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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 05-CF-3408
	)	
RAFAEL D. GONZALEZ,	)	Honorable
	)	Victoria A. Rossetti,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Burke and Justice McLaren concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 20 years' imprisonment (on a 6-to-30 range) for home invasion: despite the mitigating factors, which the trial court properly considered, the sentence was justified by the seriousness of the offense.

¶ 2 Defendant, Rafael D. Gonzalez, appeals after his conviction of home invasion (720 ILCS 5/12-11(a)(1) (West 2004)), challenging his sentence, 20 years' imprisonment, as an abuse of discretion. We hold that the sentence was commensurate with the seriousness of the offense, so that no abuse of discretion occurred. We therefore affirm.

¶ 3 I. BACKGROUND

¶ 4 A grand jury indicted defendant on 10 counts relating to his entry into an occupied residence: one count of section 12-11(a)(1) home invasion (defendant entered the victim's home and, while armed with a knife, placed his body on the victim's); one count of section 12-11(a)(2) home invasion (720 ILCS 5/12-11(a)(2) (West 2004)) (defendant entered the victim's home and, with a knife, caused cuts upon the victim's body); three counts of section 12-11(a)(6) home invasion (720 ILCS 5/12-11(a)(6) (West 2004)) (defendant entered the victim's home and, while armed with a knife, committed an aggravated sexual assault—hand or finger to the victim's vagina—or aggravated criminal sexual abuse); one count of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2004)); one count of armed violence (720 ILCS 5/33A-2(a) (West 2004)) (criminal sexual assault while armed with a knife); one count of criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2004)); and two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(6) (West 2004)).

¶ 5 After extended negotiations, including several conferences pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997), the State agreed to nol-pros all counts except one count of section 12-11(a)(1) home invasion (defendant, armed with a knife, placed his body on the victim's). Defendant entered a blind guilty plea to that remaining count.

¶ 6 The State started presenting the factual basis for the plea but that statement concluded as a colloquy between the court and defendant. According to the State:

“[O]n August 29, 2005, [the victim] was living at 709 Court of Spruce, Vernon Hills, Lake County, Illinois. In the early morning hours, approximately 1:15, she was asleep in her bed. The defendant entered the residence at that time. He picked up a knife in the kitchen, being a 12-inch butcher knife, and while [the victim] was in her house, in her dwelling place, used force to place his body on her body to hold her.

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\*\*\* The defendant was not a police officer acting in the line of duty.”

Defense counsel stopped the State’s recitation to assert that the stipulation was not entirely correct:

“The defendant clearly entered into the home and was carrying items out of the home. There was a clear residential burglary.

During the course of the home invasion, the individual, the victim, did wake up and he did grab her by the shoulders. At that time, he was slashed in the face with an object and made contact with that object, which we believe was a knife; thereby, satisfying the requirements of the elements of the offense. In fact, his fingerprint was found not on the handle but on the blade, and he had cuts on his face from that object, and then he ran from location.

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THE COURT: And that there had been a statement given by this defendant to the police after being given Mirandas indicating that he did go in and took things out; that his fingerprints were on the blade of the knife, and that after leaving, he did flee the country, is that correct?

[Defense Counsel]: That’s correct. His statements are one of shock and surprise as to some of these allegations; namely, the sexual assault. He was actually surprised by that, or by the fact that he took a knife into the house. But he did possess the knife to the extent that he had contact with the knife for purposes of this plea. His left pinky was on the blade of the knife where we believe he swatted and why he was, in fact, cut.

THE COURT: And he did indicate he put his hands on the victim telling her to be quiet at the time of this.

[Defense Counsel]: That, he did \*\*\*. \*\*\*”

The court accepted defendant’s guilty plea.

¶ 7 At sentencing, defendant’s mother testified on his behalf. She said that he had lived in Mexico until he was 14 years old. He had never been in any trouble while he lived there. He, his mother, and his two sisters came to the U.S. while his father stayed behind, a separation dictated by economic considerations. Defendant struggled in the U.S. because he did not understand English. When he left for Mexico after the home invasion, his father placed him in an inpatient substance-abuse treatment program.

¶ 8 The State noted that a psychological evaluation of defendant showed an elevated score on a measurement of antisocial personality. Further, defendant had been a behavioral problem while in jail. The State urged a 25-year sentence.

¶ 9 The argument for defendant focused on his youth at the time of the offense—17 years and 10 months—and his slight criminal record—ordinance-violation theft and disorderly conduct. Further, defendant had been under the influence of alcohol and narcotics at the time of the offense, but had sought treatment. The defense sought a sentence of 8 to 10 years’ imprisonment.

¶ 10 The court stated that it was considering all statutory factors. It specifically noted as a mitigating factor that defendant had confessed and agreed to a guilty plea. It also said that it believed defendant’s professions of regret. It sentenced defendant to 20 years’ imprisonment, a sentence that was within the range of what it, at the Rule 402 conferences, had suggested it would deem appropriate.

¶ 11 Defendant moved for reconsideration of the sentence. He suggested to the court that the original sexual assault allegations had influenced the range that the court had in mind, and he urged the court to consider the offense as essentially a property crime—essentially a burglary for the purpose of theft that went wrong because defendant failed to take into account the victim’s presence. The court stated that it had not considered any of the sexual assault allegations: it based its sentence on defendant’s having committed a home invasion in which he had controlled the victim by putting his body on top of hers.

¶ 12 Defendant appealed, and this court remanded the matter for the filing of a certificate under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Gonzalez*, No. 2-10-0244 (unpublished order under Supreme Court Rule 23). The public defender filed a certificate and an amended motion to reconsider sentence; the court denied the motion. Defendant timely appealed.

¶ 13 **II. ANALYSIS**

¶ 14 On appeal, defendant asserts that the sentence was an abuse of discretion in light of “defendant’s youth at the time of the offense, his lack of any prior serious crimes, the nature and circumstances of the offense, and the steps he had taken toward rehabilitation since the time of his arrest.” We do not agree.

¶ 15 A reviewing court should not disturb a sentence that is within the applicable sentencing range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). Reviewing courts presume that a sentence within the statutory guidelines is proper. *People v. Bocclair*, 225 Ill. App. 3d 331, 335 (1992).

¶ 16 The sentencing range for home invasion, a Class X felony, is no less than 6, and no more than 30, years. See 720 ILCS 5/12-11(c) (West 2004); 730 ILCS 5/5-8-1(a)(3) (West 2004).

The sentence here was thus within the applicable range, so that we can reverse it only if the court abused its discretion.

¶ 17 A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d at 210. “It is the province of the trial court to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case” (*People v. Latona*, 184 Ill. 2d 260, 272 (1998)), and the reviewing court may not substitute its judgment for that of the trial court merely because it might weigh the pertinent factors differently (*Stacey*, 193 Ill. 2d at 209). We presume a sentencing judge to have considered all relevant factors unless the record affirmatively shows otherwise. *People v. Hernandez*, 319 Ill. App. 3d 520, 529 (2001).

¶ 18 In determining an appropriate sentence, relevant considerations include the nature of the crime, the protection of the public, deterrence, and punishment, but also the defendant’s rehabilitative potential. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). “The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors.” *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). The weight that the trial court should attribute to each factor in aggravation and mitigation depends upon the particular circumstances of the case. *Kolzow*, 301 Ill. App. 3d at 8. Provided that the trial court “ ‘does not consider incompetent evidence, improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the statutory range prescribed for the offense.’ ” *People v. Bosley*, 233 Ill. App. 3d 132, 139 (1992) (quoting *People v. Hernandez*, 204 Ill. App. 3d 732, 740 (1990)).

¶ 19 The sentence here was a proper exercise of the court’s discretion. First, by arguing that the trial court gave insufficient weight to the mitigating factors, defendant is necessarily arguing

that we should reweigh them. This we may not do. *People v. Woodard*, 367 Ill. App. 3d 304, 321 (2006). Moreover, the sentence here was neither at great variance with the spirit and purpose of the law nor manifestly disproportionate to the nature of the offense. In this home invasion, the most salient fact was defendant's very physical confrontation with the victim. Further compounding the seriousness is that it is clear that defendant approached the victim, not the other way around. He thus sought out the confrontation when he could have fled without obstruction. Therefore, the way defendant chose to respond to the victim's presence enhanced the seriousness of the offense. Given this, a sentence in the upper-middle of the range of allowable sentences was well within the court's discretion; the sentence reflects that appropriate weight was given to mitigating factors.

¶ 20

### III. CONCLUSION

¶ 21 For the reasons stated, we affirm defendant's sentence of 20 years' imprisonment.

¶ 22 Affirmed.