely that he would reoffend if he were released from prison after a hypothetical 25-year sentence due to his advanced age. This argument is particularly unconvincing where defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense (*People v. Hayes*, 409 Ill. App. 3d 612, 629 (2011)), and, as found by the trial court, the offense at bar was "harrowing." Although defendant denies that he is asking this court to rebalance the aggravating and mitigating factors at sentencing, this is precisely what he has done. This action, however, has been prohibited by the Illinois Supreme Court. See *People v. Streit*, 142 Ill. 2d 13, 19 (1991). Therefore, we will not reduce defendant's sentence, and see no reason to remand the cause to the trial court for resentencing.

¶ 17 For the foregoing reasons, we affirm the judgment of the trial court.

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¶ 18 Affirmed.