FIFTH DIVISION
November 4, 2016

No. 1-14-2094

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 9095
	)	
LATONYA MORRIS,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's sentence of 12 years in prison for second degree murder is not excessive when defendant points to nothing in the record, other than the sentence itself, to show that the trial court did not consider the evidence presented in mitigation.

¶ 2 Following a bench trial, defendant LaTonya Morris was found guilty of second degree murder and sentenced to 12 years in prison. On appeal, she contends that her sentence is excessive in light of certain mitigating evidence including, *inter alia*, her history of domestic violence with the victim and the burden her incarceration will have upon her family. We affirm.

¶ 3 Defendant's arrest and prosecution arose out of the fatal stabbing of the victim, Rollind Stamps, the father of two of defendant's children.

¶ 4 At trial, Herbie Fairley, who lived next door to the victim and defendant in his mother's home, testified that around 8 p.m. on April 7, 2013, he heard an argument. Fairley heard defendant's "voice mostly arguing" and saying "mainly cuss words." He could hear the argument because the walls were thin and his window was open. The doorbell began to ring "continuously" so Fairley went downstairs. There, he observed, through a window, defendant "going back to the apartment" and the victim on the ground in front of the door.

¶ 5 Shirley Wallace, Fairley's mother, testified that she had known defendant and the victim for about two years prior to the victim's death. She was sitting by the window in her living room when the doorbell rang five times. When Wallace went to answer the door, she saw the victim bleeding from his side. The victim was not wearing a shirt. Defendant then approached with a "small steak knife" in her hands. Wallace told her husband to call the police. Wallace further testified that when defendant got to the front porch, she knocked the victim down. She later admitted that she told the police and an ASA that defendant stabbed the victim and then the victim fell down. According to Wallace, defendant then stood over the victim, stabbed him a number of times and kicked him in the side and head. Defendant yelled several times that the victim "took" from her kids. Finally, defendant said that "now" Wallace could call the police for that "mother f***" and went home.

¶ 6 During cross-examination, Wallace testified that she did not call the police because it was not unusual for defendant and the victim to argue. The police had been called to their home on prior occasions. Sometimes defendant would call and sometimes the victim would call. When

defendant came running up to the victim on the porch, Wallace asked her what was wrong. Defendant did not answer; rather, she ran into the victim and knocked him down.

¶ 7 Eugenia DuPont, another neighbor, testified that she heard loud noises, "like somebody was hollering outside." A female voice yelled, *inter alia*, "call the police," "F*** the police" and "I don't care about the police." DuPont moved to the peephole in her front door for "a better view." She saw defendant leaning over the victim holding a knife. Defendant then stabbed the victim. DuPont heard defendant say "he [was] going to die tonight b****." During cross-examination, DuPont acknowledged that a floor-to-ceiling wall separated her porch from Wallace's porch, however, she asserted that she could see the victim's head and defendant's legs. She then clarified that she could see shadows on the ground. She also said that although she could not see stomping, she could hear defendant stomping the victim. DuPont also acknowledged that she had heard fighting from defendant and the victim's apartment in the past.

¶ 8 Officer Busch testified that he and two officers-in-training responded to a "call of domestic violence." Defendant approached and stated that she and the victim were involved in an fight. The officer observed that the victim was on his back on a neighbor's porch. Defendant showed them a "kitchen type knife" that she had used in the altercation. As the victim was being prepared for transport to a hospital, defendant stated "take him to the hospital, teach him a lesson."

¶ 9 Forensic investigator Paul Presnell testified that he "processed the scene," and took photographs of defendant at a police station. When he asked defendant if she had any injuries, she indicated that she had one above the left eye. Photographs of the victim and defendant's

home showed a home in disarray with a printer on the floor, a television that was not upright, a laptop in two pieces on the floor, and several "braids" on the floor.

¶ 10 The State then entered the stipulated testimony of forensic pathologist Dr. James A. Filkins. The parties stipulated that if called to testify, Filkins would testify that he conducted an autopsy on the victim and noted, *inter alia*, a purple bruise on the right upper eyelid, superficial abrasions to the left cheek, right side of the neck and right arm, and a stab wound to the left side of the chest and a stab wound to the right side of the abdomen. He also noted small incised wounds to the third and fourth fingers of the left hand. Filkins further noted internal evidence of injury, *i.e.*, an "area of subgaleal hemorrhage overlying the left parietal bone of the skull."

¶ 11 The state then entered, "by way of oral stipulation," the testimony of Officer LeShawn Hawkins. The parties stipulated that Hawkins would testify that on August 12, 2010, he responded to a call of a domestic disturbance. Once there, he observed defendant. Defendant admitted that she "attacked and scratched" the victim. The victim stated that defendant, his ex-girlfriend and the mother of his children, attacked him.

¶ 12 The defense then presented the testimony of Yondi Morris, defendant's cousin. Morris testified that when she saw defendant at a police station on August 8, 2013, defendant's "face was very big, like it was very swollen." Defendant had reddish marks on her face. She was crying, afraid, shaken up, and "really disheveled."

¶ 13 Antaria Hawkins testified that she had known defendant for 13 years and the victim for about 6 years. She had engaged in "maybe" 10 to 15 conversations regarding the victim's reputation for violence when he was drinking. The victim was present for some of these conversations.

¶ 14 During cross-examination, Hawkins testified that she had phone conversations about the victim's violence when he was drinking with Tyshela Conner. Conner would call Hawkins when the victim and defendant had "altercations." Conner's aunt lived near the victim and defendant, and Conner would be at her aunt's home when the altercations occurred. One of the conversations took place five or six years prior to trial. When Hawkins visited Conner, Conner would tell her about "things that happened." They had this kind of conversation over 10 times. Around six or seven years prior to trial, Conner told Hawkins how defendant was barbequing for one of her children's birthdays when the victim, who was intoxicated, began to "fight" defendant. Conner's aunt and others "broke up the fight." Conner was present for this incident and related it to Hawkins over the phone. Patricia Bardney, who lived near defendant and the victim five or six years prior to trial, would also tell Hawkins about the victim and defendant getting into fights. During redirect, Hawkins reiterated that the victim was not a violent person; rather, he was violent when he was drinking.

¶ 15 Defendant testified that she was 31 years old at the time of trial and had worked as a certified nurse assistant and home care aide for several years. She also worked a second job as a cashier at a grocery store. She had three children, two with the victim. Defendant and the victim became a couple in 2006. From 2006 until 2013, they lived together "off and on." When the victim drank he became "very aggressive." The victim would start "drama," argue, and "put his hands" on defendant.

¶ 16 On April 7, 2013, the victim and defendant had a verbal argument during the day because defendant would not let the victim use her car to go sell fireworks with his father. During the course of the day, the victim drank beer and later hard alcohol. That evening, the victim and

defendant got into another fight because the victim was still angry about the fireworks. Defendant told the victim to calm down or she would call the police. The victim removed his shirt. He stated that he was tired of defendant and that she did not want to be with him anyway. He then stated that if defendant was going to call the police, she was going to have a reason to call the police. Defendant thought the victim was "fittin' to get ready to, you know, fight."

¶ 17 When the victim "came up" to defendant, she grabbed his hands. The victim pushed her hands, said "this" was what she wanted and hit her in the face. When defendant asked the victim why he would hit her in the face when she had to go to work, he said that she was never going back to work. The victim then grabbed a laptop and hit her in the head with it. Defendant told the victim not to hit her anymore and grabbed a knife from the dish rack. When the victim came at her again, she poked him in the side with the knife. The victim threw the laptop down, grabbed a printer and threw it at her. The victim then grabbed defendant and threw her. He next grabbed defendant by the hair and "swung" her. Defendant still had the knife and was yelling "call the police." Although she tried to call the police, the victim pushed her into the television stand and kicked her while she on the floor. Defendant went to the front door because she could "usually" run to a neighbor's house. The victim also went to the door and then left the building.

¶ 18 When defendant looked outside, she saw the victim at her neighbor's house. At this point, she "kind of" blacked out. Although she remembered kicking the victim, she did not remember stabbing him. When the victim hit her in the face, he yelled that he was going to kill everyone in the house. Defendant thought he was "going to really hurt" her and kill her. She was afraid, but not vengeful. Defendant loved the victim; she "still" loved him.

¶ 19 During cross-examination, defendant testified that after the victim hit her with a closed fist in the left eye, the eye was bruised. She had a "knot" on her head where defendant hit her with the laptop. Defendant followed the victim out of the house. She was going to call the police from a neighbor's home because the victim had broken their home phone. Defendant remembered kicking the victim in the head. However, she did not remember kicking the victim in the side, stabbing him in the chest, or telling him that he was going to die that night. Although defendant scratched the victim when she tried to get him "off" her, she did not think she cut the victim's fingers. She did not remember what she told officers when they arrived. She did tell one officer about her injuries. Although she did not remember the specifics of what she told a detective at a police station, she told the detective that the victim was "fighting" her, throwing her around and grabbed her by the hair.

¶ 20 Defendant admitted that she told several detectives that the entire incident happened inside her apartment. Once a detective told defendant that her neighbors stated that they observed her stab the victim, she admitted that she was outside. Although she told officers that she was injured, defendant did not ask for medical attention. When police arrived at her home on August 12, 2010, she told the officers that the victim had stolen her phone.

¶ 21 During re-direct, defendant testified that she did not think that she hurt the victim "that bad" and that she asked about him while she was at the police station. She grabbed the knife when the victim began hitting her with things; she was "just trying to get away."

¶ 22 Detective Matthew Benigno testified that during a conversation with defendant at a police station, he did not recall defendant stating that the victim pushed her into a television stand. There was, however, a photo of a television in defendant's apartment that was not upright.

Defendant did not say that she had injuries to her back, side or legs. Defendant was upset and stated that the victim hit her in the eye and the jaw.

¶ 23 In finding defendant guilty of second degree murder, the court stated that it was undisputed that defendant stabbed the victim. The court then noted that a "melee" took place in the victim and defendant's home and that there was "clear evidence" that defendant had been injured. The court noted that defendant has facial swelling when she was arrested and that she was agitated when she came into contact with the police. The court also noted that, although witnesses testified to the normally clean and pristine manner in which the defendant's apartment was usually kept, the house was "completely junked up" and that items that cost some money were scattered about the room. The court found it "plausible" that defendant and the victim "had been beating each other up for some time" and that mutual combat took place.

¶ 24 At sentencing, the parties presented evidence in mitigation and aggravation including, the fact that defendant followed the victim to a neighbor's home and stabbed him, defendant's lack of prior convictions and defendant's position on the board of the Parent-Teacher Association at her children's school. The defense also presented numerous letters in support of defendant. Her 11-year-old son Malik's letter stated that defendant "took very good care" of his siblings and himself and that she was just trying to protect them from the victim. Malik asked to have his mommy back. In her letter, defendant's aunt Kim Morris stated that the relationship between defendant and the victim "was volatile" and that it was "only a matter of time before one of them would end up seriously hurt or worse." Morris further stated that the family was aware of "frequent abuse" defendant suffered. Aldon Morris, defendant's uncle, stated in his letter that defendant "often" did not report the "violence inflicted" by the victim because she was ashamed.

¶ 25 The defense further argued that defendant would "actually" pay for her actions for the rest of her life because she loved the victim and that "prison would not help rehabilitate her." The defense also argued that prison would be a tremendous burden on defendant's family and three children. Defendant apologized to the victim's family, then stated that she was sorry, that she wished she could take back her actions, and that she loved the victim and still loved him.

¶ 26 In sentencing defendant to 12 years in prison, the court stated that it considered the evidence presentenced at trial, the presentence investigation, defendant's statement, and the evidence offered in mitigation and aggravation including the many letters from defendant's family and friends. The court agreed that it was "unlikely" that defendant would reoffend, because there was "no indication other than the constant ongoing acrimonious relationship that she was in that is she behaved outside that law." However, the court went on to say that what defendant did:

> "was absolutely and assuredly wrong. It was an act filled with rage and violence in its heart. There's certainly ample evidence from the statements of the witnesses that hers was not a cry when she did the things that caused the victim's death in this case. But hers was a rageful act precipitated by anger. Obviously it was provoked, but it was an angered incident."

¶ 27 Defendant filed a motion to reduce sentence. In denying the motion, the court stated that there "were certainly many mitigating aspects about the case" which was reflected in the sentence. However, there were also aggravating factors, including that defendant was "indignant" and "profane" and that after "she killed the victim, the defendant left him on her neighbor's doorstep."

¶ 28 On appeal, defendant contends that her 12-year prison term is excessive in light of the evidence in mitigation presented at sentencing.

¶ 29 A sentence within statutory limits is reviewed on an abuse of discretion standard, so that this court may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider improper aggravating factors or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56. This broad discretion means that this court cannot substitute our judgment simply because we may weigh the sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010).

¶ 30 When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, a defendant's age, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). The court does not need to expressly outline its reasoning when crafting a sentence, and we presume that the court considered all mitigating factors absent some affirmative indication to the contrary other than the sentence itself. *Jones*, 2014 IL App (1st) 120927, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Id*. "Even where there is evidence in mitigation, the court is not obligated to impose the minimum sentence." *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010).

¶ 31 Second degree murder is punishable by 4 to 20 years' imprisonment. 730 ILCS 5/5-4.5-30(a) (West 2012). The trial court also recognized that probation is a potential punishment. 730 ILCS 5/5-4.5-30(d) (West 2012).

¶ 32 Here, this court cannot say that a prison term of 12 years was an abuse of discretion when the evidence at trial established that after the "melee" in their home, defendant followed the victim to a neighbor's porch where she stabbed him again, and kicked him several times. The trial court was in the best position to evaluate the facts and we cannot say that a 12-year prison term was manifestly disproportionate to the nature of the offense. *Snyder*, 2011 IL 111382, ¶ 36.

¶ 33 Defendant, however, contends that the trial court failed to consider defendant's history of domestic violence with the victim, her potential for rehabilitation and the hardship that her incarceration will have upon her children.

¶ 34 It is presumed that the court properly considered the mitigating factors presented and it is the defendant's burden to show otherwise. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). Here, defendant cannot meet that burden, as the trial court specially stated that it had considered the many letters from defendant's family and friends as well as defendant's statement expressing remorse. The court also agreed that it was "unlikely" that defendant would reoffend because her "constant ongoing acrimonious relationship" with the victim was the only indication that defendant "behaved outside the law." Although the trial court did not expressly discuss defendant's children or the details of her relationship with the victim, the court need not explicitly indicate each mitigating factor that it has considered. *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 43. The trial court does not abuse its discretion merely because it gives the evidence presented in mitigation a different weight than a defendant would prefer. See *Jones*,

2014 IL App (1st) 120927, ¶ 55 (the presence of factors in mitigation neither requires a minimum sentence nor precludes a maximum sentence).

¶ 35 To the extent that defendant argues that the trial court improperly considered the "rageful" nature of the act, we disagree.

¶ 36 "In determining whether the trial court based the sentence on proper aggravating and mitigating 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." *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009). When crafting a sentence, the trial court may consider the nature and circumstances of the offense and the defendant's actions in the commission of the offense. See *Raymond*, 404 Ill. App. 3d at 1069.

¶ 37 Taken in context, the trial court's comments acknowledge the facts that defendant was provoked during the fight with the victim, but that she continued the altercation after the victim left their home. Considering the record as a whole, defendant has not established that her 12-year sentence was based upon the trial court's improper consideration of the "rageful" nature of the offense when the record indicates that the trial court relied upon the circumstances of the offense for its conclusion that defendant acted in anger when she followed the victim to continue the fight. See *Dowding*, 388 Ill. App. 3d at 943.

¶ 38 In the case at bar, defendant has not made an affirmative indication that the trial court did not consider all factors presented in mitigation, other than the sentence itself. *Jones*, 2014 IL App (1st) 120927, ¶ 55. Ultimately, "the mere fact that a reviewing court might have weighed the factors differently than the trial court does not justify an altered sentence" (*Raymond*, 404 Ill. App. 3d at 1069), and, consequently, defendant's argument must fail.

¶ 39 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.