

NOTICE
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2014 IL App (5th) 120577-U

NO. 5-12-0577

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Williamson County.
)	
v.)	No. 12-CF-19
)	
LELAND CHEEKS,)	Honorable
)	John Speroni,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Cates and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion when it sentenced the defendant to 10 years in prison.

¶ 2 Following a jury trial, the defendant, Leland Cheeks, was convicted of one count of criminal sexual assault. He was sentenced to 10 years' imprisonment. Appealing from the denial of his motion to reconsider his sentence, the defendant argues that his 10-year sentence is excessive. He asks this court to reduce his sentence to four years' imprisonment. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 On January 17, 2012, the defendant was charged with two counts of criminal sexual assault pursuant to section 11-1.20(a) of the Criminal Code of 2012 (720 ILCS 5/11-1.20(a) (West 2012)). Count I alleged that the defendant sexually assaulted the victim, K.E., by the use of force when he placed his penis in K.E.'s vagina. Count II alleged that the defendant sexually assaulted K.E. when he placed his penis in K.E.'s vagina knowing her to be a person who is unable to give knowing consent. On May 4, 2012, the State filed counts III and IV against the defendant, alleging that the defendant committed criminal sexual assault by placing his penis in K.E.'s anus. Count III charged that the defendant used force, and count IV charged that the defendant knew that K.E. was unable to give consent. The State dismissed counts I and II prior to trial, but proceeded on counts III and IV at trial.

¶ 5 The evidence at trial showed that K.E. was chronologically 21 years old at the time of the assault but had an IQ of approximately 45 and was mentally handicapped. K.E. also had cerebellar atrophy, which caused her to have poor balance and fall easily. K.E.'s grandmother had guardianship over K.E. and K.E. lived with her grandmother and grandfather. In January 2012, however, K.E. was visiting her mother at her mother's home. K.E.'s sister, her sister's infant son, and her sister's boyfriend, the defendant, were living at the home as well. On January 16, 2012, K.E.'s sister and mother were not home. K.E. testified that she was in the living room when the defendant asked her what she wanted to do. K.E. responded that she did not want to do anything. At that point, the defendant grabbed K.E., pushed her down, and forced anal sex upon her. K.E. eventually

pushed or kicked the defendant off of her and escaped to the bathroom, where she tried to use a rag to clean herself. When she was sure that the defendant was asleep, she called her aunt, who then called K.E.'s mother. K.E.'s mother called the police.

¶ 6 When the police arrived, the defendant was standing outside of the home. He told Detective Maria Lara that he had been taking a nap when he awoke to K.E. hitting him with a broom stick and "talking crazy." Detective Lara then spoke with K.E. and K.E. appeared nervous. Detective Lara found a condom in the pocket of the defendant's pants. A DNA test of the condom revealed two DNA profiles: that of the defendant and K.E. Detective Lara took K.E. to the hospital where a rape kit was conducted. The results of the kit stated "normal vaginal, normal rectal." There were no obvious injuries to K.E.

¶ 7 The jury found the defendant not guilty on count IV, but found that defendant used force to sexually assault K.E. and convicted him on count III.

¶ 8 On October 26, 2012, the court held a sentencing hearing. The presentence investigation report (PSI) revealed that the defendant had a juvenile charge which was later dismissed, but no other criminal history. Attached to the PSI, the defendant presented a written statement in which he claimed that his only wrongdoing was that he cheated on his girlfriend. The State did not present any evidence in aggravation, but did present a victim impact statement from K.E. wherein K.E. stated that she thought about the sexual assault all the time and her family constantly talked about it, which was difficult. Further, her sister blamed her for the assault and was spiteful toward K.E.

¶ 9 On October 29, 2012, the court held a hearing where it made a ruling as to the sentence. It considered the factors in aggravation and mitigation. In mitigation, the court

considered the defendant's limited criminal history. In aggravation, the court noted the need to deter others from committing the same offense, especially considering the mental deficiencies of the victim. The court also noted that the victim struggled to simply stand or walk. The court then sentenced the defendant to 10 years in prison. The defendant filed a motion to reconsider, which the court denied. This appeal followed.

¶ 10

ANALYSIS

¶ 11 The circuit court has broad discretion when sentencing a defendant and its decision will not be disturbed absent an abuse of that discretion. *People v. La Pointe*, 88 Ill. 2d 482, 292 (1981). An abuse of discretion will be found only where the circuit court's decision is arbitrary, fanciful, or unreasonable. *People v. Ursery*, 364 Ill. App. 3d 680, 686 (2006). The sentencing court is in the best position to determine an appropriate sentence. *People v. Wilson*, 143 Ill. 2d 236, 250-51 (1991). A sentencing court has a far better opportunity to observe the defendant and consider the relevant factors, whereas a reviewing court must rely upon a "cold record." *People v. Fern*, 189 Ill. 2d 48, 53 (1999). In determining an appropriate sentence, a sentencing court must consider all of the relevant factors in aggravation and mitigation and "balance them against each other." *People v. Mays*, 230 Ill. App. 3d 748, 758 (1992). The seriousness of the offense is the most important factor the court must consider when determining an appropriate sentence. *People v. Watt*, 2013 IL App (2d) 120183, ¶ 50. When the circuit court has imposed a sentence within the statutory range, the court has not abused its discretion unless the sentence is manifestly disproportionate to the nature of the offense or greatly at variance with the spirit and purpose of the law. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007).

¶ 12 Criminal sexual assault is a Class 1 felony with a sentencing range from 4 years to 15 years. 730 ILCS 5/5-4.5-30(a) (West 2012). The circuit court sentenced the defendant to 10 years' imprisonment, which is a sentence well within the statutory range. Therefore, the court has not abused its discretion unless the sentence was manifestly disproportionate to the nature of the offense. In this case, the court considered factors in aggravation and mitigation. The victim had mental and physical deficiencies. The victim had difficulty standing and walking, and could not comprehend basic concepts due to her mental disability. While the court considered the defendant's young age and limited criminal history, the court rightly found that the crime against K.E. was heinous, and in light of K.E.'s limitations, "particularly egregious." The defendant showed no remorse and only regretted that he had cheated on his girlfriend. The court was able to view the defendant, the victim, the trial, and the sentencing hearing and was able to fashion an appropriate sentence. Thus, we do not agree with the defendant that the court abused its discretion when it sentenced him to 10 years in prison.

¶ 13 CONCLUSION

¶ 14 For the foregoing reasons, the judgment of the circuit court of Williamson County is affirmed.

¶ 15 Affirmed.