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FIRST DIVISION
June 30, 2015

Nos. 1-12-2941 & 1-12-3243 (cons.)
2015 IL App (1st) 122941-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Plaintiff-Appellee,)	Appeal from the
)	Circuit Court of
v.)	Cook County.
)	
MESSIAH DAVIS,)	Nos. 08 CR 22888 &
)	08 CR 22889
Defendant-Appellant.)	Honorable
)	Thomas V. Gainer, Jr.,
)	Judge Presiding.
)	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

Held: Trial court did not rely on improper factors in aggravation during sentencing, and did not abuse its discretion in sentencing defendant to consecutive prison terms.

¶ 1 Defendant Messiah Davis was convicted after a jury trial of delivery of a controlled substance and delivery of a controlled substance within 1000 feet of a school. He was sentenced to consecutive terms of 10 years and 20 years in prison. Defendant now appeals, arguing that the

trial court abused its discretion in sentencing him where it: (1) relied on improper aggravating factors, (2) imposed consecutive sentences based on the same improper factors, and (3) failed to give proper weight to the mitigating factors. For the following reasons, we affirm.

¶ 2 This appeal concerns only the sentence imposed, and not the underlying convictions. Accordingly, we will give a brief description of the underlying convictions, but the majority of our discussion will focus on the sentencing hearing and defendant's motion to reconsider.

¶ 3 This case originally involved three separate indictments. Under 08 CR 22888, defendant was charged with one count of delivery of a controlled substance within 1000 feet of a school and one count of delivery of a controlled substance, for events that occurred on October 22, 2008. Under 08 CR 22889, defendant was charged with one count of delivery of a controlled substance within 1000 feet of a school, and one count of delivery of a controlled substance, for events that occurred on October 27, 2008. Under 08 CR 21432, defendant was charged with burglary of a boxcar for events that occurred on October 29, 2008.

¶ 4 During pretrial proceedings, the trial court held several plea bargain conferences pursuant to Illinois Supreme Court Rule 402 (eff. Jul. 1, 2012). On June 15, 2009, during one such conference, the trial court offered defendant concurrent terms of six years, ten years, and ten years for the charged offenses in exchange for a guilty plea on all three offenses. Defendant rejected the offer.

¶ 5 The parties proceeded to a jury trial on the burglary of a boxcar charge, which resulted in a hung jury. The trial court declared a mistrial.

¶ 6 On February 1, 2011, the trial court granted defendant's motion to join the two remaining indictments (08 CR 22888 and 08 CR 22889). The State indicated that it was not proceeding on count one of the first indictment, which charged defendant with delivery of a controlled

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substance within 1000 feet of a school on October 22, 2008. The remaining count under 08 CR 22888 was for delivery of a controlled substance on October 22, 2008, namely one to fifteen grams of heroin. The two counts under 08 CR 22889 remained as well, which were delivery of a controlled substance on October 27, 2008, namely one to fifteen grams of heroin, and delivery of a controlled substance on October 27, 2008 within 1000 feet of a school, namely one to fifteen grams of heroin. The jury found defendant guilty of delivery on all three counts. The case then proceeded to sentencing.

¶ 7 At the sentencing hearing, the State presented certified copies of defendant's prior convictions. One was for aggravated battery with a weapon (03 CR 20623), one was for aggravated battery of a peace officer (02 CR 23359), and another was for aggravated battery of a peace officer (02 CR 23360). The State also introduced defendant's three juvenile adjudications for possession of a controlled substance (00 JD 3437, 01 JD 5482, and 01 JD 1295).

¶ 8 The State submitted a copy of the presentence investigation report (PSI) compiled in 2006 after defendant was convicted of aggravated battery with a weapon (03 CR 20623). The trial court allowed this submission over defendant's objection. The aggravated battery conviction was based on evidence that showed defendant was driving a car that struck Lakeith Chambers, who was standing in the street. The State submitted a copy of Lakeith's testimony from the 2006 trial. The State also called Lakeith's treating physician to testify at defendant's sentencing hearing. Dr. Andrew Dennis testified that Lakeith's injuries from the offense included a heart attack, a collapsed left lung and a bruised right lung, and an ankle fracture. Dr. Dennis testified that several hours of surgery were performed on Lakeith's heart, followed by several hours of surgery on his abdomen. Dr. Dennis testified that Lakeith remained hospitalized for several

weeks in the intensive care unit as a result, and that he referred Lakeith to a heart failure clinic in case Lakeith needed a heart transplant in the future.

¶ 9 The State also called Sergeant Armando Galan to testify regarding one of defendant's convictions for aggravated battery of a peace officer (02 CR 23359). Galan testified that he approached defendant in a public house building on July 10, 2002, because he believed defendant was holding a bag of cocaine. Defendant tried to flee but Galan tackled him and attempted to confiscate the bag of alleged cocaine. Defendant then hit and kicked Galan. He hit Galan's radio out of his hands and they continued to wrestle until defendant broke free and fled. Defendant ultimately pled guilty to aggravated battery of a peace officer.

¶ 10 Detective Ed Kaizer testified regarding defendant's other conviction for aggravated battery of a peace officer (02 CR 23360). Kaizer testified that Officer Burg and Officer Gonzalez told Kaizer that they approached defendant on August 30, 2002, outside of a public housing building. As the officers approached, defendant bent down and picked up a baby to hold in front of him. The officers told defendant he was under arrest, but defendant resisted. He put the baby down and began kicking and punching both officers. Defendant repeatedly slammed Officer Burg's hand on a fence, and defendant bit Officer Gonzalez and remained biting him until he was "maced." Defendant pled guilty to aggravated battery of a peace officer and received two years' incarceration.

¶ 11 Defendant's parents testified in mitigation. Defendant's father, Johnny Governor, testified that he had severe medical problems including emphysema, heart problems, and seizures from epilepsy that caused him to collapse and blackout. Governor testified that he suffered from these issues, as well as substance abuse, while defendant was growing up. Defendant helped Governor take care of his medical conditions, and he made sure Governor woke up in the mornings, took

his medications, ate meals, and got dressed. Governor testified that he separated from defendant's mother four years before defendant was arrested in this case, and that he lives with his daughter and her children, but that they do not help take care of him.

¶ 12 Defendant's mother, Betty Davis, testified that she suffers from several medical problems including severe depression and problems with her legs that make walking difficult. She testified that she needs help getting around the house, and needs somebody to check on her because her medications make her drowsy. Davis testified that defendant used to take her to her doctor appointments and make sure she took her medications. He did all the grocery shopping and washed their clothes. She testified that defendant had a difficult upbringing because she and his father had substance abuse issues. She also testified that there was a lot of "peer pressure" in the neighborhood and that defendant was a member of the Traveling Vice Lord gang. Davis testified that her nieces check on her at the house now that defendant is incarcerated.

¶ 13 Defendant submitted progress reports from his drug treatment and a certificate of completion of a drug program he completed while incarcerated. Defendant addressed the trial court and stated that he now realized his mistakes and the need to change his life, and that he did not want to lose his life to the streets or to jail. He stated that he hoped to become a productive citizen.

¶ 14 The trial court stated that after considering the testimony of defendant's parents, and "after reviewing the factors in mitigation," it did not "find that their testimony support[ed] 5-5-3.1(11) that imprisonment of the defendant would entail excessive hardship to his dependents." The trial court then noted that it had reviewed the factors in mitigation and "reviewed each one with an eye toward determining what exactly is it about [defendant] and what he has done throughout his life that would mitigate the seriousness of these crimes."

¶ 15 The trial court noted that defendant was a drug dealer with an organized business and that defendant utilized cell phones and arranged drug sales in an organized fashion. The court stated that “while [defendant’s] criminal conduct neither caused [n]or threatened any serious physical harm to the police officers that were acting undercover, he was engaged in selling poison that ruins communities all over this country.” The court continued, stating “the defendant was selling poison in a community that is wracked by this poison and in an area that was close by a school when children coming home from school were present.”

¶ 16 The trial court stated that while it considered defendant’s “very eloquent statement and the fact that he has completed drug treatment in the jail,” it could not say that “his criminal conduct was the result of circumstances unlikely to recur and that his character and attitude indicate that he is not unlikely to commit additional crime[s].”

¶ 17 The trial court again stated that it had considered “all of the factors in mitigation” and defendant’s successful drug treatment, as well as the fact that “the police officers weren’t in any immediate danger as a result of this criminal conduct.” But it noted that since defendant was 15 years old, he had been a “career criminal.” He was placed on probation for three different drug offenses, but was unable to successfully complete any of them. The trial court stated that shortly after becoming an adult, “he began to engage in violent crime. He was involved in two crimes against Chicago police officers ***.” The trial court then detailed the injuries of the two police officers. It then stated that there was something to be said about the fact that defendant put the baby down before he was arrested during one offense, but that “the fact that he even picked the child up in the first place is very aggravating in this court’s mind.”

¶ 18 The court went on to state that defendant was sentenced to two years in jail but got out after less than one, but that less than four months after his release, he “caused very grievous – in

the language of the statute – great bodily harm to LaKeith Chambers.” He was then sentenced to a maximum extended term of ten years, but was released about four years later for meritorious behavior. The court stated, “For all the time that he was in custody, he did apparently nothing to turn his life around because when he came out in ’07,” he was dealing drugs by at least October of 2008. The court opined that defendant did not attempt to turn his life around after nearly five years in jail, but that it “was only when he was facing the serious charges that he is facing now, a Class X and a Class 1 felony, that he has come to the realization that his criminal behavior must end.”

¶ 19 The court continued, stating that the “two buys” that defendant was indicted for “were small amounts of drugs,” but that they showed evidence of his conduct and that a planned scheme was involved. The court stated: “Having regard to the nature and circumstances of the offense and the history and character of this defendant, it is my opinion that consecutive sentences are required to protect the public from further criminal conduct by [defendant].” The trial court then contemplated whether it should give defendant the maximum sentence of 30 years on the Class X felony and 15 consecutive years for the Class 1 felony, for a total of 45 years in jail. But the trial court stated:

“I think to do that would be to ignore his accomplishment in drug treatment. I think it would be to ignore the fact that if what he says is heartfelt and true, that he has made some progress in assessing the damage he has done since he was 15 years old. And I can’t ignore that. I can’t do that. But I still believe in my heart that his life of crime, his – which is extensive and which has gone on since he was 15 years old – must be punished.”

¶ 20 The trial court then sentenced defendant to 20 years in jail for the Class X felony, and 10 years for the Class 1 felony, for an aggregate sentence of 30 years in jail. Defendant now appeals, arguing that the trial court abused its discretion in sentencing him where it: (1) relied on improper aggravating factors, (2) imposed consecutive sentences based on the same improper factors, and (3) failed to give proper weight to the mitigating factors.

¶ 21 As a preliminary matter, however, the State contends that although defendant filed a motion to reconsider alleging that his sentence was excessive and that the trial court imposed consecutive sentences without a sufficient basis, he failed to include in his motion allegations about the trial court's comments regarding improper facts, and thus waived this issue on appeal. See *People v. Harvey*, 211 Ill. 2d 368, 386 (2004) (a defendant's failure to object at trial and to raise the issue in a post-trial motion operates as a waiver of the right to raise the issue as a ground for reversal on review). Defendant maintains that while he did not make some of the specific improper factor arguments in his motion to reconsider that he now makes on appeal, we should nevertheless review this issue pursuant to the plain error doctrine.

¶ 22 The plain error doctrine allows a reviewing court to consider unpreserved error when a clear or obvious error occurred and (1) the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) that error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The second scenario is potentially present here because "when a trial court considers erroneous aggravating factors in determining the appropriate sentence of imprisonment, the defendant's 'fundamental right to liberty' is unjustly affected, which is seen as a serious error." *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 7

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(quoting *People v. James*, 255 Ill. App. 3d 516, 531 (1993)). Accordingly, we will review this issue under the plain error doctrine.

¶ 23 Imposition of a sentence is normally within a trial court’s discretion, and there is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, such that the trial court’s sentencing decision is reviewed with great deference. *Abdelhadi*, 2012 IL App (2d) at ¶ 8. The presumption is only overcome by an affirmative showing that the sentence imposed varies greatly from the purpose and spirit of the law or manifestly violates constitutional guidelines. *Id.* “Nonetheless, the question of whether a court relied on an improper factor in imposing a sentence ultimately presents a question of law to be reviewed *de novo.*” *Id.*

¶ 24 Here, defendant contends that the trial court relied on the improper aggravating factor of the harm to society at large from the sale of drugs. Specifically, defendant takes issue with the following statement by the trial court:

“[Defendant] was engaged in selling poison that ruins communities all over this country. And so while these police officers didn’t suffer any immediate harm or were even threatened with immediate harm other than the type of threat that comes with the daily functions of their job, the defendant was selling poison and in an area that was close by a school when children coming home from school were present.”

¶ 25 Defendant contends that the trial court applied this factor to aggravate defendant’s sentence, which has been “consistently rejected in Illinois.” Defendant argues that the widespread harm from the sale of drugs is implicit in the offense of delivery of a controlled substance, and thus it was improper for the court to rely on it again in aggravation. See *People v.*

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Phelps, 211 Ill. 2d 1, 12 (2004) (although the trial court has broad discretion when imposing a sentence, it may not consider a factor implicit in the offense as an aggravating factor in sentencing).

¶ 26 It is true that a factor cannot be used both as an element of an offense and as a basis for imposing a “harsher sentence than might otherwise have been imposed.” *People v. Gonzalez*, 151 Ill. 2d 79, 83-84 (1992). The prohibition against this “double enhancement” is based on the rationale that “the legislature obviously has already considered such a fact when setting the range of penalties and it would be improper to consider it once again as a justification for imposing a greater penalty.” *People v. James*, 255 Ill. App. 3d at 532. The defendant bears the burden of establishing that a sentence was based on improper considerations. *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009). In determining whether the trial court based the sentence on improper aggravating factors, a court of review should “consider the record as a whole, rather than focusing on a few words or statements by the trial court.” *Id.*

¶ 27 Here, defendant relies primarily on *People v. Maxwell*, 167 Ill. App. 3d 849 (1988), to support his contention that the trial court relied on the improper aggravating factor of harm to others because harm to society is a factor implicit in both the crime of delivery of a controlled substance and delivery of a controlled substance within 1000 feet of a school. In *Maxwell*, the defendant pleaded guilty to the charge of unlawful delivery of a controlled substance. In determining the sentence, the trial court relied on three factors in aggravation, including the fact that the defendant’s conduct “caused or threatened serious harm.” *Maxwell*, 167 Ill. App. 3d at 850. The defendant appealed, contending that sentence was too harsh because the trial court improperly weighed the aggravating factor of defendant’s infliction of or attempt to inflict serious bodily harm. *Id.*

¶ 28 The court on appeal found that the trial court's consideration of the factor that defendant inflicted or attempted to inflict serious bodily injury to another person "is clearly improper considering all the evidence at trial," because that aggravating factor "indicates that some actual or threatened serious harm must have occurred because the court may consider [it]." *Id.* at 852. The State admitted that the facts did not indicate that defendant directly attempted to inflict bodily injury, but then attempted to characterize the trial court's consideration of this factor as a proper method of incorporating into defendant's sentence an element implicit in the delivery of cocaine. The court found that such a characterization would not be permitted because "the issue of widespread harm from the use of cocaine is implicit in the crime of delivery." *Id.* The court went on to state that in its argument in aggravation, the State did not present any evidence that defendant directly harmed or attempted to harm another person, and thus reliance on this aggravating factor was improper. *Id.*

¶ 29 In the case at bar, the trial court stated that defendant was engaged in "selling poison that ruins communities all over this country." It went on to state that defendant was "selling poison in a community that is wracked by this poison" and in an area close to a school. We do not find that this is the same scenario that occurred in *Maxwell*. The trial court did not state, as it did in *Maxwell*, that defendant's conduct caused or threatened serious physical harm. In fact, the trial court specifically stated that "the police officers weren't in any immediate danger as a result of this criminal conduct," and that defendant's criminal conduct "neither caused [n]or threatened any serious physical harm to the police officers that were acting undercover." While the trial court may have implied harm by referring to heroin as "poison," we do not find that it relied on defendant's allegedly harmful conduct as a factor in aggravation.

¶ 30 Even if we were to find that this factor was improper, we would still find that the case would not need to be remanded for resentencing based on the improper factor. When a trial court considers an improper factor in aggravation, the case must be remanded unless it appears from the record that the weight placed upon the improper factor was so insignificant that it did not lead to a greater sentence. *People v. Glenn*, 363 Ill. App. 3d 170, 178 (2006). Courts of review have found the following considerations to be helpful when determining whether trial courts have afforded significant weight to an improper factor such that remand would be required: (1) whether the trial court made any dismissive or emphatic comments in reciting its consideration of the improper factor; and (2) whether the sentence received was substantially less than the maximum sentence permissible by statute. *Dowding*, 388 Ill. App. 3d at 945.

¶ 31 Here, while the trial court mentioned that defendant was engaged in selling "poison" to the community, it focused on other factors. Namely, that defendant was an organized drug dealer, that he was a career criminal, that he unsuccessfully completed any probation periods as a juvenile, that he began engaging in violent crime as soon as he became an adult, two of which involved Chicago police officers, and that defendant used a baby as a shield during one arrest. The court also noted that defendant was twice sentenced to jail before this offense and got out early both times for meritorious conduct, only to cause very serious harm to LaKeith Chambers within months of his first release, and to begin selling drugs again several months after his second release. The trial court also considered defendant's threat to the public. Accordingly, we find that the weight placed on this improper factor, if any, was so insignificant that it did not lead to a greater sentence. *Glenn*, 363 Ill. App. 3d at 178. Moreover, the maximum sentence defendant could have received for the Class X felony was 30 years, as the sentencing range is 6 to 30 years imprisonment, and the maximum sentence he could have received for the Class 1

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felony was 15 years in prison, as the sentencing range for a Class 1 felony is 4 to 15 years imprisonment. See 730 ILCS 5/5-4.5-25, 30 (West 2008). Defendant received 20 years for the Class X felony, and 10 years for the Class 1 felony. Accordingly, the sentence received for each conviction was substantially less than the maximum sentence permissible by statute. *Dowding*, 388 Ill. App. 3d at 945.

¶ 32 Defendant's next argument on appeal is that the trial court relied on several irrelevant factors when sentencing defendant. Specifically, defendant contends that Detective Kaizer's testimony that Officers Burg and Gonzalez told him that defendant "picked up a baby to hold in front of him" during the 2002 aggravated battery of a peace officer offense was hearsay testimony that was not reliable or relevant. Defendant similarly contends that the testimony regarding the hand injury that Officer Burg sustained during the 2002 aggravated battery to a peace officer conviction was irrelevant, as well as the testimony regarding Lakeith's injuries from the 2006 aggravated battery with a weapon conviction. We disagree.

¶ 33 It is well established that the ordinary rules of evidence are relaxed during sentencing hearings. *People v. Bouyer*, 329 Ill. App. 3d 156, 165 (2002). The only requirement for admission of evidence in a sentencing hearing is that the evidence must be reliable and relevant as determined by the trial court within its sound discretion. *People v. Harris*, 375 Ill. App. 3d 398, 408 (2007). "The source and type of admissible information is virtually without limits." *People v. Varghese*, 391 Ill. App. 3d 866, 873 (2009). A court " 'may search anywhere, within reasonable bounds, for other facts which tend to aggravate or mitigate the offense.' " *People v. LaPointe*, 88 Ill. 2d 482, 495 (1981) (quoting *People v. McWilliams*, 348 Ill. 333, 336 (1932)). Specifically, a court may inquire into a defendant's "general moral character, habits, social environment, abnormal tendencies, age, natural inclination or aversion to commit crime, and

stimuli motivating his conduct, in addition to his family life, occupation, and criminal record." *People v. Reed*, 376 Ill. App. 3d 121, 128 (2007).

¶ 34 Here, Detective Kaizer's testimony that Officers Burg and Gonzalez told him that defendant "picked up a baby to hold in front of him," and that Officer Burg sustained an injury to his hand during the 2002 aggravated battery of a peace officer offense was not inadmissible. Merely because testimony contains hearsay does not render it *per se* inadmissible at a sentencing hearing; a hearsay objection affects the weight rather than the admissibility of the evidence. *Varghese*, 391 Ill. App. 3d at 873. Hearsay evidence is therefore admissible if it meets the requirements of reliability and relevancy. *People v. Hudson*, 157 Ill. 2d 401, 450 (1993). Hearsay evidence may be found to be relevant, reliable, and admissible when it is corroborated by other evidence. *Id.*

¶ 35 After examining the record, we find that the trial court did not abuse its discretion by admitting Detective Kaizer's testimony. Defendant pled guilty to aggravated battery of a peace officer and received two years of incarceration. Detective Kaizer provided details of that conviction that he heard from both Officer Burg and Officer Gonzalez. Both officers provided details of the offense which was related to past criminal conduct by defendant. See *People v. Hudson*, 157 Ill. 2d 401, 450 (1993) (testimony relevant if it relates to past criminal conduct by defendant). Such conduct provides an insight into defendant's character. *Id.*

¶ 36 With respect to Lakeith's injuries that resulted from the 2006 aggravated battery with a weapon conviction, the State submitted Lakeith's trial testimony from 2006. Lakeith's treating physician testified at the sentencing hearing and corroborated Lakeith's 2006 testimony regarding his injuries. Defendant contends that, based on *People v. Ballard*, 206 Ill. 2d 151, 193 (2002), such testimony was irrelevant because while the details of a prior crime are considered relevant

aggravation, the unforeseen effects of those prior crimes on their victims are of no such assistance. In *Ballard*, the defendant's ex-girlfriend testified at sentencing about her injuries from a prior assault by defendant. She told the court how the injuries had affected her life, including details on her continued physical therapy. Our supreme court found that the ex-girlfriend's detailed account of her ongoing physical therapy were irrelevant, specifically stating "the unforeseen effects of those prior crimes on their victims are of no such assistance." *Ballard*, 206 Ill. 2d at 193. In this case, Lakeith did not testify as his ongoing physical therapy or any unforeseen effects of the aggravated battery. Rather, the testimony submitted was from the 2006 trial, which was corroborated by the treating physician's testimony regarding Lakeith's injuries at the time of the incident, not after. Accordingly, we find that the testimony presented regarding the aggravated battery with a weapon conviction was proper.

¶ 37 Defendant next contends that the trial court abused its discretion by ordering defendant's sentences to run consecutive for protection of the public when this case involved two nonviolent deliveries of a controlled substance. The State maintains that the trial court did not abuse its discretion where it properly considered defendant's prior criminal history and the circumstances of the crimes.

¶ 38 Consecutive sentences should be imposed sparingly and are to be imposed only where the nature and circumstances of the offense and the history and character of the defendant indicate that a consecutive term is required to protect the public from further criminal conduct of the defendant. *People v. Clark*, 278 Ill. App. 3d 996, 1006 (1996). The statute specifically states that the court may impose consecutive sentences:

"If, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive

sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." 730 ILCS 5/5-8-4(c)(1) (West 2008).

¶ 39 Here, during the sentencing hearing, the trial court stated:

"Having regard to the nature and circumstances of the offense and the history and character of this defendant, it is my opinion that consecutive sentences are required to protect the public from further criminal conduct by [defendant]. And that criminal conduct is all of the criminal conduct that I have outlined here today - - crimes of violence against a police officer, the crime of violence against a rival gang member who he ran down with a car in the middle of the day in broad daylight on Western Avenue at a very busy intersection, and now this conduct where he is selling poison that is destroying our community and doing so within - - within feet of children returning from school ***."

¶ 40 Given the statute, the trial court's comments during sentencing, and the facts of this case, we find that the trial court did not abuse its discretion in giving consecutive sentences. Defendant's reliance on *People v. Clark*, 278 Ill. App. 3d at 1006, does not convince us otherwise. In *Clark*, the trial court found that there was no reason to believe that the defendant was "the kind of person who is a danger to the community and goes around killing people because looking at his past life as the State has indicated, his past activities, there is nothing there to indicate that he is a violent or dangerous man." *Clark*, 278 Ill. App. 3d at 1006. Yet the trial court went on to impose consecutive sentences. The appellate court reversed, finding that there was no support that consecutive sentences were necessary where there was no history of violence or need to protect the public. *Id.* Here, on the other hand, the trial court noted several past

activities by defendant that indicate that he is a violent and/or dangerous man. The trial court noted that the public should be protected from further conduct of defendant. Accordingly, we cannot say that the trial court abused its discretion in imposing consecutive sentences in this case.

¶ 41 Lastly, defendant contends that his 30-year aggregate sentence was excessive in light of the significant mitigation evidence and the "relatively small amount of drugs involved here." The State responds that the sentence was well within the statutory range and was therefore proper.

¶ 42 We reiterate that a trial court's imposition of a sentence is entitled to great deference. *People v. O'Neal*, 125 Ill. 2d 291, 297 (1988). Although a reviewing court has the authority to reduce a sentence, the court may only exercise this authority if the trial court abused its discretion in imposing the sentence. *People v. Starnes*, 374 Ill. App. 3d 132, 143 (2007). A reviewing court should not, however, substitute its judgment for that of the trial court and reduce an offender's sentence merely because it would have weighed the factors differently and reached a different result. *People v. Streit*, 142 Ill. 2d 13, 19 (191). Generally, the trial court is in a better position than a court of review to determine an appropriate sentence considering the particular facts and circumstances of each case. *Starnes*, 374 Ill. App. 3d at 143. "If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." *Id.*

¶ 43 Under Illinois law, the sentencing range for a Class X felony is no less than six years and no more than 30 years in the Illinois state penitentiary. 730 ILCS 5/5-4.5-25 (West 2008). The sentencing range for a Class 1 felony is no less than four years and no more than 15 years in the

Illinois state penitentiary. 730 ILCS 5/5-4.5-30 (West 2008). In the instant case, a review of the record indicates that the trial court relied on proper aggravating and mitigating factors in imposing the sentence. The record reflects that the trial court was fully aware of the circumstances surrounding the crime and defendant's extensive criminal history. It also took into consideration defendant's completion of a drug treatment program, and his "eloquent" testimony during sentencing.

¶ 44 We note that a trial court need not articulate the process by which it determines the appropriateness of a given sentence (*Starnes*, 374 Ill. App. 3d at 143), but in this case, the trial court properly considered the factors in aggravation and mitigation and sentenced defendant within the statutory range. It concluded as follows:

"[W]hat's the appropriate sentence? Should I *** max him out and give him 30 years in the Illinois Department of Corrections on the Class X felony and 15 years consecutive for a total of 45 years in the Illinois Department of Corrections?

Well I think to do that would be to ignore his accomplishment in drug treatment. I think it would be to ignore the fact that if what he says is heartfelt and true, that he has made some progress in assessing the damage he has done since he was 15 years old. And I can't ignore that. I can't do that. But I still believe in my heart that his life of crime, his - - which is extensive and which has gone on since he was 15 years old - - must be punished."

¶ 45 The trial court then found that the appropriate sentence was 20 years for the Class X, and 10 years for the Class 1, to be served consecutively, which was within the statutory range. While the trial court could have imposed a lesser sentence, we cannot say that the trial court abused its discretion in this case as we do not find that the sentence imposed is at odds with the purpose and

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spirit of the law or that it is disproportionate to the nature of the offense. Accordingly, we conclude that the sentence was an appropriate exercise of the trial court's discretion.

¶ 46 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 47 Affirmed.