2016 IL App (3d) 150571-U

Order filed October 28, 2016.

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-15-0571
v.	)	Circuit No. 11-CF-14
	)	
ANTONIO D. THOMAS,	)	The Honorable Stephen Kouri,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice O'Brien and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: In a first degree murder case that was before the trial court on remand for resentencing, the trial court properly complied with the appellate court's mandate and did not commit an abuse of discretion in sentencing the defendant to natural life in prison on the firearm enhancement portion of the defendant's sentence. The appellate court, therefore, affirmed the trial court's judgment.

¶ 2 After a bench trial, defendant, Antonio D. Thomas, was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 2010)) and certain other related offenses. Defendant was sentenced to 60 years in prison on the first degree murder conviction with an added-on sentencing

enhancement of natural life in prison because during the commission of the murder, defendant personally discharged the firearm that proximately caused the victim's death (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010)). On appeal, we vacated defendant's sentence and remanded the case for resentencing. See *People v. Thomas*, 2015 IL App (3d) 120461-U, ¶¶ 2, 47, 49. Following a new sentencing hearing upon remand, the trial court again sentenced defendant to 60 years plus natural life in prison for first degree murder. Defendant again appeals, arguing that: (1) the trial court failed to follow this court's mandate in resentencing him upon remand; and (2) his sentence of 60 years plus natural life in prison for first degree murder was excessive under the circumstances. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 On November 9, 2010, defendant shot and killed the victim in this case, Curtis Johnson, while Johnson was involved in a fistfight with defendant's friend, Calvin Brown. The shooting occurred at a gas station in Peoria. Johnson had stopped at the gas station that evening to get gas on his way home with his pregnant girlfriend, Tiffany Smith, and two small children. Brown, who had been out making drug runs, picked up defendant, and stopped at the gas station as well. While at the gas station, Brown and Johnson had words, and Johnson went after Brown after Brown insulted Johnson. Brown was quite a bit smaller than Johnson and was losing the fight when, in response to Brown's request for help, defendant stepped in and shot Johnson a single time in the chest or stomach. Following the shooting, defendant and Brown fled the scene of the crime. Johnson collapsed on the ground and died at the gas station in Smith's arms.

¶ 5 Defendant was charged with the crime in January 2011. A bench trial was held later that year. At the conclusion of the bench trial, the trial court found defendant guilty of first degree murder and certain other related offenses, and the case was scheduled for a sentencing hearing.

¶ 6 In preparation for the sentencing hearing, a presentence investigation report (PSI) was prepared. The PSI indicated that defendant was born in November 1987 and was 22 years old (almost 23) when he committed the offense. Defendant was 6'3" tall and weighed 230 pounds.

¶ 7 As for defendant's family life, the PSI indicated that defendant had a troubled childhood. Defendant's father was not around very much, and defendant's mother was in and out of his life because she had a drug problem. In 1999, the Department of Children and Family Services became involved with the family after defendant's mother left defendant and his siblings with a friend and never returned for them. The parental rights of defendant's parents were later terminated, and defendant eventually ended up living with his grandmother and his aunt. In March 2011, defendant had a child of his own.

¶ 8 Regarding his education, the PSI indicated that while defendant was in elementary school, he was diagnosed as being "Educable Mentally Retarded" and was placed in a special education classroom. Defendant was also diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). The PSI noted that defendant was extremely impulsive and had trouble at home and at school as a result. Defendant was initially prescribed medication for his condition, but the medication was later discontinued because the doctor believed that defendant's behavior issues were due more to behavior management problems than to ADHD. Over the next few years, defendant was expelled from school twice because he had multiple suspensions for his problem behavior and had possessed marijuana in school.

¶ 9 With regard to his prior involvement in criminal activity, the PSI stated that as a juvenile, defendant was adjudicated delinquent for burglary in 1998 and for unlawful possession of cannabis in 2000. The defendant was sentenced to terms of probation on those offenses and was placed into a children's home. Defendant also had numerous curfew violations. As an adult,

defendant had two convictions in 2005 for unlawful possession of a controlled substance (Class 4 felonies), two convictions in 2007 for misdemeanor obstructing justice (both of which had been committed in 2006), one conviction in 2007 for the federal offense of felon in possession of a firearm (which had been committed in 2006), and numerous traffic and ordinance violations. On the controlled substance charges, defendant had been sentenced to county jail and terms of probation, which he had failed to successfully complete. On the federal charge, defendant had been sentenced to 27 months in prison and a period of supervised release. Following the initial completion of his prison term, defendant's supervised release was revoked, and he was sent back to prison on the federal charge.

¶ 10 The PSI was later supplemented and the victim impact statement of Anita W., one of Johnson's family members, was added to the PSI.

¶ 11 A sentencing hearing was held in July 2012. During the hearing, the attorneys primarily relied upon the information contained in the PSI. The prosecutor argued for a lengthy prison sentence and emphasized the nature of the crime, defendant's prior criminal history, his history of getting into trouble, his inability to follow rules, his extremely impulsive behavior, and what the prosecutor characterized as defendant's "dangerous personality." Defense counsel argued for a sentence of imprisonment in the lower end of the range available and emphasized defendant's troubled childhood, his lifelong struggle with behavior problems and impulsivity, his learning disability, his lack of prior violent crimes, his potential for rehabilitation, and the fact that defendant had not instigated the fight in this case and was trying to protect his friend when he impulsively shot Johnson.

¶ 12 After the attorneys had finished making their recommendations, the trial judge announced his sentencing decision. The trial judge indicated that he had considered the PSI, the evidence

and arguments presented by the attorneys, the defendant's statement of allocution, the statutory factors in aggravation and mitigation, the history and character of the defendant, and the circumstances and nature of the offense. The trial judge commented that he was strongly influenced by the victim impact letter, noting that the letter "made one good point after another." The trial judge stated that his assessment of the situation was that when defendant shot Johnson, he "ripped the heart out of that family." The trial judge noted that when Brown yelled for defendant's help, defendant, "[who was] a big guy in his own right," did not jump into the fight himself but, instead, pulled out a gun and shot and killed Johnson. The trial judge concluded his remarks by stating, "if you're man enough to pull the trigger, you're going to be man enough to do life in prison."

¶ 13 With that said, the trial judge sentenced defendant on the underlying first degree murder conviction to 60 years in prison. A mandatory sentencing enhancement (firearm enhancement) of 25 years to natural life in prison applied to the charge because during the commission of the murder, defendant had personally discharged the firearm that had proximately caused the victim's death. See 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010). As part of the sentence on the first degree murder charge, the trial judge imposed a firearm enhancement of natural life in prison.

¶ 14 In June 2012, defendant appeared before the trial judge for a hearing on a motion to reconsider sentence, which defendant had previously filed. The trial judge noted for the record at that time that defendant had "F the Judge" written on the back of his jail uniform with the first word spelled out. When asked, defendant stated he did not know what was on the back of his jumpsuit. At the trial judge's direction, the "F" word was covered up by one of the jail guards so that there would not be profanity in the courtroom.

¶ 15 A sentencing hearing was held on defendant's new offense, unlawful possession of a weapon by a felon (defendant had a gun in his possession when he was later arrested after the murder in this case), to which defendant had entered a blind plea of guilty. At the conclusion of the sentencing hearing in that case, the trial judge sentenced defendant to the maximum extended term of 10 years in prison, saying that it was probably the easiest sentencing he had ever done. The trial judge ordered that the sentence in that case was to run consecutively to the sentences entered in the instant case.

¶ 16 After his motion to reconsider sentence in the instant case was denied, defendant appealed. In a divided decision, this court affirmed defendant's conviction, vacated some or all of defendant's sentence—the extent to which is now in dispute—and remanded the case for resentencing. See *Thomas*, 2015 IL App (3d) 120461-U, ¶¶ 2, 47, 49. Three separate orders were issued by this court in that decision, one by each member of the appellate court panel. *Id.* ¶¶ 49, 50, 58. In short, on the sentencing issue, at least two of the appellate panel members found that the trial judge had not committed an abuse of discretion in sentencing defendant to 60 years in prison on the first degree murder charge. *Id.* ¶¶ 36, 51, 59. Two of the panel members also found, however, that the trial judge had committed an abuse of discretion in sentencing defendant to natural life in prison on the firearm enhancement portion of the sentence. *Id.* ¶¶ 37, 66. In making that ruling, those members of the panel considered the records in other cases where the same trial judge had made a similar comment or had imposed a similar sentence. *Id.* ¶¶ 38-47. Those two panel members concluded that the trial judge's sentencing decision was improperly based upon a blanket personal policy of imposing a natural life sentence (or the equivalent thereof) on every convicted offender subject to firearm enhancements. *Id.* The third panel member disagreed. *Id.* ¶ 51. The mandate provided, among other things, that the

judgment of the trial court was "vacated in part and the cause remanded for re-sentencing." *Id.* ¶ 48.

¶ 17 On remand, an updated presentence investigation report was prepared and a new sentencing hearing was held in July 2015 before the same trial judge. The updated PSI, for the most part, contained the same information as the initial PSI. At the time of the updated PSI, defendant was 27 years old. An additional offense was added to the criminal history portion of the updated PSI to reflect the conviction and sentence that defendant had received in June 2012 (the conviction and sentence that were entered on the new unlawful possession of a weapon by a felon charge just prior to the hearing on the initial motion to reconsider sentence). At the outset of the sentencing hearing, based upon an objection by defense counsel, the trial judge ruled that he would not consider any of the disciplinary reports contained in the updated PSI regarding defendant's behavior in jail or prison. As an addition to the updated PSI, defense counsel tendered to the court a letter that had been written on defendant's behalf by defendant's sister.

¶ 18 When defense counsel stated during the sentencing hearing that the sentencing range was 20 to 60 years on the first degree murder charge, the trial judge interjected a question. The following conversation ensued:

> "THE COURT: But we're not resentencing on the 60, are we? I thought that was the one thing the three different opinions agreed upon, was that the 60 years was affirmed.
>
> [DEFENSE COUNSEL]: Well, that is the mandatory—it's the mandatory life, I think.
>
> THE COURT: I thought that's the only thing we're here on.
>
> [DEFENSE COUNSEL]: That's what we're talking about.

THE COURT: Do you agree with that, Ms. [Prosecutor]?

[THE PROSECUTOR]: Yes.

THE COURT: I'm not dealing with the 20 to 60.

[DEFENSE COUNSEL]: Yes, sir. But we have that sentence that in itself is likely to keep Mr. Thomas in prison for the rest of his life.

THE COURT: And then you add 25.

[DEFENSE COUNSEL]: You add—you add the 25, and then you have the—what we're talking about is the life—

THE COURT: I mean, do you agree with Justice Schmidt's dissent where he said essentially no matter what number—

[DEFENSE COUNSEL]: Yes, sir.

THE COURT: —is picked in this range, as a practical matter, it doesn't make much difference, does it?

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: Okay.

[DEFENSE COUNSEL]: But I would submit that it should not be the—it should not be the number that was picked by the court the first time."

¶ 19 After listening to the recommendations of the attorneys, the trial judge announced his sentencing decision. In doing so, the trial judge stated, in pertinent part:

"This case is back for a resentencing hearing to address a reversal by the Appellate Court. I normally try not to give lengthy speeches at sentencing hearings for the sole reason that the more the trial judge says, the more likely his remarks may be misinterpreted on appeal or unfairly twisted by a crafty appellate

defender. This isn't just my belief. It is shared by other trial judges. This case and the opinion that was handed down has caused a great deal of concern and unease to this Court. Because of the posture of this case and the sentence I intend to impose, I feel compelled to further explain the reason or reasons for the decision I make today. This is not an explanation of a decision I made at the prior sentencing hearing. It is an explanation of a decision I make today.

In explaining my decision, let me say a few general comments at the outset. First and most importantly, I understand the chain of command, and I fully intend to adhere to it. In other words, I must follow the law as interpreted by the Appellate Court. I must do so even if I disagree with its decision as sometimes happens. Let me repeat that for the record so that there is no misunderstanding. I must follow the interpretations of law by the reviewing Court, and I intend to do so. My sentence today should not be construed as disregarding it.

Second, and related to that principle, when it comes to appeals of felony cases usually involving prison sentences, the Third District Appellate Court is often sharply divided. Frequently the decisions are reversed or affirmed on a 2 to 1 basis. Recently in a case involving another trial judge, not me, from Peoria County, the tone towards that judge and the attorneys involved was harsher than any decision or opinion I have read in my 33 years in the legal field, including almost 13 years on the bench. Trial judges, jurors and for the vast majority of attorneys, including the two that are in front of me today, come to work every day in this circuit and do the best they can to follow the law. The split decision and

the application of less than static standards such as abuse of discretion, against the manifest weight of the evidence, and plain error have made it a very challenging environment for trial judges and attorneys alike in felony cases. Prosecutors, defense counsels, and especially *pro se* defendants have—to some extent appeared to have adjusted their trial tactics accordingly.

In this case alone, there are three different opinions. It appears the only significant thing all three agree upon is the 60-year maximum sentence that was imposed previously. Two of the opinions believe that the life sentence add-on was based on an improper sentencing policy. The sentencing policy that is attributed to this Court appears to be based on a selection of four or five cases. I have handled over 10,000 criminal cases, and I would guess 60 percent of those were felony cases. Conservatively speaking, hundreds and hundreds involved guns. Dozens and dozens involved the discharge of those guns. [Twenty-five] or so were murder cases, most involving guns.

Murder cases, as [defense counsel] indicated, never are routine. They never fit into the same round hole. Each are unique, and they are unique to this judge, which means each sentence that is handed down is not based on some automatic blanket policy. The taking of a life affects the victim's family in [a] profound way that is [*sic*] no other crime does. I think six of my cases were life sentences, two of which were mandatory life.

Perhaps a clearer perspective and a different view of whatever sentencing policy one is attributing to this Court would have been different had a somewhat larger sample size, in particular by including those cases and sentences that aren't

even appealed, because in those cases, the sentences are on the lower end of the spectrum.

I mention all of this because again, not in explanation of the prior decision or any justification of any prior decision made by the Trial Court in this case, but an explanation and context of the decision I am going to make today. This is important. I fully acknowledge that one of my comments at sentencing, both in this case and perhaps two or three other cases which I think are referred to in the opinion which were—which comment was meant to serve as a strong message of deterrence to others, that sentence combined—that statement combined with the limited review of four or five cases I acknowledge contributed to the opinion that was handed down in this case. And just so there is no misunderstanding, this judge believes in the concept of deterrence of others and uses that as a factor in my sentencing decisions.

Now, in this case, given that all three justices on the panel have affirmed the 60-years portion of the sentence, as the attorneys know, as Justice Schmidt recites in his dissent, as Justice Wright notes in her opinion, and as common sense tells us, Mr. Thomas essentially has a life sentence whether I give him the minimum add-on of 25 years or the maximum of natural life or something in between. And for the record, I am not using a life expectancy table in making that statement. I would note for the record that this Court fully acknowledges the decision in the *Cervantes* case [*People v. Cervantes*, 2014 IL App (3d) 120745, ¶¶ 46-47], which I think is cited in this case, but I also mention contrary prior authority in *Sherman v. City of Springfield*, 111 Ill. App. 2d 391[, 408-09 (1969)],

and by inference, the calculations made by Justices Schmidt and Wright in their opinions in this case.

I will now address the add-on portion in particular. We are back here once again to deal with Mr. Thomas. Antonio Thomas murdered a father of one child with another child on the way. It wasn't even his fight to be involved in. The victim was senselessly and savagely murdered in front of two children and in the arms of the mother of his children as he laid on concrete at the gas station.

Contrary to what might be inferred from the opinion issued in this case, as the trier of fact, I felt—I felt that the victim did not instigate the trouble, the struggle that resulted in his death. He was, in fact a very, very big man. As big as he was, Tiffany Smith, in whose arms he died, is a very, very small woman. From just a foot or two away from me, her soft spoken, painful, moving testimony was barely audible to me as she had to relive again the unthinkable and horrendous nightmare of that encounter that she and her children will suffer through for the rest of their lives. It is testimony I will never forget, and stating the obvious, it is not something you could truly appreciate by simply reading it from a transcript. More than any other case I have ever had—and again I have had roughly 25 murder cases, give or take—I was moved as much by the testimony of Tiffany Smith as I have any other witness that I've heard in my 13 years on the bench.

Sentencing hearings are not just about the Defendant. Victims' families are entitled to some measure of justice, as is the public at large. Victims' families and the public at large are entitled to some degree of finality and judicial closure

and justice, as that is the only consolation prize a criminal justice system can give them when a life is taken. As much as any other case that I have presided over, in my judgment justice calls for this Defendant to receive a life sentence.

From the time this opinion was handed down to this very moment, I have struggled greatly with the—with balancing my obligation to follow the Third District's ruling and what I saw and heard in this case in the courtroom from two feet away from the witness box.

I have considered, I have seriously considered giving Mr. Thomas the minimum of 25 years on the add-on or some other quote "low" end of quote number, just to symbolize acknowledgement of a decision that was handed down with the end result being in practical terms, as Justice Schmidt has written, a life sentence no matter what number I give Mr. Thomas. Yet after lengthy thought and consideration, I have concluded that justice in this case should not be compromised in that manner. Mr. Thomas should receive a life sentence as authorized by State statute. I make this decision with respect, acknowledgement and in conformity with the requirements of the opinion issued by the Appellate Court in this case."

¶ 20 After the trial judge made his sentencing decision, defendant filed a motion to reconsider sentence. A hearing was later held on the motion in August 2015. In the motion itself and at the hearing, defense counsel pointed out differences between the statement of facts as set forth in the appellate court decision and what the trial judge had stated about the facts at the resentencing hearing. The trial judge commented that the appellate court was wrong about who the aggressor and the instigator of the fight were and noted that he himself was the trier of fact. At the

conclusion of the hearing, the trial judge denied defendant's motion to reconsider sentence, except as to some matters that pertained to court costs.

¶ 21 As the trial judge admonished defendant about his appellate rights, the following conversation ensued:

> "THE COURT: Any questions, Mr. Thomas?
>
> THE DEFENDANT: Yeah, f*** you.
>
> UNIDENTIFIED AUDIENCE MEMBER: Stop.
>
> [DEFENSE COUNSEL]: Your Honor—
>
> UNIDENTIFIED AUDIENCE MEMBER: That's the problem.
>
> THE COURT: You know what? I totally expected that from Mr. Thomas. I expected one of two things.
>
> UNIDENTIFIED AUDIENCE MEMBER: He denying it.
>
> UNIDENTIFIED AUDIENCE MEMBER: Shut up.
>
> THE COURT: Either profanity or laughter. That's what I get from Mr. Thomas. That's what he thinks about the victim and the victim's families."

¶ 22 Defendant filed this instant appeal to challenge the trial court's sentencing decision.

¶ 23 ANALYSIS

¶ 24 I. Compliance with the Appellate Court Mandate

¶ 25 As his first point of contention on appeal, defendant argues that the trial judge failed to comply with this court's mandate in resentencing defendant upon remand. Defendant asserts that the trial judge failed to conduct a full resentencing on the first degree murder conviction as directed by this court's mandate and, instead, merely conducted a resentencing on the firearm

enhancement portion of that sentence. Defendant asks, therefore, that we vacate his sentence for first degree murder and remand this case for the defendant to be fully resentenced on that charge by a different trial judge.

¶ 26 The State argues that the trial judge complied with this court's mandate upon remand. The State asserts that when this court's previous order is examined as a whole, it is clear that this court affirmed the underlying 60 year sentence for first degree murder and vacated only the firearm enhancement that was added to that sentence. Thus, the State submits, by resentencing defendant only on the firearm enhancement portion of the sentence, the trial judge was acting in full compliance with the mandate. According to the State, if the trial judge would have taken any other action, he would have violated the scope of the mandate. The State asks, therefore, that we reject defendant's argument on this issue.

¶ 27 It is well established that the determination of whether a trial court has complied with an appellate court's mandate is a question of law that is subject to *de novo* review on appeal. *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 351-52 (2002). Once the appellate court's mandate is sent to the trial court, it vests the trial court with the authority to take only those actions that comply with the mandate. *In re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 1152 (2002). When the directions in a mandate are clear and specific, the trial court has no discretion and must obey those directions to the letter to insure that its order is in compliance with the decision of the appellate court. See *id.*; *Puritan Finance Corp. v. Gumdrops, Inc.*, 101 Ill. App. 3d 888, 891 (1981). However, when the directions in the mandate are more general in nature, such as when the appellate court instructs the trial court to proceed in conformity with the appellate court's opinion, the trial court must examine the entire opinion and exercise its

discretion to determine what further proceedings on remand would be consistent with the opinion. See *Ludwinski*, 329 Ill. App. 3d at 1152-53.

¶ 28 In the present case, at least two of the three panel members in the last appeal agreed that the underlying 60 year sentence for first degree murder did not constitute an abuse of discretion. Although our previous order was somewhat ambiguous as to whether a portion of the sentence or all of the sentence was being vacated, when the order is viewed as a whole, it must be concluded that this court was only vacating the portion of the sentence that it found to be improper—the firearm enhancement portion. Therefore, when the trial court resentenced defendant only on that portion of the sentence, it did so in full compliance with this court's previous mandate.

¶ 29 II. Excessive Sentence

¶ 30 As his second point of contention on appeal, defendant argues that the trial court erred in sentencing him to 60 years plus life in prison on the first degree murder charge in the instant case. Based upon our ruling on the first issue, we will only address the appropriateness of the firearm enhancement portion of the sentence. Defendant asserts that his sentence, which was the harshest sentence allowed under the law for the crime, was excessive in light of his troubled background; his intellectual disability; the fact that he had not previously committed any crimes of violence as an adult; his young age at the time of the offense; and the nature of the offense itself, which involved an unpremeditated attempt by defendant to help a friend who was being physically beaten by a much larger person. According to defendant, as the sentence imposed suggests, the trial judge treated this case as though it was one of the worst gun murders, which, defendant submits, this case clearly was not. Rather, defendant asserts, the facts of this case were of a mitigating nature in that the intellectually disabled defendant, who was young and had prior problems with impulsive behavior, responded impulsively to his friend's request for help

by firing a single shot at the much larger person who was physically beating his friend. In light of those circumstances, defendant contends, the sentence imposed in this case was greatly at variance with the purpose and spirit of the law. Defendant asks, therefore, that this court reduce his sentence on the first degree murder conviction to the minimum sentence allowable under the law.

¶ 31 The State argues that the trial judge's sentencing decision on the firearm enhancement portion of the sentence did not constitute an abuse of discretion and should be upheld. According to the State, the trial judge's explanation of his sentencing decision upon remand quashes any possibility that the sentence was arbitrarily imposed based upon a stated policy or personal view of the trial judge, as was the concern of this court in the first appeal. The State asserts further that mitigating factors, such as the young age or rehabilitation potential of defendant, do not overcome other factors in aggravation, such as the nature and seriousness of the crime. Furthermore, the State contends, the sentence in this case is consistent with the purpose and spirit of the law as the firearm enhancement was intended to deter the use of firearms in the commission of felonies. For all of the reasons set forth, the State asks that we affirm the sentencing decision of the trial court.

¶ 32 A trial court's sentencing decision is entitled to great deference and weight and will not be altered on appeal absent an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). The trial court is in a much better position than the appellate court to determine an appropriate sentence because the trial court has the opportunity to give firsthand consideration to such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age; whereas the appellate court has to rely solely on the record. See *id.* at 209. In sentencing a defendant, the trial court is not obligated to recite and assign value to

each fact presented at the sentencing hearing. *People v. Meeks*, 81 Ill. 2d 524, 534 (1980). It is presumed that the trial court considered any mitigating evidence, absent some indication in the record to the contrary. *People v. Franks*, 292 Ill. App. 3d 776, 779 (1997). While a sentencing judge must consider such mitigating factors as age and rehabilitative potential, he need not give greater weight to those factors than to the other factors in aggravation, such as the nature and seriousness of the offense. See *People v. Hoskins*, 237 Ill. App. 3d 897, 900 (1992); *People v. Jones*, 297 Ill. App. 3d 688, 693 (1998). Although the reviewing court may reduce a sentence where an abuse of discretion has occurred (Ill. Sup. Ct. R. 615(b)(4)), in reviewing the propriety of a sentence, the reviewing court should proceed with great caution and must not substitute its judgment for that of the trial court merely because the reviewing court would have weighed the factors differently. *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 33 The version of section 5-8-1(a)(1)(d)(iii) of the Unified Code of Corrections that was in effect at the time of the commission of the offense in the instant case provided that a mandatory sentencing enhancement of 25 years up to natural life in prison was to be added to the prison term imposed by the trial court upon a defendant convicted of first degree murder if, during the commission of the offense, the defendant personally discharged a firearm that proximately caused death to another person. See 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010). The legislature enacted the firearm enhancement statute to deter the use of firearms in the commission of certain felony offenses. *People v. Tolbert*, 354 Ill. App. 3d 94, 101 (2004). As the courts have noted, "[t]he offender's possession and use of a firearm creates a 'unique, pervasive and enhanced danger' [citation], especially because of the quickness and ease with which one can acquire and use a firearm that 'allows the perpetrator to effortlessly and instantaneously execute an intent to kill once it is formed; and allows an offender to harm a greater number of victims more rapidly

than other weapons and inflict deadly wounds on a number of people within a wide area and within a short amount of time.' " *Id.* at 101-02 (quoting *People v. Zapata*, 347 Ill. App. 3d 956, 971 (2004)).

¶ 34 In the present case, after having thoroughly reviewed the trial judge's sentencing decision, we find that it did not constitute an abuse of discretion. In determining the appropriate sentence to be imposed upon defendant, the trial court considered all of the factors in aggravation and mitigation, including those factors cited by defendant on appeal. After weighing those factors, the trial judge found that justice required that a firearm enhancement of natural life in prison be imposed. In reaching that conclusion, the trial judge commented that he was deeply moved by the trial testimony of the victim's girlfriend (Tiffany Smith) who, along with her children, would suffer as a result of this crime for the rest of their lives. The trial judge also pointed to the senselessness and savagery of this particular killing and the fact that it took place in front of two children. The trial judge made clear that he did not have a blanket or personal policy of sentencing such offenders to life in prison and that he was imposing the sentencing enhancement of natural life in this case because it was what justice required. Defendant's assertions to the contrary would have this court re-weigh the sentencing factors on appeal, which is something this court clearly cannot do. See *Stacey*, 193 Ill. 2d at 209; *Streit*, 142 Ill. 2d at 19. Under the circumstances of this case and applying the appropriate standard of review, we find no error in the trial court's sentencing decision. See *Stacey*, 193 Ill. 2d at 209-10; *Streit*, 142 Ill. 2d at 19. We, therefore, affirm the firearm enhancement imposed upon defendant of natural life in prison. To avoid any uncertainty and to the extent that the remaining portion of defendant's sentence in this case is before us, we affirm defendant's entire sentence.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 37 Affirmed.