

No. 1-14-0588

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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 14369
	)	
GERARDO CAMPOS,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hoffman and Delort concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Automatic transfer provision of the Juvenile Court Act of 1987 is not unconstitutional in light of *People v. Patterson*, 2014 IL 115102. Defendant's 10½ year sentence for aggravated battery by discharging a firearm affirmed over contentions that: (1) he was denied a fair sentencing hearing because the trial court misstated the evidence and failed to consider a statutory mitigating factor; and (2) his sentence was excessive.

¶ 2 Following a bench trial, defendant Gerardo Campos was convicted of aggravated battery by discharging a firearm and sentenced to 10½ years' imprisonment. On appeal, defendant contends that: (1) the "automatic transfer provision" of the Illinois Juvenile Court Act of 1987 (705 ILCS 405/5-130 (West 2010)), under which he was tried and sentenced as an adult, is

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unconstitutional; (2) he was denied a fair sentencing hearing when the trial court relied on a misstatement of evidence in aggravation and failed to adequately consider a statutory mitigating factor; and (3) his sentence was excessive. We affirm.

¶ 3 At trial, the evidence established that, on August 3, 2011, the 16-year-old defendant and a group of men were arguing on the street. Defendant, who was not wearing any shoes, was in the middle of the street while the group stood near the entrance to a Chicago Transit Authority (CTA) Orange Line station. Three of the men approached defendant and said something to him. Defendant lifted up his shirt and exposed the handle of a gun which was tucked into his waistband, and told the men to back away. The men walked back to the others in their group who told defendant to "bust that s\*\*\*\*" meaning, fire the gun, because they did not believe the gun was real. Defendant fired the gun multiple times in the direction of the group, hitting one of the men in the stomach. Defendant fled and returned to his residence where the police found him. Defendant told the police "I'm going to beat this." Neither of the State's four witnesses—two bystanders and two members of the group—had observed that anyone in the group were carrying guns that day.

¶ 4 Because of defendant's age, the police interviewed him at the police station with his parents present. Defendant acknowledged possessing a gun for his protection and on the date of the offense. He was returning to his home after walking his girlfriend to the CTA Orange Line station, when he observed a group of individuals he recognized as gang members. Some gang slogans were exchanged, and defendant lifted his shirt to expose his gun. Defendant flashed a Satan Disciples gang sign toward the group. Some people in the group shouted that the gun was a fake and they approached defendant. In response, defendant fired his gun multiple times until

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he ran out of bullets. He told the police he would have continued shooting if he had more bullets. Defendant ran back toward his home and, on the way, he threw his gun into the air as hard as he could and did not know where it landed. When he arrived home, he "jumped" into the shower to make it appear as though he had been there the entire time. Defendant did not tell the police that the others in the group were armed, that he was afraid, or that he thought his girlfriend was in danger.

¶ 5 Defendant testified that, on the night of the shooting, he was a member of the Satan Disciples street gang. Defendant carried a gun for protection because he lived in the territory of rival gangs. On the day of the shooting, he left his residence to walk his girlfriend to a nearby train station, but did not wear shoes because he was going to immediately return home. While he walked, he observed a group of men walking in his direction, flashing gang signs. Three or four of the men approached him and asked his gang affiliation. Defendant told the men that he was a Satan Disciple, he did not want any trouble, and to leave him alone. Defendant began to walk back to his residence, but the men continued to engage him. Defendant told them he had a gun, and the men responded, several times: "bust that B." Defendant was afraid because he did not want the men to chase him back to his residence in the event that they were carrying guns. One of the men said: "get out the way, I'm going to shoot his ass," then placed his hand underneath his shirt. Defendant admitted he fired his gun in the direction of the group, but maintained that he was not trying to hit anyone, that he was only trying to keep the men away. Defendant's gun was an automatic and, when he pulled the trigger once, "the whole thing" went off.

¶ 6 The trial court found defendant guilty of aggravated battery by discharging a firearm, but not guilty of attempted first-degree murder. The trial court did not believe that defendant was

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justified in using such force as the only testimony regarding another person from the group carrying a gun, came from defendant. The trial court noted that defendant did not give this information to the police after the shooting and found this "part of his testimony [was] incredible, unbelievable, fabricated and scripted by him in order to justify his shooting." Further, the trial court did not believe defendant was afraid for his life when he shot his gun not once, but multiple times. However, the trial court did not find defendant had the specific intent to kill anyone. Defendant moved unsuccessfully for a new trial.

¶ 7 At sentencing, the State argued that, although defendant had no prior criminal history, a minimum sentence would "deprecate the seriousness of the offense." The State remarked that defendant opened fire on a group of people on a public way in front of a CTA station where a passerby could have been shot.

¶ 8 In mitigation, trial counsel argued defendant was 16 years old at the time of the offense, and that he had made a "quick, immature decision." Trial counsel asserted that defendant did not leave his home that day looking for trouble and did not initiate the confrontation with the group of men. Instead, the group approached defendant first and, eventually, told him to fire his gun. Trial counsel also noted that defendant had been diagnosed with attention deficit hyperactivity disorder (ADHD) in the first grade and that, while he had been prescribed medications, he had not always taken them. Finally, trial counsel stated that defendant was dedicated to "withdrawing" from his gang affiliation.

¶ 9 Trial counsel read a letter from defendant's parents wherein they acknowledged his mistake and the resulting consequences. They were "shocked and disappointed" with his actions, but believed he could turn his life around. Defendant addressed the court and thanked it for its

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time stating that he missed his family and had learned that being involved in a gang was not worth his "life in jail."

¶ 10 Defendant's presentence investigation report revealed no criminal background, but an affiliation with the Satan Disciples street gang since he was 15 years old. In the first grade, defendant was diagnosed with ADHD, and he attended an alternative high school for one year before dropping out. He had not been employed prior to his incarceration.

¶ 11 The trial court sentenced defendant to 10½ years' imprisonment for aggravated battery by discharging a firearm. In imposing the sentence, the trial court acknowledged defendant's age when the offense occurred, his lack of a criminal background, and that he had not "been in any type of significant trouble before." The trial court did not believe defendant was looking for trouble on the night of the shooting, but found that he consciously chose to carry a gun as he walked his girlfriend to the train station. The trial court was "concerned" that defendant fired several shots from his gun and, following his arrest, he told the police he was "going to beat the case because the gun wasn't going to be able to be found." The trial court also noted, however, that defendant's statement to the police was made in the "spur of the moment," and was not going to place much weight on the statement as to "any type of aggravation." The trial court concluded that the sentence would be crafted to ensure defendant's rehabilitation, stating: "I see young men such as you often in my courtroom. I wring my hands because I want the best for someone like you to be rehabilitated." The trial court weighed the fact that defendant's actions "endangered" lives by firing into a crowd of people against the need for future deterrence from violent crimes. Defendant's motion for reconsideration was denied. This appeal followed.

¶ 12 On appeal, defendant first contends that section 5-130 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130 (West 2010)), violates the cruel and unusual punishment clause of the eighth amendment of the United States constitution (U.S. Const., amend. VIII), the proportionate penalties clause of the Illinois constitution (Ill. Const. 1970, art. I, § 11), and both the federal and state due process clauses (U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2). In support of this argument, defendant primarily relies on the United States Supreme Court's decisions in *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); and *Roper v. Simmons*, 543 U.S. 551 (2005).

¶ 13 At the time of defendant's offense, section 5-130 of the Act (705 ILCS 405/5-130 (West 2010)), required that juveniles who were at least 15 years old and charged with certain enumerated offenses, including aggravated battery by discharging a firearm, be prosecuted in adult criminal court rather than juvenile court and sentenced accordingly. This section of the Act has become known as the automatic transfer provision. *People v. Patterson*, 2014 IL 115102, ¶ 111, *cert. denied*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 399 (2015). Here, defendant was 16 years old when he was charged with aggravated battery by discharging a firearm and, thus, was tried as an adult in a criminal court rather than a juvenile court. We review the constitutionality of a statute *de novo*. *Id.* ¶ 90.

¶ 14 Defendant's various constitutional violation claims have previously been addressed and rejected by our supreme court in *Patterson*. Concerning defendant's due process claims, our supreme court in *Patterson* concluded that the decisions in *Miller*, *Graham* and *Roper* involved analyses of the eighth amendment, not the due process clauses, and "[a] ruling on a specific flavor of constitutional claim may not justify a similar ruling brought pursuant to another

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constitutional provision." *Id.* ¶ 97. Moreover, the court observed it had already rejected a similar due-process argument in *People v. J.S.*, 103 Ill. 2d 395 (1984), and found no reason to depart from that holding despite *Miller, Graham, and Roper. Patterson*, 2014 IL 115102, ¶¶ 93-94, 98.

¶ 15 The *Patterson* court also rejected eighth amendment and proportionate-penalties claims against the automatic transfer provision. The *Patterson* court noted that the decision to prosecute a defendant in juvenile or criminal court is a matter of procedure. *Id.* ¶ 104. The purpose of the automatic transfer provision is "to protect the public from the most common violent crimes, not to punish a defendant." *Id.* ¶ 105. Therefore, the legislature had deemed the criminal court to be the proper venue for the prosecution of a juvenile charged with one of enumerated offenses. *Id.* Consequently, because the automatic transfer provision was merely procedural and did not actually impose punishment, our supreme court rejected the defendant's eighth amendment and proportionate-penalties clause arguments. *Id.* ¶ 106.

¶ 16 Although defendant acknowledges *Patterson*, he argues it was wrongly decided. However, "[a]s an intermediate appellate court, we are bound to honor our supreme court's conclusion on this issue unless and until that conclusion is revisited by our supreme court or overruled by the United States Supreme Court." *People v. Fountain*, 2012 IL App (3d) 090558, ¶ 23. Accordingly, we reject defendant's claims that the automatic transfer provision is unconstitutional.

¶ 17 Defendant next contends that he was denied a fair sentencing hearing when the trial court relied on a misstatement of evidence in aggravation. While explaining defendant's sentence, the court stated that defendant told the police he was "going to beat the case because the gun wasn't

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going to be able to be found." The evidence at trial, however, demonstrated that defendant told the police: "I'm going to beat this."

¶ 18 Initially, defendant acknowledges that, at the time of sentencing, he did not object to the comments made by the court, and his claim was not included in a written postsentencing motion. Generally, to preserve a claim of sentencing error, the defendant must make a contemporaneous objection and include the claimed error in a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Defendant has, therefore, forfeited his claim of error. *Id.* Nevertheless, defendant argues, we should relax the forfeiture rule under the *Sprinkle* doctrine. *People v. Sprinkle*, 27 Ill. 2d 398 (1963).

¶ 19 Under the *Sprinkle* doctrine, the forfeiture rule may be relaxed when a trial court oversteps its authority in the presence of a jury, or when trial counsel has been effectively prevented from objecting because it would have " 'fallen on deaf ears.' " *People v. McLaurin*, 235 Ill. 2d 478, 486-88 (2009). However, only under the most "extraordinary circumstances \*\*\* such as when a judge makes inappropriate remarks to a jury or relies on social commentary instead of evidence in imposing a death sentence," will we relax the forfeiture rule. *People v. Thompson*, 238 Ill. 2d 598, 612 (2010).

¶ 20 We find that the narrow application of the *Sprinkle* doctrine does not apply in this case. Defendant did not have a jury trial, nor did the trial court rely upon social commentary in imposing a death sentence. Rather, the trial court here simply misstated evidence from the trial during sentencing. Defendant claims only that objecting to the court's misstatement would have been "unreasonable" because it "would have risked antagonizing the judge as he was about to sentence" him. There is nothing in the record to indicate an objection to the court's misstatement



would have "fallen on deaf ears," or that such an objection would have "antagonized" the trial court. Moreover, this situation is not the compelling, nor the extraordinary circumstance contemplated by our supreme court in relaxing the forfeiture rule under the *Sprinkle* doctrine. See *id.*; *McLaurin*, 235 Ill. 2d at 485-89. Accordingly, we find no reason to relax the forfeiture rule under the *Sprinkle* doctrine in this case.

¶ 21 In the alternative, defendant argues we may review this claim of error under either prong of the plain-error doctrine. The plain-error doctrine applies when "a clear or obvious error occurred," and either "\*\*\*\* the evidence at the sentencing hearing was closely balanced, or \*\*\* the error was so egregious as to deny the defendant a fair sentencing hearing." *Hillier*, 237 Ill. 2d at 545. A defendant bears the burden of persuasion on both prongs. *Id.* If there is no error, there can be no plain error. *People v. Bannister*, 232 Ill. 2d 52, 79 (2008). Therefore, the first step in a plain-error analysis is to determine whether any error occurred. *People v. Hudson*, 228 Ill. 2d 181, 191 (2008).

¶ 22 When sentencing a defendant, the trial court " 'must exercise care to insure the accuracy of information considered.' " *People v. Jackson*, 149 Ill. 2d 540, 549 (1992) (quoting *People v. Adkins*, 41 Ill. 2d 297, 300 (1968)). It is not enough to show that the trial court misstated the sentencing evidence, the defendant must demonstrate that the court "relied on the particular" misstatements when it sentenced the defendant. *People v. Valadovinos*, 2014 IL App (1st) 130076, ¶ 47. Even if the trial court considers a misstated fact, it will not require remand or resentencing if it did not lead to a greater sentence. *People v. Cotton*, 393 Ill. App. 3d 237, 266 (2009). "[A] reviewing court should not focus on a few words or statements made by the trial court, but must consider the record as a whole." *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010).

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We review this claim of error under an abuse of discretion standard. *Cotton*, 393 Ill. App. 3d at 265 (quoting *People v. McAfee*, 332 Ill. App. 3d 1091, 1096 (2002)). Reliance upon improper evidence " 'affects a defendant's fundamental right to liberty, and therefore, is an abuse of discretion.' " *Id.*

¶ 23 While the trial court here during the sentencing hearing had misquoted defendant's statement: "I'm going to beat this," its consideration of the evidence as a whole belies any notion that its misstatement affected defendant's sentence. Immediately after the misstatement was made, the trial court pointed out that defendant made the statement upon his arrest, stating: "I am not going to take that and put much weight into that, into any type of aggravation." This demonstrates that the trial court did not rely upon the misstatement when imposing defendant's sentence. Although the trial court indicated it may have given defendant's statement some weight, it is clear that little was attached to the statement, it did not influence the trial court's sentencing of defendant, and it did not lead to a greater sentence. See *id.* at 266. Rather, the record demonstrates that the trial court's sentence was based on defendant's rehabilitative potential, the danger posed by his actions on the day of the shooting, and the need for deterrence from violent crimes. Consequently, although the trial court misquoted defendant's statement to the police, he was not denied a fair sentencing hearing because of it.

¶ 24 Defendant argues that the court's misstatement demonstrates it had failed to understand that by defendant stating: "I'm going to beat this," defendant's actions were justified by self-defense. Defendant argues, citing section 5-5-3.1(a)(4) of the Unified Code of Corrections (730 ILCS 5/5-5-3.1(a)(4) (West 2010)) (Code), that the trial court failed to consider, as a statutory

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mitigating factor, that "[t]here were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense." *Id.*

¶ 25 Because the language of the Code is mandatory, the trial court may not refuse to consider relevant evidence presented in mitigation. *People v. Calhoun*, 404 Ill. App. 3d 362, 386 (2010). Although the trial court's consideration of statutory mitigating factors is required, " [t]he trial court is not required to expressly indicate its consideration of all mitigating factors and what weight each factor should be assigned." *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 43 (quoting *People v. Kyse*, 220 Ill. App. 3d 971, 975 (1991)). The trial court is presumed to have considered all relevant mitigating factors during sentencing unless there is explicit evidence to the contrary. *Id.* A trial court's failure to consider a relevant statutory mitigating factor is an abuse of discretion. *Id.* We review a claim of error under an abuse of discretion standard. *People v. Johnson*, 385 Ill. App. 3d 585, 596 (2008).

¶ 26 Although the trial court in this case need not expressly indicate its consideration of all statutory mitigating factors, there is explicit evidence that it did consider this statutory mitigating factor. At sentencing, the trial court stated:

"I will note that the victims in this matter were shot at, I don't believe according to the testimony was such, and I don't believe as [a]n outsider looking in, that they expected the gun to be real. So the arguments that you were defending yourself and the comments that they made towards you, which were in fact stupid, they indicate to me that they did not believe that the gun was real."

Considered in context, the trial court's comments demonstrated that it did consider any circumstances which may have excused or justified defendant's conduct. Regardless of whether

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the trial court ascribed some weight to this mitigating factor, or rejected the factor as unsupported by the evidence, it is clear it was considered. The record, therefore, rebuts defendant's argument that the court failed to consider this statutory mitigating factor.

¶ 27 In sum, because the trial court did not rely on its misstatement of defendant's statement to the police following his arrest, and it did not fail to consider the statutory mitigating factor, it did not abuse its discretion and, therefore, no error occurred. Where there is no error, there can be no plain error. *Bannister*, 232 Ill. 2d at 79.

¶ 28 Defendant's argument in the alternative, that his trial counsel was ineffective for failing to preserve this claim of error for review, also fails. "Because we conclude that no error occurred, we need go no further in addressing defendant's plain-error or ineffective-assistance-of-counsel arguments." *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 28.

¶ 29 Finally, defendant argues that his 10½ year sentence for aggravated battery by discharging a firearm is excessive and points to: his age at the time of the offense; his ADHD; his lack of a criminal background; the lack of premeditation in committing the offense; and the fact that the offense was committed only after a group of men had approached him.

¶ 30 In determining a proper sentence, the trial court is given broad discretionary powers. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). We will not reverse a sentence absent an abuse of that discretion. *People v. Geiger*, 2012 IL 113181, ¶ 27. A reviewing court gives such deference to the trial court because it "has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). A sentence within the statutory range for the offense may only be "deemed excessive and the result of an abuse of discretion" where it is

"greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Id.* at 210. The spirit and purpose of the law are furthered if the court's sentence reflects both the seriousness of the offense and gives sufficient consideration to the defendant's rehabilitative potential. *People v. Butler*, 2013 IL App (1st) 120923, ¶ 31.

¶ 31 Here, defendant was convicted of aggravated battery by discharging a firearm, which is a Class X felony with a sentencing range between 6 and 30 years' imprisonment. 720 ILCS 5/12-3.05(e)(1), (h) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). Defendant's 10½ year sentence was, therefore, within the statutory range. The trial court's discussion when imposing his sentence demonstrates that it carefully considered defendant's rehabilitative potential and his age. However, the trial court also weighed these factors against the seriousness of the offense when it noted that defendant's action of firing multiple gunshots into a crowd of people endangered the lives of many that day, and it was "divine luck or just luck" that more people were not injured or killed.

¶ 32 Furthermore, the record reveals that the trial court considered nearly all the mitigating factors defendant argues on appeal, specifically: defendant's youth at the time of the offense, his lack of a criminal background, the offense was committed in the "spur of the moment," and that on the day of the offense, he was not on the street looking for trouble. While the trial court never specifically mentions defendant's ADHD, when mitigating evidence was presented to the trial court, it is presumed that the evidence had been considered absent some indication other than the sentence itself. *People v. Cole*, 2016 IL App (1st) 141664, ¶ 55. Defendant's ADHD was referenced in his presentence investigation report, which the trial court was required to consider prior to sentencing (730 ILCS 5/5-3-1 (West 2010)), and mentioned by defense counsel during

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the mitigating phase. Nothing in the record demonstrates the trial court ignored these facts. Therefore, we cannot find that defendant's sentence greatly varied from the spirit and purpose of the law or that it was manifestly disproportionate to the nature of the offense. See *Stacey*, 193 Ill. 2d at 210. Consequently, defendant's 10½ year sentence was not excessive.

¶ 33 Defendant reliance on the United States Supreme Court's seminal decision in *Miller* is unavailing. In *Miller*, the Supreme Court observed that "children are constitutionally different from adults for purposes of sentencing" because they "have diminished culpability and greater prospects for reform." *Miller*, 567 U.S. at \_\_\_, 132 S. Ct. at 2464. Following *Miller*, defendant generally argues that trial courts must give greater consideration to the rehabilitative potential of young defendants. Defendant, however, makes no specific argument that the trial court failed to meaningfully consider his youth and unique rehabilitative potential in the imposition of his sentence. We find defendant cannot prevail on such argument, as the court expressly and significantly considered these factors when imposing its sentence, thus acting consistently with the Supreme Court's statements in *Miller*. Defendant only uses *Miller* to argue that defendant's characteristics as a young defendant were compounded by his ADHD, which the court failed to reference during sentencing. However, as discussed, we presume the court considered this mitigating evidence, absent some indication other than the sentence itself. See *Cole*, 2016 IL App (1st) 141664, ¶ 55. The record fails to provide such an indication.

¶ 34 For the foregoing reasons, we affirm the order of the circuit court of Cook County.

¶ 35 Affirmed.