2016 IL App (5th) 130471-U

NO. 5-13-0471

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Williamson County.
	)	
v.	)	No. 08-CF-287
	)	
DONALD HUSE,	)	Honorable
	)	John Speroni,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's order imposing a maximum sentence of two concurrent seven-year terms, followed by two years of mandatory supervised release, for two counts of aggravated criminal sexual abuse, pursuant to section 11-1.60(c)(1)(i) of the Criminal Code of 1961 (720 ILCS 5/11-1.60(c)(1)(i) (West 2010)), is affirmed as modified where the defendant failed to present any new facts that would warrant a different decision.

¶ 2 The defendant, Donald Huse, appeals the order of the circuit court of Williamson County finding him guilty of two counts of aggravated criminal sexual abuse, pursuant to section 11-1.60(c)(1)(i) of the Criminal Code of 1961 (720 ILCS 5/11-1.60(c)(1)(i) (West 2010)), and sentencing him to two concurrent seven-year terms, followed by two years of mandatory supervised release. For the reasons that follow, we affirm as modified.

¶ 3 FACTS

¶ 4 Following a jury trial, the defendant was convicted of two counts of aggravated criminal sexual abuse, pursuant to section 11-1.60(c)(1)(i) of the Criminal Code of 1961 (720 ILCS 5/11-1.60(c)(1)(i) (West 2010)). The trial court imposed a maximum sentence of two concurrent seven-year terms in the Illinois Department of Corrections, followed by two years of mandatory supervised release. The trial court imposed the following fines and fees: a $200 sexual assault fine (730 ILCS 5/5-9-1.7(b)(1) (West 2008)); a $250 DNA analysis fee (730 ILCS 5/5-9-1.7(b)(1) (West 2012)); $255 in restitution to the Child Advocacy Center; a $100 Violent Crime Victims Assistance fine (725 ILCS 240/10(b) (West 2008)); and a $25 Crime Stoppers fine (730 ILCS 5/5-6-3(b)(12)-(13) & 5-6-3.1(c)(12)-(13) (West 2008)).

¶ 5 On September 16, 2013, the defendant filed a motion to reconsider sentence, arguing that his sentence was excessive and an abuse of discretion. The trial court denied this motion, and the defendant filed a timely notice of appeal.

¶ 6 On appeal, the defendant argues: (1) that the trial court abused its discretion by ignoring mitigating evidence of his military service and mental illness, and sentencing him to the maximum prison term after finding that no mitigating factors were present, and (2) that his fines and fees should be reduced by $75 to correct errors in the trial court's assessment of the Crime Stoppers and Violent Crime Victims Assistance fines.

¶ 7 At the defendant's jury trial, the State presented the following evidence. On June 21, 2008, grandfather Michael brought his 11-year-old granddaughter, K.G., to the Econolodge Motel in Marion, Illinois, to go swimming. Michael and K.G. were frequent

visitors at the swimming pool. K.G. entered the pool area by herself while Michael was in the lobby paying the pool fee. K.G. testified that, upon entering the pool area, she saw the defendant sitting in the hot tub. K.G. recognized the defendant from prior swimming visits; however, she had never spoken to him. The defendant asked K.G. to come into the hot tub, and she did. K.G. testified that the defendant pulled her onto his lap and touched her on her breasts and between her legs. She stated that he touched her over her swimsuit and that he did not put his hands underneath her clothing. Michael walked into the pool area during this time and asked what was going on, and K.G. testified that the defendant moved his hands to her stomach. Michael testified that he did not see the defendant's hands because the jets were on in the hot tub, and the defendant's hands were under water at all times. Michael then stepped out of the pool area and back into the lobby to retrieve his briefcase. K.G. testified that once Michael stepped out of the pool area, the defendant touched her breasts and between her legs again. When Michael returned, K.G. exited the hot tub and told him that she wanted to leave. K.G. and Michael testified that the defendant followed them to Michael's truck, opened the back door, got into the truck, and stated "everything is cool." Michael told the defendant to get out and drove with K.G. to the police station to report the incident. Pritchard, a police officer from the Marion police department, also testified and verified the defendant's identity. The State rested. The defendant moved for a directed verdict, which was denied. The defense put on its case.

¶ 8 The defendant did not testify. The defense introduced the testimony of the Econolodge manager, who testified that Michael and K.G. would often come to the hotel and pay the fee to swim in the pool located on the west side of the lobby. He also stated

that the defendant was a guest at the hotel during the time of the incident and would frequent the hot tub because he had back problems. The manager was not at the Econolodge at the time of the incident. The defense then rested its case pending its motion for a directed verdict, which the trial court denied.

¶ 9 The jury found the defendant guilty of two counts of aggravated criminal sexual abuse: one for touching K.G.'s breasts and the other for touching her between the legs.

¶ 10 The defendant filed a motion for a new trial, which the trial court denied. During the sentencing hearing, defense counsel requested a sentence of probation, based on mitigating evidence set forth in the defendant's presentence investigation report (PSI). Specifically, defense counsel highlighted the defendant's military service, mental illness, and minimal criminal record.

¶ 11 The PSI revealed that the defendant is a 19-year veteran, having served in the United States Navy from 1987 to 2006. During his military service, the defendant received his GED, trained as a jet engine mechanic and flight engineer, and served in the Iraq War. Also during this service, he was hospitalized for psychotic breaks and was discharged in 2006 due to his mental illness. The defendant was diagnosed with schizoaffective disorder, the effects of which include paranoid personality disorders, delusions, and episodes of mania.

¶ 12 The PSI also revealed the defendant's prior criminal history. In 1983, the defendant was a juvenile found guilty of burglary and sentenced to 24 months of probation. In 2006, he was convicted of one count of battery, a Class A misdemeanor,

and sentenced to 24 months of probation. During this probation, the defendant failed to comply with reporting requirements that were imposed as conditions of his probation.

¶ 13 The trial court found that no statutory mitigating factors were present. The trial court then considered whether a sentence of probation or conditional release was appropriate, pursuant to section 5-6-1 of the Unified Code of Corrections (730 ILCS 5/5-6-1 (West 2008)), and determined that it was not. To support this conclusion, the trial court found that two primary aggravating factors were present: first, that "[a] sentence is necessary to deter others from committing the same crime"; and second, that the defendant had "a history of prior delinquency or criminal activity." The trial court also noted that there was evidence from K.G.'s testimony and victim impact statement that she had suffered significant emotional harm as a result of the offense.

¶ 14 The trial court sentenced the defendant to two concurrent seven-year terms in the Illinois Department of Corrections, followed by two years of mandatory supervised release. After sentencing, the trial court also entered an order notifying the Illinois State Police that the defendant was "adjudicated as a mental defective." This direct appeal followed.

¶ 15 ANALYSIS

¶ 16 I.

¶ 17 The defendant argues that the trial court abused its discretion by sentencing him to the maximum prison term after erroneously finding that no mitigating factors were present, ignoring mitigating evidence of his mental illness, military service, and minimal prior criminal history.

¶ 18 When a defendant challenges a sentence, the standard of review is whether the trial court has abused its discretion in imposing the sentence. *People v. Davis*, 368 Ill. App. 3d 17, 23 (2006). A trial court has broad discretionary powers in determining a sentence, and its decisions are afforded great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). This level of deference is given because a trial court has superior opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id.* A reviewing court has the power to reduce or alter a sentence; however, this power should be exercised "cautiously and sparingly," and may only be used if the trial court has abused its discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). An abuse of discretion occurs where the sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210.

¶ 19 The defendant first argues that the trial court abused its discretion by ignoring mitigating evidence of his history of mental illness, including a psychotic break during his military service that led to medical discharge and hospitalization for psychiatric treatment.

¶ 20 Illinois courts have repeatedly held that a defendant's history of mental illness is not inherently mitigating, and, in fact, that mental illness can be aggravating. See, *e.g.*, *People v. Baez*, 241 Ill. 2d 44, 122-23 (2011); *People v. Thompson*, 222 Ill. 2d 1, 42-43 (2006); *People v. Ballard*, 206 Ill. 2d 151, 190 (2002); *People v. Holman*, 2014 IL App (3d) 120905, ¶ 75.

¶ 21 In *People v. Holman*, the defendant argued that his maximum extended-term sentence was excessive in light of significant mitigation evidence, which included mental health issues, minimal criminal history, and the defendant's rehabilitation potential. *Holman*, 2014 IL App (3d) 120905, ¶ 71. The State argued that the maximum sentence was proper considering the defendant's criminal record, the effect of the harm done, and the defendant's lack of remorse or responsibility for the offense. *Id.* ¶ 72.

¶ 22 In its opinion, the *Holman* court found that all mitigating factors were presented to the trial court at the time of sentencing, and there was no evidence in the record that the trial court had ignored these factors. *Id.* ¶ 75. Further, it noted that the trial court did not have an obligation to view the defendant's history of mental health issues as mitigating in nature. *Id.* The defendant had struggled with mental health issues for several years and had not been able to get his problems under control, despite being given previous chances at rehabilitation with his prior sentences of probation. *Id.* Thus, the court found that the trial court did not abuse its discretion in sentencing the defendant to the maximum sentence available. *Id.* ¶ 77.

¶ 23 Similarly, in the case at bar, the mitigating factor of mental illness was presented to the trial court at the time of sentencing, primarily in the defendant's PSI report. The trial court did not have an obligation to find this evidence mitigating. Rather, it found this evidence to be aggravating, as the defendant had the opportunity when he pled guilty to the prior battery case to seek treatment and to put himself in a position where he could receive the necessary treatment and remain in society; however, he failed to do so. The effect of the harm done in the present case was substantial, as evidenced by K.G.'s

testimony and victim impact statement that she had suffered significant emotional harm as a result of the offense.

¶ 24 A sentencing judge may view evidence of mental illness as either mitigating or aggravating, depending on whether he finds it "evokes compassion or demonstrates possible future dangerousness." (Internal quotation marks omitted.) *Ballard*, 206 Ill. 2d at 190. Considered in light of this standard, in the case at bar, the trial court found that the defendant's mental illness demonstrated possible future dangerousness:

> "I also find that having regard to the nature and circumstances of the offense, and to the history, character and condition of the offender, that [the defendant's] imprisonment is necessary to protect the public ***. [The defendant] had the opportunity at the time he pled guilty to the prior battery case to seek treatment and to put himself in a position where he could remain in society. He failed to do that. I absolutely believe that there is no possibility that if he were out in the public that he would not re-offend. I also believe that he would be unable, completely unable to comply with probation and to seek the help, the treatment that he would need. I'm entitled to consider the evidence received upon the trial. *** And if there's any purpose or any goal that I can accomplish, it is to make certain that as long as I'm able to do so, that [the defendant] is placed out of society, is put out of society so that he cannot do this to any other young woman or to anyone else."

¶ 25 Additionally, "[a] defendant's rehabilitative potential and other mitigating factors are not entitled to greater weight than the seriousness of the offense." *People v. Pippen*, 324 Ill. App. 3d 649, 652 (2001). Here, the trial court found that the defendant's rehabilitative potential and the mitigating factor of his mental illness did not outweigh the seriousness of the offense. "[T]he seriousness of the crime committed is considered the most important factor in fashioning an appropriate sentence." *People v. Lima*, 328 Ill. App. 3d 84, 101 (2002). The defendant inappropriately touched K.G. and was convicted of aggravated criminal sexual abuse. The trial court felt that this was a serious offense and that there was a need for deterrence of any future behavior of this sort.

¶ 26 The defendant next argues that the trial court abused its discretion by failing to find that his extensive military service was a mitigating factor at sentencing. It is undisputed that the defendant spent approximately 19 years serving in the United States Navy, where he earned his GED, trained as a jet engine mechanic and flight engineer, and served in the Iraq War. The defendant presented this evidence to the trial court at his sentencing hearing and argues that the evidence was ignored as a mitigating factor.

¶ 27 In *People v. Shaw*, the defendant claimed that during sentencing, the trial court ignored mitigating evidence of his past military service and his psychological history. *People v. Shaw*, 351 Ill. App. 3d 1087, 1093 (2004). However, the record revealed that the trial court explicitly stated that it had fully considered all circumstances of the crime, as well as aggravating and mitigating factors, including the defendant's military service and psychological history. *Id.* at 1095. The appellate court noted that "[t]he mere fact that the court did not specifically recite each one of those factors does not call into

question the court's consideration of those factors." *Id.* The appellate court stated: "It is the trial court's duty−not ours−to balance the mitigating and aggravating factors and to make a reasoned decision as to the appropriate sentence." *Id.* Taking all of this into consideration, the appellate court upheld the trial court's sentence. *Id.* at 1096.

¶ 28 Similarly, the defendant here presented mitigating evidence of his past military service, along with his mental illness, as previously discussed. Just like the trial court in *Shaw*, the trial court here explicitly stated:

> "I have considered evidence that was received upon trial. I've read and considered the Presentence Investigation Report and the Sex Offender Evaluation. *** There was not evidence offered or information offered in court today as to aggravation or mitigation."

The fact that the trial court did not specifically recite the defendant's military service and mental illness as mitigating factors does not call into question its consideration of those factors. It is the trial court's responsibility to weigh both mitigating and aggravating factors and to fashion an appropriate sentence, which is exactly what it did in the case at bar.

¶ 29 The trial judge is not required to articulate his consideration of all mitigating factors. *Lima*, 328 Ill. App. 3d at 101. He is not required to recite and assign value to each fact presented during sentencing. *Holman*, 2014 IL App (3d) 120905, ¶ 73. "When mitigating factors are presented to the trial court, there is a presumption it considered them." *Pippen*, 324 Ill. App. 3d at 652.

¶ 30 In *Pippen*, the defendant committed acts of sexual misconduct with his 11-year-old stepdaughter. *Id.* at 650. He contended that the trial court had abused its discretion in sentencing him to three consecutive 12-year terms in light of the nature of the offenses and did not afford mitigation factors enough weight. *Id.* at 651. The court noted that a reviewing court does not reweigh mitigating factors involved in a trial court's sentencing decision. *Id.* at 653. There is a presumption that the trial court reviewed and weighed all mitigating factors, and the presence of mitigating factors does not require a trial court to reduce a sentence from the maximum allowed. *Id.* at 652.

¶ 31 Similarly, in this case, there is a presumption that the trial court considered the defendant's military service as a mitigating factor. Although the trial judge is not required to articulate his consideration of each mitigating factor, in the case at bar, the trial judge stated that he did consider the defendant's military service as a mitigating factor. The trial judge stated: "I've read and considered the Presentence Investigation Report." This report contained detailed records of the defendant's military service. He also stated: "I have considered the arguments made concerning sentencing alternatives." Military service and lack of noteworthy criminal history are considered but are not inherently mitigating. *People v. Turner*, 156 Ill. 2d 354, 365-66 (1993). The trial judge did not specifically assign value to evidence of the defendant's military service presented at the sentencing hearing; however, he was not required to do so. A reviewing court does not reweigh factors involved in a trial court's sentencing decision. *Pippen*, 324 Ill. App. 3d at 653. The defendant is requesting that this court assign different weight to this mitigation evidence than the trial court did, which we will not do.

¶ 32 The defendant also argues that the trial court abused its discretion by not taking into consideration his minimal criminal history. Factors that should be given weight in favor of imposing imprisonment or may be considered in imposing a more severe sentence include the defendant's history of prior delinquency or criminal activity and whether the sentence is necessary to deter others from committing the same crime. 730 ILCS 5/5-5-3.2(a)(3) & (7) (West 2008)). The seriousness of the offense is considered the single most important factor in determining an appropriate sentence. *Lima*, 328 Ill. App. 3d at 101.

¶ 33 In the case at bar, the defendant had a criminal history. In 1983, he was a juvenile found guilty of burglary, and in 2006, he was convicted of one count of battery, a Class A misdemeanor. He did not comply with the reporting requirements during his probation. Pursuant to section 5-5-3.2 of the Unified Code of Corrections (730 ILCS 5/5-5-3.2(a)(3) & (7) (West 2008)), these prior delinquencies and past criminal activity are given weight in considering imposing a more severe sentence.

¶ 34 Additionally, the seriousness of the crime is considered the most important factor at sentencing, and, pursuant to section 5-5-3.2 of the Unified Code of Corrections (730 ILCS 5/5-5-3.2(a)(3) & (7) (West 2008)), if the sentence is necessary to deter others from committing the same crime, then it is a factor that should be taken into consideration in favor of imposing a more severe sentence. Here, the trial court emphasized that the defendant's crime was of a serious nature, stating, "I also find that having regard to the nature and circumstances of the offense, and to the history, character and condition of the offender, that [the defendant's] imprisonment is necessary to protect the public." In her

victim impact statement, K.G. spoke of the terror and emotional harm that she experienced as a result of the defendant's actions. As such, the defendant's past criminal history as well as the seriousness of the crime and need for deterrence were considered by the trial court and were found to be statutory aggravating factors.

¶ 35 The defendant argues that the court erroneously found no mitigating factors and, therefore, imposed the maximum sentence after concluding that probation was not appropriate. However, the existence of mitigating factors does not require the court to reduce a sentence from the maximum sentence that is allowed. *Pippen*, 324 Ill. App. 3d at 652. The trial court directly cited to factors in aggravation and mitigation that it considered in arriving at its sentencing conclusion, factors that it considered after reading the PSI report, victim impact statements, as well as trial witness testimony. The judge stated: "I've read and considered the Presentence Investigation Report ***. *** I have considered the arguments made concerning sentencing alternatives." The trial judge weighed these factors and found it appropriate to impose the maximum sentence allowed.

¶ 36 The trial court's sentence will be disturbed only if there was an abuse of discretion. *Alexander*, 239 Ill. 2d at 212. Here, the record reveals that all mitigating factors were presented to the trial court at the time of sentencing, and there is no evidence that the trial court ignored those factors. As the trial court acknowledged at sentencing, the defendant had a prior criminal history and a mental illness that was potentially aggravating. Other mitigating factors, such as the defendant's military service, were considered, but when these factors were considered along with the seriousness of the

crime and the need for deterrence, the trial court did not abuse its discretion in sentencing the defendant to the maximum sentence available.

¶ 37 II.

¶ 38 The defendant also argues that the Crime Stoppers fine should be vacated as it was improperly imposed and that the Violent Crime Victims Assistance fine should be reduced to $50. The State concedes these issues.

¶ 39 The Crime Stoppers fine is only imposed when a defendant receives a community-based sentence. *People v. Beler*, 327 Ill. App. 3d 829, 837 (2002). Because the defendant received a prison sentence in this case, the Crime Stoppers fine is void and must be vacated.

¶ 40 The Violent Crime Victims Assistance fine was $25 per felony when the defendant committed the offenses. 725 ILCS 240/10(b) (West 2008). Thus, the $100 fine must be reduced to $50. See *People v. Dalton*, 406 Ill. App. 3d 158, 163 (2010).

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons, we affirm that portion of the judgment of the circuit court of Williamson County that sentenced the defendant to two concurrent seven-year terms in the Illinois Department of Corrections, followed by two years of mandatory supervised release, and we vacate the Crime Stoppers fine and adjust the Violent Crime Victims Assistance fine to $50.

¶ 43 Affirmed as modified.