

NOTICE
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2014 IL App (4th) 130592-U
NOS. 4-13-0592, 4-13-0593 cons.
IN THE APPELLATE COURT

FILED
June 30, 2014
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from
Plaintiff-Appellee,) Circuit Court of
v.) Sangamon County
JOHN E. THROOP, JR.,) Nos. 11CF1056
Defendant-Appellant.) 11CF736
)
) Honorable
) John W. Belz,
) Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* In No. 4-13-0593, the appellate court affirmed, concluding that the trial court did not abuse its discretion by sentencing the defendant to 35 years in prison for predatory criminal sexual assault. In No. 4-12-0592, the appellate court dismissed the appeal of the child pornography conviction where no arguments were made in relation thereto on appeal.

¶ 2 In July 2012, defendant, John E. Throop, Jr., entered open guilty pleas to one count each of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2008)), criminal sexual assault (720 ILCS 5/12-13(a)(4) (West 2010)), and child pornography (720 ILCS 5/11-20.1(a)(1) (West 2010)). In September 2012, following a hearing, the trial court sentenced defendant to consecutive prison terms of 35 years for predatory criminal sexual assault, 10 years for criminal sexual assault, and 10 years for child pornography.

¶ 3 Defendant appeals the predatory criminal sexual assault conviction (No. 4-13-

0593), arguing only that the trial court abused its discretion by sentencing him to 35 years in prison for predatory criminal sexual assault. We disagree and affirm. Defendant also appealed the child pornography conviction (No. 4-13-0592), but he makes no argument thereon, so we dismiss that appeal.

¶ 4

I. BACKGROUND

¶ 5 In August 2011, the State charged defendant with (1) one count of predatory criminal sexual assault and (2) three counts of criminal sexual assault.

¶ 6 In December 2011, a grand jury returned indictments against defendant for (1) eight counts of child pornography and (2) three counts of aggravated child pornography (720 ILCS 5/11-20.1B(a)(6) (West 2010)).

¶ 7

A. The Guilty Plea Hearing

¶ 8 At a July 2012 guilty-plea hearing, the State represented to the trial court that in exchange for defendant's guilty pleas to one count each of predatory criminal sexual assault, criminal sexual assault, and child pornography, the State agreed to dismiss the remaining charges against defendant. The State and defendant made no agreement regarding the sentence.

¶ 9 After being advised of the terms of the plea agreement, the trial court admonished defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 2012), informing him that the three convictions would carry a mandatory sentencing range of between 14 and 90 years in prison. Defendant confirmed that he understood his rights, the nature of the charges, and the possible penalties.

¶ 10 As a factual basis for defendant's guilty pleas, the State asserted that defendant had been a long-time family friend of the victim, R.M., and had known R.M. since she was very young. Defendant began having sexual intercourse with R.M. when she was 11 years old. The

sexual intercourse would occur approximately once per week, when R.M. stayed at defendant's home, sometimes overnight. This conduct continued until R.M. was 13 years old. Sometime after R.M.'s thirteenth birthday, her parents discovered text messages that she had exchanged with defendant, indicating the existence of a sexual relationship. After this discovery, defendant admitted to a police detective that he had engaged in sexual intercourse with R.M. when she was between the ages of 11 and 13. Defendant also admitted that he videotaped himself having sexual intercourse with R.M. after she turned 13, and he provided that video to the detective. Following the factual basis, the trial court accepted defendant's guilty pleas, entered judgments of conviction against him, and dismissed the remaining charges in accordance with the plea agreement.

¶ 11 B. The Sentencing Hearing

¶ 12 At a September 2012 sentencing hearing, the State recommended consecutive prison terms of 40 years for predatory criminal sexual assault, 10 years for criminal sexual assault, and 10 years for child pornography. The State did not present evidence in aggravation.

¶ 13 The trial court considered the presentence investigation report (PSI) (730 ILCS 5/5-3-1 (West 2012)), which revealed that defendant (born June 2, 1975) had no prior criminal history. Defendant reported that he used alcohol only once in his life, and he had never used any illegal drugs. Defendant was married in 1998 and divorced in 2005. Prior to his arrest, defendant had been living with a girlfriend of seven years. Defendant had no biological children.

¶ 14 The PSI also included a sex-offender evaluation performed by Keir Goatly. Goatly noted that defendant admitted he once asked R.M. to bring her juvenile brother to defendant's residence so that defendant could engage in sex acts with both of them. Goatly found that defendant needed and was willing to participate in sex-offender treatment. Defendant demonstrated the ability to understand, internalize, and implement sex-offender-specific topics,

lessons, and interventions. Goatly concluded that defendant's risk to reoffend was low to moderate.

¶ 15 Attached to the PSI was a written victim-impact statement from R.M.'s father, Joseph M., Jr. Joseph stated that defendant was like a brother to him, even serving as a pallbearer at his grandmother's funeral. Because of their close relationship, Joseph trusted defendant and would let R.M. stay at defendant's house. According to Joseph, defendant told others that Joseph had been sexually abusing R.M. This caused Joseph to be distrusted by members of his church. As a result of defendant's crimes against R.M., Joseph lost his job, divorced his wife, and his family had problems with depression, stress, and fear. Joseph indicated that R.M. wanted to make sure that defendant would not victimize her again. Joseph also asserted in his statement that defendant sent about 800 explicit text messages to R.M., and he told R.M. that he wanted to get her pregnant and run away with her.

¶ 16 In mitigation, defendant presented eight character letters, which the trial court admitted into evidence. The letters generally described defendant as a dependable employee and a generous, well-mannered person who helped others in need. A letter from Joanne Laura Kiser, who met defendant in 2008, mentioned that defendant took care of Kiser when she had health problems.

¶ 17 John Throop, Sr., defendant's father, testified that he and his wife chose to home school defendant, in part because defendant was bullied during the 90 days he spent in public high school. Defendant worked as a clerk at Design Ideas—a shipping company—from 1998 until 2010. Defendant thereafter worked full time as a clerk at a grocery store from 2010 until the time of his arrest in August 2011. Defendant was active in church, and he would feed homeless people and buy them clothing and furniture with his own money. John Sr. described defend-

ant as shy, introverted, passive, and nonviolent. John Sr. further testified that defendant was remorseful for what he had done.

¶ 18 On cross-examination, John Sr. testified that defendant was never sexually abused as a child. As an adult, defendant never told John Sr. that he was struggling with sexual thoughts involving children, nor did he seek help from John Sr. in dealing with any emotional or psychological problems.

¶ 19 In his statement in allocution, defendant expressed his regret, acknowledged the harm caused by his crimes, and stated that he could be rehabilitated if the court would grant him mercy.

¶ 20 In announcing its sentencing ruling, the trial court noted that it considered the factual basis for defendant's guilty plea, the PSI, defendant's character letters, Joseph's victim impact statement, defendant's statement in allocution, the financial impact of incarceration, and all the applicable factors in aggravation and mitigation. The court cited the need to deter others as one of the most important factors in aggravation. The court noted the heinous nature of defendant's crimes against R.M., as follows:

"I have been involved in this for about 20 years as an attorney and a Judge, and I can tell you[,] you get to the point where you think that you've seen everything. I haven't seen this before.

Frankly, the facts in this case are appalling, shocking, unbelievably bad. The still photographs, the video, the crimes themselves, frankly, [defendant], I am speechless. I talk a lot, and I just don't know what to say. These facts are just horrible."

After explaining its reasoning, the court sentenced defendant as stated.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant argues that the trial court abused its discretion by sentencing him to 35 years in prison for predatory criminal sexual assault. Specifically, defendant contends that the court failed to give proper weight to mitigating factors, including defendant's rehabilitative potential.

¶ 24 A. Standard of Review

¶ 25 The supreme court has stated the standard of review applicable to the trial court's sentencing decision, as follows:

"It is well settled that the trial court has broad discretionary powers in imposing a sentence [citation], and the trial court's sentencing decision is entitled to great deference [citation]. The trial court is granted such deference because the trial court is generally in a better position than the reviewing court to determine the appropriate sentence. The trial judge has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. [Citation.]

*** [A] sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court

where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 209-10, 737 N.E.2d 626, 629 (2000).

¶ 26 B. Defendant's 35-Year Prison Sentence

¶ 27 In this case, defendant challenges the trial court's imposition of a 35-year prison sentence for the crime of predatory criminal sexual assault, which carried a sentencing range of 6 to 60 years (720 ILCS 5/12-14.1(b)(1) (West 2008)). Defendant does not argue that the court accepted any improper evidence at the hearing or considered any improper factors in aggravation. Instead, he claims that the mitigating factors far outweighed the aggravating factors, which obligated the court to impose a sentence toward the low end of the sentencing range. Specifically, defendant asserts that the court failed to give proper weight to the following statutory mitigating factors: (1) defendant's lack of a criminal history (730 ILCS 5/5-5-3.1(a)(7) (West 2008)); (2) the unlikelihood that the circumstances of defendant's crimes will reoccur (730 ILCS 5/5-5-3.1(a)(8) (West 2008)); and (3) defendant's character and attitude, which indicated that he is unlikely to commit another crime (730 ILCS 5/5-5-3.1(a)(9) (West 2008)). Defendant further contends that the court should have more fully considered that defendant (1) admitted his guilt, (2) was remorseful, (3) was employed for 12 years prior to his arrest, and (4) has the potential to be rehabilitated.

¶ 28 Although defendant does not make the argument directly, he implicitly urges us to reweigh the mitigating and aggravating factors and substitute our judgment for that of the trial court. This is precisely what we will not do. It is well established that the trial court is in a better position than the appellate court to consider the evidence presented at sentencing, weigh the

applicable factors in aggravation and mitigation, and fashion an appropriate sentence. The question for this court is simply whether the trial court abused its discretion in doing so.

¶ 29 The evidence showed defendant engaged in regular sexual intercourse with R.M. for two years when she was between the ages of 11 and 13 years old. Beyond the conduct inherent in the offense, defendant demonstrated a depraved sexual interest in children by (1) requesting that R.M. bring her juvenile brother to defendant's house to engage in group sex and, (2) according to Joseph's victim impact statement, telling R.M. that he wanted to get her pregnant and run away with her. Defendant's close, lifelong relationship with R.M., which derived from his close friendship with her family, likely compounded the emotional and psychological damage done to R.M. as a result of defendant's prolonged sexual relationship with her.

¶ 30 Weighing the aggravating factors against the mitigating factors, the trial court was well within its discretion to sentence defendant to 35 years in prison for his predatory criminal sexual assault upon R.M. Defendant's sentence, which was near the middle of the statutory range, was nowhere close to being "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210, 737 N.E.2d at 629.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm defendant's convictions and sentences. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 33 No. 4-13-0592, dismissed.

¶ 34 No. 4-13-0593, affirmed.