2016 IL App (2d) 151190-U
No. 2-15-1190
Order filed September 23, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL R. VUCIC, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 14-CF-2399 Honorable Daniel B. Shanes, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the defendant's aggregate sentence of 50 years' incarceration based upon his convictions of predatory criminal sexual assault of a child, criminal sexual assault, and child pornography, where the sentence was within the statutory limit, was not at variance with the spirit and purpose of the law, and was not manifestly disproportionate to the nature of the offenses.

¶ 2 After entering a blind plea to predatory criminal sexual assault of a child, criminal sexual assault, and child pornography, defendant, Michael R. Vucic, was sentenced to an aggregate of 50 years' imprisonment. He appeals the sentence, arguing that it is excessive, was improperly imposed, and was an abuse of discretion. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant, who was 43 years old at the time of sentencing in 2015, taught sixth grade social studies for 18 years. He was sexually involved with two students, A.F., age 12 when the activity began, and M.S., age 15 when it began, between January 2007 and August 2014. Defendant photographed and videotaped the encounters. When one of the victims came forward, defendant fled to Bosnia. He was arrested in Bosnia and extradited to the United States in September 2014.

¶ 5 On January 14, 2015, the Lake County grand jury returned two bills of indictment. With respect to A.F., the grand jury charged: 7 counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)); 2 counts of sexual exploitation of a child (720 ILCS 5/11-9.1(a)(1) (West 2014)); 8 counts of aggravated child pornography (720 ILCS 5/11-20.1B(a)(1) (West 2014)); and 22 counts of child pornography (720 ILCS 5/11-20.1(a)(1), (a)(2), (a)(6) (West 2014)).

¶ 6 With respect to M.S., the grand jury charged: 7 counts of criminal sexual assault (720 ILCS 5/12-13(a)(4) (West 2014)); 2 counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2014)); and 4 counts of child pornography (720 ILCS 5/11-20.1(a)(6) (West 2014)).

¶ 7 On September 24, 2015, defendant entered a blind plea of guilty to predatory criminal sexual assault of a child (A.F.), child pornography (A.F.), criminal sexual assault (M.S.), and child pornography (M.S.). The State *nolle prossed* the remaining counts of both indictments. The trial court admonished defendant that he could be sentenced to a maximum aggregate of 82 years' imprisonment. The matter was continued for a presentence investigation.

¶ 8 The sentencing hearing revealed the following. Defendant has a master's degree and no previous criminal history. He taught at the same middle school for 18 years. While incarcerated

in the Lake County jail, defendant participated in an anger management class, a financial class, Bible study, a mentoring program, and a book club. He also assisted other inmates in obtaining their GEDs. He incurred no disciplinary tickets while in custody. Letters from former students attested to defendant's teaching ability and caring attitude. Psychological testing showed that defendant was at low risk for reoffending.

¶ 9 According to the presentence investigation report, when defendant was two years old, his father was fatally shot in the family-owned motel's parking lot. Defendant's mother continued to run the motel with defendant's help growing up, and defendant resided with her in Lake Forest, Illinois. Defendant has a sister, with whom he was close. Defendant's brief marriage ended in divorce. At the time of sentencing, defendant was in a relationship with a woman who was significantly younger than he. Defendant used alcohol and cannabis "occasionally."

¶ 10 In a written victim impact statement, M.S. expressed the "guilt" and "shame" that defendant caused her. She also expressed her sadness, depression, and inability to trust. She revealed that she had nightmares that made her afraid to sleep at night.

¶ 11 According to A.F.'s grandparents' statement at sentencing, A.F. became uncommunicative and had to be home-schooled. She attempted suicide and developed a medical condition that caused her to pull out her hair. A.F.'s grandparents spent approximately $20,000 for her schooling, hospitalizations, doctors, and medication.

¶ 12 Defendant articulated regret and sorrow for his "poor judgment." He stated: "Though our actions were consensual, I should have made better choices." Defendant stated that he began by trying to help the fatherless victims' families. "During this time," according to defendant, "sincere feelings mutually grew," and defendant became sexually attracted to 15-year-old M.S.

and then to 12-year-old A.F. Defendant apologized to the victims and their families and asked for forgiveness.

¶ 13 The court commented that defendant victimized M.S. and A.F. "time and time and time again." The court admonished defendant that his conduct with the girls was not consensual, because "they were children." The court then said that there is an English word for what defendant did: "rape." The court also noted that defendant's actions inflicted "emotional and psychological terrorism" on the victims.

¶ 14 The court sentenced defendant as follows: 7 years' imprisonment on both counts of child pornography, to run concurrently with each other but consecutively to the other sentences; a consecutive sentence of 11 years' incarceration for criminal sexual assault; and a consecutive sentence of 32 years' imprisonment for predatory criminal sexual assault of a child. The aggregate sentence was 50 years' incarceration.

¶ 15 On November 24, 2015, defendant filed a motion to reconsider the sentence. He argued that the court failed to consider his potential for rehabilitation, the excessive hardship his incarceration would cause his mother, and that he was at low risk for reoffending. The court denied the motion, and defendant filed a timely appeal.

¶ 16 II. ANALYSIS

¶ 17 Defendant contends that the aggregate sentence of 50 years' imprisonment failed to balance rehabilitative potential and punishment. Defendant also argues that the court imposed the sentence based on uncharged crimes or dismissed counts of the indictments.

¶ 18 A defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense. *People v. Bien*, 277 Ill. App. 3d 744, 756 (1995). The court may conclude that mitigating factors do not require giving a defendant the opportunity for rehabilitation when they

are weighed against the aggravating factors. *Bien*, 277 Ill. App. 3d at 756. A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Bien*, 277 Ill. App. 3d at 756. A practical life sentence for a defendant who has committed grievous physical and emotional harm is not at variance with the spirit and purpose of the law. *Bien*, 277 Ill. App. 3d at 756.

¶ 19 The trial court has broad discretion in imposing sentence, and its decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court is afforded such deference because it is generally in a better position than the reviewing court to determine the appropriate sentence, considering the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Stacey*, 193 Ill. 2d at 209. A trial court's sentence will not be disturbed absent an abuse of discretion. *People v. Brazziel*, 406 Ill. App. 3d 412, 433 (2010). An abuse of discretion occurs when the trial court's decision is fanciful, arbitrary, or unreasonable, so that no reasonable person would agree with it. *People v. Campos*, 349 Ill. App. 3d 172, 175 (2004).

¶ 20 Defendant pleaded guilty to predatory criminal sexual assault of a child, criminal sexual assault, and two counts of child pornography. Predatory criminal sexual assault of a child is a Class X felony carrying a sentence of 6 to 60 years' incarceration. Criminal sexual assault is a Class 1 felony carrying a sentence of 4 to 15 years' incarceration. In addition, consecutive sentences on the sexual assault counts were mandatory. 730 ILCS 5/5-8-4(d)(2) (West 2014). Both counts of child pornography carried sentences of probation or 3 to 7 years' incarceration. As with the sexual assault counts, the child pornography convictions mandated consecutive sentences. 730 ILCS 5/5-8-4(d)(2.5) (West 2014). The transcript of defendant's guilty plea

shows that he was aware that the maximum aggregate sentence was 82 years' incarceration. On appeal, defendant acknowledges that his aggregate sentence of 50 years' incarceration is within statutory limits.

¶ 21 The record also shows that the court considered mitigation, including defendant's lack of criminal history, the loss of his father at a tender age, the hard work it took for his family to keep the motel after his father's death, the hardship to his family that defendant's incarceration would entail, defendant's acceptance of responsibility by pleading guilty, and defendant's good works while in the county jail. The court balanced all of that against defendant's abuse of the victims. "Really," the court observed, "this is a parents' nightmare and a child's hell." The court found nothing to excuse or justify defendant's behavior. The court noted that defendant's power and control over the victims was "manipulative, predatory, and destructive," and that defendant perpetrated the abuse inside a school building. Mindful as we are that the trial court was in a superior position to determine the appropriate sentence, and that the aggregate sentence was considerably less than the maximum, we cannot say that it was at variance with the spirit and purpose of the law, especially where defendant attempted to destroy evidence by giving the videos to a coworker and to escape punishment by fleeing the country.

¶ 22 Defendant also maintains that the court improperly considered uncharged and dismissed offenses. Specifically, defendant cites the court's use of the words "rape" and "terrorism" out of context. Defendant admitted to using poor judgment, but he simultaneously attempted to defend his actions by claiming that the victims consented. The court pointed out that the victims could not consent because they were children. Then, making certain that defendant understood the law's "fancy and formal names for these crimes," the court explained that the sexual assault counts to which defendant pleaded guilty, in plain "English," amounted to rape. Similarly, the

court did not literally sentence defendant for the crime of terrorism, but it remarked that defendant's power and control over the victims amounted to "emotional and psychological terrorism." That comment was supported by the victim impact statements.

¶ 23 Defendant further argues that the court's use of the words "rape" and "terrorism" showed a biased mindset. A judge cannot rely upon his or her own opinion of a crime in sentencing a defendant. *People v. Henry*, 254 Ill. App. 3d 899, 904 (1993) (the court called the crime "disgusting" and said that was why defendant was given the sentence). Here, the court used the word "rape" to convey its colloquial meaning. The court used the word "terrorism" to describe the documented psychological effect that defendant's acts had on the victims, not to accuse defendant literally of being a sworn enemy of our society.

¶ 24 Defendant claims that the court sentenced him on the dismissed charges based on the court's comment that he pleaded guilty to two acts but the "case is so much more than that." The court pointed out that the abuse occurred over many days, weeks, and months, with multiple acts of penetration. Uncharged criminal conduct is relevant in a sentencing determination. *People v. Ivy*, 313 Ill. App. 3d 1011, 1019 (2000). Furthermore, in an order entered on October 28, 2015, defendant expressly agreed that the court could consider photos and videos depicting him engaged in many sex acts with the minor victims.

¶ 25 In his reply brief, defendant raises for the first time that the court punished him for facts that were inherent in the offense. Raising new issues in a reply brief is impermissible, as reply briefs are limited to responses to arguments that already have been made. *People v. Borges*, 88 Ill. App. 3d 912, 918 (1980).

¶ 26 Defendant suggests that this court should reduce his sentence. Illinois Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999) permits the appellate court to reduce a criminal sentence.

However, the reviewing court should exercise that power cautiously and sparingly. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). For a reviewing court to reduce a sentence that is within the statutory limits, the sentence imposed must reflect a clear departure from the spirit and purpose of the law and the constitutional requirement that the sentence be proportionate to the nature of the offense. *People v. Bobo*, 375 Ill. App. 3d 966, 989 (2007). Defendant argues that "rarely, has this court seen the measure of mitigation" as was presented in the instant case. Defendant asserts that the trial court gave insufficient weight to the help that he gave other inmates in the county jail and his lack of criminal history. He also asserts that the court ignored the psychological evaluation finding him at low risk for reoffending. To the contrary, the record demonstrates that the court considered all of the mitigating evidence and factors. The record also demonstrates that the sentence, which was 32 years below the aggregate maximum, was not disproportionate to the crimes. Accordingly, we determine that the court did not abuse its discretion in sentencing defendant to an aggregate of 50 years' imprisonment.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm defendant's aggregate sentence of 50 years' incarceration in the Illinois Department of Corrections.

¶ 29 Affirmed.