2016 IL App (1st) 142933-U

FIFTH DIVISION
December 30, 2016

No. 1-14-2933

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. 11 CR 1348
	)	
ENRICO SCURLOCK,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment on defendant's convictions for two counts of aggravated criminal sexual assault affirmed where his aggregate 56-year sentence is not excessive; mittimus amended to correct sentencing credit.

¶ 2 Following a jury trial, defendant Enrico Scurlock was convicted of two counts of aggravated criminal sexual assault and sentenced to mandatory consecutive terms of 28 years' imprisonment, for an aggregate sentence of 56 years' imprisonment. On appeal, defendant does not challenge his convictions, but contends that his sentences are excessive because he did not

inflict severe bodily harm on the victim, and the aggregate 56-year sentence constitutes a *de facto* life sentence. Defendant also contends, and the State agrees, that his mittimus should be amended to correct his days of sentencing credit. We affirm and correct the mittimus.

¶ 3 At trial, R.S. testified that on the night of November 26, 2010, defendant, whom she had recently met, invited her over to his apartment. Shortly after midnight on November 27, 2010, R.S. and her friend, Brittany Burnham, drove to the high-rise apartment building in Chicago where defendant lived with the intention of "hanging out" and talking. After arriving, the women sat in the living room and talked with defendant for awhile. Brittany later left the apartment to go outside to smoke a cigarette.

¶ 4 After Brittany left, R.S. and defendant continued talking on the couch, and defendant asked her where she saw herself in five years. When R.S. replied that she pictured herself being married, defendant asked why she would "do that to us," then stood in front of her with an irate expression. R.S. thought defendant was going to hit her and she stood up. Defendant then grabbed her arms just below her elbows and held them at her sides. R.S. struggled with defendant trying to break free, but defendant lifted her off the floor and walked backwards to a bedroom.

¶ 5 When they reached the bedroom, defendant pushed R.S. in her upper chest, and she fell backwards landing on the floor with her head and shoulders landing on an air mattress. R.S. got up from the floor and lunged at defendant in an attempt to exit the room, but he pushed her again and she fell back onto the air mattress. Defendant laughed at R.S., and when she got up again, he pushed her into a wall, banging her head against the wall. He then held her against the wall, firmly grabbing her lower jaw and trying to kiss her.

¶ 6 While R.S. continued struggling, defendant kissed and licked her face, licked her chest, then grabbed her belt and tried to remove her clothes. R.S. fell onto the air mattress again and crossed her legs as she tried to fight off defendant. Defendant then pulled off her pants, pried her legs open with his hands, and made contact between his mouth and her vagina. R.S. tried to get up, but defendant pushed her back down again, pinning one of her arms behind her. Defendant then got on top of R.S. and forced his penis into her vagina.

¶ 7 When the telephone rang, R.S. told defendant that if he did not let her go, Brittany would know that something was wrong and would call the police. Defendant then got up and pulled R.S. up from the floor. As R.S. tried to run to the door, she heard people in another room inside the apartment. She then heard knocking on the apartment door and heard Brittany's voice. R.S. grabbed her belongings and ran for the door, but defendant grabbed her and shoved her against a wall, holding his arm against her neck and his hand on the door. Defendant told R.S. to tell Brittany that she was okay and would be out in a minute, and she complied. Defendant then tried to straighten R.S.'s clothes as he held her against the wall. R.S. jumped away from defendant, shoved her feet into her shoes, and when he opened the apartment door, she ran out.

¶ 8 R.S. ran from the building, got into Brittany's car, and told her what happened. As they drove back to R.S.'s home, defendant called and asked R.S. why she was "acting like that." R.S. cursed at defendant, called him a monster, and hung up. Defendant called R.S. repeatedly, but she did not answer his calls.

¶ 9 R.S. testified that when she got home, she saw that the side of her face was "a little swollen" and had "a few marks" and "a little bruising." R.S.'s family called an ambulance which took her to South Suburban Hospital where a nurse examined her and took vaginal swabs, which

R.S. described as "painful." She was also given medication to prevent diseases which made her nauseous and vomit. R.S. subsequently identified defendant in a photo array and lineup.

¶ 10 Nurse Valerie Kalamaras testified that about 8 a.m. on November 27, 2010, she examined R.S. at South Suburban Hospital. R.S. stated that when she resisted defendant's advances, he became violent and turned her face towards him to kiss her. He then grabbed her around her neck, pinned her hands behind her back, and sexually assaulted her orally and vaginally. R.S. complained of injury to her wrists, but the nurse did not note any external injuries to her body. Kalamaras then took swabs of R.S.'s mouth, face, chest and vagina. During the genital examination, Kalamaras noted a small abrasion on R.S.'s labia, and in her cervix there were broken blood vessels and purple bruising. Kalamaras testified that R.S.'s injuries were consistent with sexual intercourse, but she could not determine if the encounter was by force.

¶ 11 J.F. testified that in December 2005, when she was 17 years old, defendant approached her on the CTA train on a few occasions and asked for her phone number. On the third occasion, she took his number and subsequently called him. During their conversation, J.F. informed defendant that she was three months pregnant. On December 18, 2005, she called defendant and agreed to meet him at her friend's house. Defendant arrived in his car with one of his friends, and J.F. and her friend got in the car and rode around with them for a couple of hours. After they returned to her friend's house, defendant's friend and J.F.'s friend got out of the car and sat on the porch while defendant and J.F. remained in the car talking. The conversation veered off into a different direction, and J.F. began to feel that something was not right. Defendant's friend returned to the car, and J.F. intended to get out but could not because defendant sped away. Defendant dropped off his friend at a house and then drove around a residential area that was unfamiliar to J.F. Defendant then leaned over J.F. and tried to unbuckle her pants. When J.F.

tried to push him away, defendant punched her in her stomach several times. Defendant then pulled out a knife and said that he also had a gun. J.F. stopped fighting defendant, and he sexually assaulted her, inserting his penis into her vagina. Afterwards, defendant drove J.F. back to her friend's house and asked her if she was going to tell anyone or call the police, and she said no, but then reported the assault to her friend, her mother, and the police.

¶ 12 S.G. testified that in December 2008, she met defendant in a store and they exchanged telephone numbers. The following day, they spoke on the phone and agreed to go out. On December 4, 2008, defendant picked up S.G. from her mother's house and told her that they were going bowling with his brother and his brother's girlfriend. He then drove to a liquor store, bought a pint of cognac, and drove around for awhile. Defendant said they needed to stop at his house so he could change his shirt, and they entered the home through the back door and went straight to defendant's bedroom. S.G. heard people in the living room, but did not see anyone. Defendant left S.G. alone in his bedroom when he went to change his clothes, and while she waited for him, she lay on his bed and rested. When defendant returned to the bedroom, they talked for awhile, and defendant then tried to touch her. When S.G. moved his hand, defendant told her that she had an attitude problem and started acting "crazy." Defendant became angry, aggressively tried to remove her pants, and told S.G. that the only way she was leaving was if she was naked. As S.G. struggled with defendant, he ripped buttons from her blouse, removed her pants, and placed his penis inside her vagina. When defendant was done, he told S.G. "this what I do for bitches like you." She then left his house and walked home. Defendant called S.G. later that night and said he wanted to talk to her, but she told him to never call again and hung up. S.G. reported the assault to the police, but defendant was never charged.

¶ 13 The State presented a stipulation that forensic scientist Biao Cheng tested the vaginal and anal swabs collected from R.S. and found them positive for the presence of semen. The State also presented a stipulation that forensic scientist Pauline Gordon subsequently conducted DNA analysis on those swabs and found that the male DNA profile identified from the swabs matched the DNA profile of defendant. Gordon further found that defendant could not be excluded as a contributor to a DNA profile identified from the face swab collected from R.S.

¶ 14 In addition, the State presented a stipulation that Chicago police officer Ladonna Simmons would testify that she spoke with R.S. at the hospital and R.S. told her that she repeatedly tried to get defendant off of her by punching him in the face, kicking him and screaming. R.S. also told the officer that defendant repeatedly grabbed her face very hard and told her to "shut up" because his neighbors would hear.

¶ 15 Terrell Mason testified for the defense that he had been friends with defendant for over 10 years and lived in the high-rise apartment where the incident occurred. On the night in question, Mason was in his bedroom watching television with a friend, and when he came out of his room to get a drink, he saw R.S. and Brittany in the living room talking with defendant. Mason returned to his room, and when he came out about an hour later, the women were gone and defendant was sitting in the living room by himself talking on his phone. Mason denied hearing any commotion coming from the other bedroom that night.

¶ 16 Defendant's sister, Darriel Thomas, testified that on December 4, 2008, she was in the living room of their home and saw defendant enter the house and go to his bedroom with a girl. Thomas went to the washroom directly across from defendant's bedroom and did not hear any noise coming from his room. About two minutes later, she returned to the living room and the girl walked out the front door. Thomas never heard any commotion coming from the bedroom.

¶ 17 Defendant testified that on the night in question, he and R.S. were kissing on the couch when he suggested they go to the bedroom. When R.S. got up from the couch, she almost fell, and he grabbed her to brace her, then led her to the bedroom. They walked to the bedroom together and engaged in consensual sexual intercourse. Defendant denied that he carried R.S. to the bedroom against her will and denied forcing himself on her. Defendant also testified that his encounters with both J.F. and S.G. were consensual.

¶ 18 The jury found defendant guilty beyond a reasonable doubt of two counts of aggravated criminal sexual assault. The first count was for contact between defendant's penis and R.S.'s vagina, and the second count was for contact between his mouth and her vagina.

¶ 19 Following the trial, defense counsel filed a motion for a new trial. Defendant stated that he wanted to proceed *pro se*, which the court immediately denied. Defendant then stated that he was hiring private counsel who was going to file his motion for a new trial, and that counsel would appear on the next court date. On the next court date, five weeks later, defendant claimed that his family was still trying to hire private counsel, and said that he did not know how much the transcripts cost. The court stated that defendant was "a long way" from hiring private counsel and that it wanted to proceed. Defendant then filed three *pro se* motions including a "Supplemental Motion for New Trial for Ineffective Assistance of Counsel," a "Supplemental Motion for New Trial or Judgment of Acquittal Notwithstanding the Verdict," and a petition for transcripts.

¶ 20 In his first *pro se* motion, defendant raised several claims alleging that his trial counsel rendered ineffective assistance. The trial court conducted a hearing on defendant's motion pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), found that all of his allegations were without merit, and concluded that counsel did not render ineffective assistance. The court then

ruled that the other *pro se* motions filed by defendant were moot, and conducted a hearing on the motion for a new trial filed by defense counsel, which it also denied.

¶ 21 At sentencing, after speaking with defendant, defense counsel requested a brief continuance to allow defendant's character witnesses, including his mother, who was not present in court that day, to come to court and testify on his behalf. Defendant stated that he told his parents that he had a motion pending that the court needed to rule on, and therefore, that his mother did not need to come to court that day. He stated that he did not know that the court was going to proceed to sentencing on the same day. Defense counsel then confirmed for the court that defendant's family was told to come to court that day.

¶ 22 The following colloquy then occurred:

> "THE COURT: Mr. Scurlock, I am going to find your behavior at this point is becoming in bad faith. You have used every opportunity and everything that you could to –
>
> THE DEFENDANT: [Defense counsel] never contacted my parents.
>
> THE COURT: -- to delay this proceeding over and over and over again."

Defendant maintained that he did not know that the court was going to proceed with sentencing, and the court repeatedly told defendant that he had no right to tell his mother not to come to court that day. The court then proceeded with the sentencing hearing.

¶ 23 In aggravation, the State asked the court to recall R.S.'s testimony regarding the events that transpired and to consider the effects that the offense in this case has on a victim. The State argued that it was an incredibly invasive crime that will have a severe impact on R.S. for the rest of her life. The State then pointed out that defendant had six prior felony convictions, one of

which was a Class 2 felony and the others being Class 4 felonies, and requested a substantial prison sentence based on the severe nature of the offense.

¶ 24 In mitigation, defense counsel noted that defendant was 29 years old and was formerly employed in human resources at Rush hospital as a "coordinator for violence." Counsel also noted that defendant has a wife and a six-year-old son, and that his mother and sister were suffering great financial difficulties. Counsel argued that defendant grew up in a difficult environment and tried to support his sister and mother, and that his father was never part of his life. Counsel provided the court with the names of several character witnesses defendant wanted to call on his behalf, and acknowledged that defendant had just handed her the lists moments before. Counsel requested a sentence close to the minimum term.

¶ 25 The presentence investigation report (PSI) indicates that defendant had five prior Class 4 felony convictions for possession of a controlled substance, and one Class 2 conviction for manufacturing or delivering between 1 and 15 grams of cocaine. The PSI also shows that defendant has a misdemeanor conviction for possession of cannabis, and a 2006 misdemeanor conviction for battery, which was initially charged as an aggravated criminal sexual assault.

¶ 26 The parties agreed that the court was required to impose mandatory consecutive sentences for the two counts of aggravated criminal sexual assault. In allocution, defendant maintained that his sexual encounter with R.S. was consensual and that the allegations against him were false and vindictive. He also maintained that his encounters with J.F. and S.G. were consensual and that they "concocted stories in order to get what they want" from him. Defendant stated that he tells everyone he comes in contact with that he has prior drug convictions, and those people then use the police and criminal justice system against him to get what they want.

Defendant concluded by stating "I know this will be [a] volleyball case for me and I will be back here in this court."

¶ 27 When imposing the sentence, the trial court made the following findings:

"Mr. Scurlock, you have indicated still that the behavior with you and [R.S.] was consensual, that you were neglectful. The jury chose not to believe you and I don't believe you either.

You are a smooth talking guy, Mr. Scurlock. And I think you have gotten away with things for a long time. You say it's not fair, it's everybody's fault, but not yours. You are just the victim here. That's the way you want to paint yourself. I think you have been pretty good at that for a long time.

But you are right about a couple of things. What's right is right and what's wrong is wrong and this was wrong, very wrong. And when one makes mistakes they do pay the price and that's what you are going to do today.

The statute requires that these two counts must run consecutively. However although I'm not required to make such a finding.

I'm going to borrow the language from the other subsection. That's 730 ILCS 5/5-8-4C. D is the mandatory consecutive but under C the language states a sentence – strike that. The court may sentence someone if they feel it is required to protect the public from further criminal conduct by the defendant. And that is the language that I am relying on to explain the length of my sentence in [this] case.

The defendant has established a clear pattern of dangerous and deviant sexual behavior. He is a predator of young women. 2010 moving backward it was [R.S.]. 2008

[S.G.]. 2006 case who ever that was that was reduced from an aggravated criminal sexual assault to a battery. 2005 [J.F.].

In each of the three attacks that were testified to by the victim's [*sic*] during this trial the defendant presented himself as a nice normal polite charming individual. After lulling each victim into a false sense of safety with him, he found ways to then get them alone. Once isolating his victims the defendant suddenly switched from charming to violent, the defendant's behavior is that of a Dr. Jekyll and Mr. Hyde.

Adding to this the defendant has six felony convictions all for drug cases from 2001 through 2009. Certainly seems to be [a] reasonable inference that the defendant is a habitual drug user which also makes him even more dangerous.

You, Mr. Scurlock, pose a serious threat to young women in our community but in other ways, sir, you are [a] menace to society. I am deeply concerned with protecting any future victims of your sexual assaults given your clear pattern of violent sexual behavior.

That is why I am sentencing you to 28 plus 28 to run consecutively for a total of 56 years."

¶ 28 Defense counsel then made an oral motion to reconsider the sentence, which the trial court denied. The State did not object to the oral motion.

¶ 29 On appeal, defendant acknowledges that the trial court was required to impose consecutive sentences, but contends that the sentences are excessive because he did not inflict severe bodily harm on R.S. Defendant argues that the injuries sustained by R.S. were minor and did not warrant sentences near the 30-year maximum. He further argues that the contact in Count

2, mouth to vagina, was not as violent as the contact in Count 1, penis to vagina. Defendant also asserts that the aggregate 56-year sentence constitutes a *de facto* life sentence.

¶ 30 The State responds that defendant forfeited the issue for review because he did not object to the sentence and did not file a written postsentencing motion. Alternatively, the State argues that the trial court did not abuse its discretion because it found that defendant was a sexual predator who was a danger to society, and thus, the lengthy sentence was necessary. The State also points out that defendant has six prior felony drug convictions, and that the sentence is within the statutory range.

¶ 31 Defendant replies that the issue is not forfeited because he made an oral motion to reconsider the sentence and the State did not object, and therefore, the requirement to file a written motion is waived. Defendant asks this court to reduce his sentence or remand his case for a new sentencing hearing.

¶ 32 Initially, we observe that in order to preserve a sentencing error for review, both a contemporaneous objection during the sentencing hearing and a written postsentencing motion raising the issue are required. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Here, defendant did not file a written postsentencing motion, but instead, made an oral motion to reconsider the sentence. However, because the State did not object to the oral motion, the requirement to file a written motion is waived, and we may address defendant's sentencing issue. *People v. Davis*, 356 Ill. App. 3d 725, 731 (2005).

¶ 33 Aggravated criminal sexual assault, as charged in this case, is a Class X felony with a sentencing range of 6 to 30 years' imprisonment. 720 ILCS 5/12-14(a)(2) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2014). Where defendant is convicted of aggravated criminal sexual assault, the trial court is required to impose mandatory consecutive sentences. 730 ILCS 5/5-8-4(d)(2)

(West 2010). The trial court has broad discretion in imposing an appropriate sentence, and where, as here, that sentence falls within the statutory range it will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 34 The Illinois Constitution mandates that criminal penalties be determined according to the seriousness of the offense, and with the objective of restoring the offender to useful citizenship. Ill. Const.1970, art. I, § 11; *People v. Ligon*, 2016 IL 118023, ¶ 10. In light of these objectives, "[t]he trial court is charged with fashioning a sentence based upon the particular circumstances of the individual case, including the nature of the offense and the character of the defendant." *People v. Fern*, 189 Ill. 2d 48, 55 (1999). The court's sentencing decision is entitled to great deference because, having observed the defendant and the proceedings, it had the opportunity to weigh defendant's demeanor, credibility, general moral character, mentality, habits, social environment and age. *Alexander*, 239 Ill. 2d at 213. "The sentencing judge is to consider 'all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding.' " *Fern*, 189 Ill. 2d at 55, quoting *People v Barrow*, 133 Ill. 2d 226, 281 (1989).

¶ 35 Here, we find no abuse of discretion by the trial court in sentencing defendant to terms of 28 years' imprisonment for each count of aggravated criminal sexual assault, which falls within the statutory range. The record shows that the trial court found that in each of the three assaults testified to in this case, defendant initially presented himself as a "charming individual," lulled each victim into "a false sense of safety with him," and after isolating the victim, "suddenly

switched from charming to violent." The court explicitly found that defendant posed "a serious threat to young women in our community" and that he was a "menace to society." The court specifically explained "I am deeply concerned with protecting any future victims of your sexual assaults given your clear pattern of violent sexual behavior." The court also noted that defendant had six prior felony convictions. The record thus shows that the trial court clearly articulated and explained its reasoning as to why the lengthy sentences were appropriate and necessary in this case.

¶ 36 We reject defendant's claim that he should not have received the lengthy sentences because R.S. did not suffer severe harm. The record clearly shows that the trial court did not base its sentencing determination on the severity of the injuries to R.S., but instead, on its finding that defendant was a "dangerous and deviant" sexual "predator." The court quoted the language from the consecutive sentencing statute which allows such sentences to be imposed where "required to protect the public from further criminal conduct by the defendant." 730 ILCS 5/5-8-4(c)(1). After quoting that language, the court expressly stated "that is the language that I am relying on to explain the length of my sentence in [this] case." We therefore find that the court gave proper consideration to the nature of the offense and defendant's character as constitutionally required when it determined that the 56-year sentence was warranted and necessary to protect the public from defendant.

¶ 37 This court will not reweigh the sentencing factors or substitute our judgment for that of the trial court (*Alexander*, 239 Ill. 2d at 213), and based on the record before us, we cannot say that the sentence imposed by the court is excessive, manifestly disproportionate to the nature of the offense, or that it departs significantly from the intent and purpose of the law. *Fern*, 189 Ill. 2d at 56. Accordingly, we find no abuse of discretion by the trial court.

¶ 38 Defendant next contends, and the State agrees, that he is entitled to sentencing credit for 1339 days served in custody, rather than 1225, and that his mittimus should be amended to reflect the correct number. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that defendant is to receive 1339 days of credit for time served.

¶ 39 For these reasons, we affirm the judgment of the circuit court of Cook County and amend the mittimus.

¶ 40 Affirmed; mittimus amended.