2017 IL App (1st) 142820-U

No. 1-14-2820

Third Division

May 10, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 C6 60707
	)	
STEVENS ELIACIN,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 12-year sentence for home invasion affirmed over his claim that it was excessive in light of his insignificant criminal history, the victim's limited physical injury, and his rehabilitative potential.

¶ 2 Following a jury trial, defendant Stevens Eliacin[1] was found guilty of home invasion and unlawful restraint. The trial court sentenced defendant to 12 years' imprisonment for home invasion and a concurrent term of three years for unlawful restraint. On appeal, defendant contends that his sentence is excessive in light of his lack of a significant criminal history, the victim's limited physical injury, his remorse, and his rehabilitative potential, which included that he committed the offenses when he was 27 years old, his steady employment history, and his supportive home environment. For the following reasons, we affirm.

¶ 3 Defendant was charged with the Class X felony of home invasion in that he, without authority, knowingly entered the dwelling of Michelle Carr on May 31, 2012, and intentionally injured her (720 ILCS 5/12-11(a)(2), (c) (West 2012)),[2] the Class 4 felony of unlawful restraint (720 ILCS 5/10-3(a), (b) (West 2012)), and the Class 4 felony of criminal trespass (720 ILCS 5/19-4(a)(2) (West 2012)).

¶ 4 Prior to trial, the court granted the State's motion to admit evidence of a June 28, 2010, incident to show knowledge, intent, and absence of mistake or accident. At trial, Carr testified regarding the incident. She was on her way into a courtroom with her mother so she could testify against defendant's friend, Michael Mounds, in another matter. When defendant approached her by the courtroom door and said, "You're going to drop the charges," Carr responded, "leave me alone. I do not want to speak to you" and reached for the door handle. Defendant smacked her hand away and held onto the door handle preventing her from opening the courtroom door. After Carr banged on the door, a deputy told defendant to step back and then brought Carr and her

[1] Although defendant testified that his name was Steven Eliacin at trial, the notice of appeal indicates his name is Stevens Eliacin.

[2] Renumbered as § 19-6 by Pub. Act. 97-1108, § 10-5 (eff. Jan. 1, 2013).

mother to a closed off "victim/witness" room, which had to be opened with a key. When Carr's mother left to tell her son where they were, defendant entered the room and again told Carr to drop the charges.

¶ 5 Cook County Sheriff's Deputy Kelly Ryan testified to many of the same facts regarding the June 28, 2010, incident, including that after Deputy Ryan observed Carr frantically jiggling the courtroom door and saying, "Help me" while defendant stood over her, she brought Carr to a victim's safe room. Employees, including sheriffs and individuals from State's Attorney's office, could access the room with a key card. After a few minutes, one of the safe room doors swung open and Deputy Ryan observed defendant inside the room with Carr, who was very frantic.

¶ 6 Regarding the May 31, 2012, events which gave rise to the instant charges, Carr testified that she was alone at her house at about 3 p.m. when she let her dog out the back door. Carr became alarmed when she noticed her dog "cowering and pacing, nervous." As Carr peeked her head out the door, she saw defendant in the bushes and froze. Defendant then "came at [her]," and said, "We need to talk." Carr responded, "No. I don't want to talk to you," and then closed the door. After Carr locked the deadbolt, she could still hear defendant yelling and she repeatedly told him to go away and leave her alone. When Carr heard a "loud boom" as defendant's foot hit the door, she picked up her cell phone and ran to the back room where she closed the door behind her. While leaning against the door because she did not want defendant to get in, Carr called 911.

¶ 7 When Carr finished speaking with the 911 operator, she put the phone in her pocket without ending the call and braced the door with both hands. Carr "knew [defendant] was in the house," and she heard him "coming down the hall, and yelling." When defendant pushed open the door "with force," Carr stumbled back and tried to throw a vase at him. Defendant then

grabbed her right wrist "tightly," and kept pulling her wrist as she struggled to get away from him. Carr grabbed a ceramic figurine and started swinging it at him while yelling that she "just wanted him to leave." After Carr eventually broke free, she ended up on the floor and defendant was standing over her when the police arrived. A recording of the 911 call was played for the jury and entered into evidence. On the call, Carr tells the 911 operator that "someone's trying to break into my house right now. Help me, please." Carr says, "He's kicking down the door" and then repeatedly pleads, "Please hurry." After defendant says, "Get out here, b****," Carr repeats, "Get out of my house" and "[g]et away from me" several times. Defendant refuses her requests stating, "No, listen to me" and "[n]o, we need to talk." Defendant also says, "I'm done with all that sh**," and "Michelle, I'm sorry. Listen."

¶ 8 Homewood police officer Tom Hayne testified that when he responded to a call on the day in question, he found that the rear door of Carr's residence had been forced open and there was door hardware on the ground. After Officer Hayne went to a back bedroom where he had heard the sound of commotion, he opened the door and found defendant standing over Carr, who was "cowering away from him." Defendant was placed in custody and taken to the police station.

¶ 9 Dr. Amin Yassin testified that he treated Carr's right wrist on the day in question and after the x-rays showed it was not broken, he diagnosed her with a wrist sprain and then bandaged it and prescribed pain medication.

¶ 10 Defendant moved for a directed finding, which the court denied.

¶ 11 Defendant testified that he had been friends with Carr for five years and that he went to her house on May 31, 2012, to "rectify [their] friendship" and to try to "clear [his] name with her" regarding "a lot of stuff that she [felt] [he] was responsible for." They had not spoken since January 2012. Defendant admitted that when he arrived at the back of Carr's house, she told him

that she did not want to talk to him and closed the door, and that he "forced the door open, breaking it." When he opened the door to the back room without using any force, she was about 10 feet away. As she was yelling at him to "Get out," defendant said, "We need to talk. I'm sorry for what I did," and they went back and forth like that several times. Defendant stated that after Carr threw two vases at him and then started punching him, he grabbed her wrist when one of her punches hit him in the cheek. After Carr told him to let go and he released his grasp, she stepped back and then fell against the wall. Defendant acknowledged that he was a "big guy" and that "back then" he weighed about 300 pounds.

¶ 12 A transcript of the 911 call was admitted into evidence by stipulation as Defendant's Exhibit 1.

¶ 13 The jury found defendant guilty of home invasion and unlawful restraint. Defendant filed a motion for a new trial, which the court denied.

¶ 14 At sentencing, the State presented a written victim impact statement form Carr, which explained that defendant's actions had taken a toll on her, financially, emotionally, and mentally. They had "haunted" her to the point where she "contemplated taking [her] own life to make it go away." Defendant's acts of stalking, breaking into her home, and threatening her, caused her so much fear and emotional distress, weight gain, depression, and paranoia over the years that she had not been able to sleep well in over one year. Her thoughts of suicide and depression reached the point where her family did not want to leave her alone. Carr did not want to leave her home out of fear of being seen or found and felt like a prisoner in her own home. She cried all the time, cut all contact with her friends, stopped going to school, and could not hold down a job. Carr requested the maximum sentence.

¶ 15 The State argued in aggravation that when defendant broke down Carr's door, he was yelling and calling her names, saying, "get out her [*sic*] b****." He did not stop at her pleas or her cries and it was only when the police showed up that he ended his "rage of terror." The State pointed out that this was not the first time defendant had gone after her and then noted his prior blatant act of going after her in a courthouse safe room. The State requested a significant sentence.

¶ 16 In mitigation, defendant's mother Marie Renee Eliacin testified that she worked as a nurse and lived with her husband, Robert Eliacin, who was a surgeon. She had known Carr, who had stayed at their house several times, since 2004 and she had never witnessed defendant be abusive to Carr or a fight between them. Eliacin indicated that defendant was a "good boy," who had finished high school and had taken care of his grandmothers until they died. Defendant never had disciplinary problems at home. Since defendant's arrest, Eliacin's husband had not been the same and he had developed a heart problem. Although Eliacin was not present during the offense and could not say defendant did nothing, she pleaded with the court to be lenient because this was his "first time."

¶ 17 Defense counsel argued that the legislature had already considered the severity of the crime of home invasion when it set a high minimum sentence of six years. According to counsel, the serious nature of the crime was mitigated by the fact that Carr's physical injury was minor. Further, counsel noted that defendant was not charged with injuring Carr for the prior incident on June 28, 2010. In light of Carr's testimony that the instant offense on May 31, 2012, was the first time she had contact with defendant since the 2010 incident, counsel objected to the presentation that defendant's actions toward her had gone on "for years and years." Defense counsel provided an alternate interpretation of the 911 tape, indicating that there was a "toning down" toward the

end and that defendant was talking about apologizing for things. Counsel argued that defendant's rehabilitative potential was high in light of the fact that he was in his twenties, had held steady employment, his parents were supportive of him, he played sports in high school, and his hobbies included reading, producing music, writing, and exercising. Further, defendant did not have a significant criminal history and the instant offense was his first conviction. Noting that defendant had been cooperative with defense counsel and with the police, and in light of his very limited criminal history, counsel argued that this incident was an aberration and then requested the minimum sentence.

¶ 18 In allocution, defendant explained that he had done a lot of thinking during the two years he had been in jail. He took responsibility for what he had done and for the "dumb decisions" he had made. He apologized for his actions and for what he put Carr and his parents through. Defendant stated that regardless of how important it was that he tell Carr what he wanted to say, he should never have "impacted her like that." He apologized, and said that if Carr were there, he would tell her that he was sorry because he "never meant to hurt nobody."

¶ 19 Prior to imposing sentence, the court stated:

> "I can think of no other place that you can be safe — you should feel safe other than your house. The houses are sanctuaries. If we can't feel safe in our house, we can't feel safe anywhere. We can't feel safe on the streets. We can't feel safe in the store. We can't feel safe anywhere. If we can't feel safe in our house we are not going to any where [*sic*] in this world.
>
> And, you violated the sanctity of that house by kicking in the door to talk to somebody who did not want to talk to you. That and proof of the other crimes the fact she didn't want to talk with you at the courthouse you didn't take no for

an answer. You still intended on talking to her. And, that's what happened here. She went inside of the house. You saw her. She locked the door. And, then you either kicked in the door or you put your shoulder in the door. You're a big guy. And, you decided to violate her house. And, I always like to ask defendants what would happen if this happened to your mother. That someone kicked in the door to get and talk to your mother. Would you be asking for the minimum sentence. Absolutely not. Cause you know how terrible it is.

And, we talked about the minor injury. I'll grant there was this minor injury. The sprain. But, then you read the words out of the victim impact statement. It might have been a minor injury that day, but it is something that has lasted with her for a long period of time. And, in all due respect to your mother Marie Renee Eliacin you told me these good things that your son had done. As a son you are suppose[d] to help your grandparents. You are suppose[d] to help your mother. You are suppose[d] to help your father. You do not get extra credit for helping people you are suppose[d] to help. That doesn't make you a good person. That simply makes you a son.

I considered all the factors in the case. I had an opportunity to obviously to hear the 911 tape. The factors in aggravation the defendant's conduct caused or threatened serious harm. I will agree with Counsel for the Defense. I will not take into consideration any of these *** five supervisions he had before. I'm not going to consider that. I consider the nature and the facts of this case which I have find [*sic*] to be very, very, very aggravating. First conviction or not. First conviction

> you violated this young ladies' [*sic*] home. No means no. I don't want to talk to you. You turned [*sic*] around and leave."

¶ 20 In light of its consideration of "all of the factors in aggravation and mitigation," the presentence investigation (PSI), and that defendant "has no history of prior criminality," the court sentenced him to 12 years' imprisonment for home invasion and a concurrent term of three years for unlawful restraint.

¶ 21 Defendant filed a motion to reconsider sentence, which the court denied.

¶ 22 On appeal, defendant contends that his 12-year sentence for home invasion is excessive in light of his lack of a significant criminal history, the victim's limited physical injury, his remorse, and his rehabilitative potential, which included that he committed the offenses when he was 27 years old, his steady employment history, and his supportive home environment.

¶ 23 Defendant's Class X felony conviction for intentionally causing an injury during a home invasion (720 ILCS 5/12-11(a)(2), (c) (West 2012)) carried a 6 to 30-year sentencing range (730 ILCS 5/5-4.5-25(a) (West 2012)). Because the 12-year term imposed by the trial court falls within the prescribed statutory range, we may not disturb his sentence absent an abuse of discretion. See *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). A trial court's sentencing decision is entitled to substantial deference because the trier of fact, "having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36. That we might have weighed those factors differently, is not reason for us to substitute our judgment for that of the trial court. See *People v. Alexander*, 239 Ill. 2d 205, 213 (2010) citing *People v. Stacy*, 193 Ill. 2d. 203, 209 (2000). Accordingly, the

sentence will be upheld unless it is greatly at variance with the purpose and spirit of the law or is manifestly disproportionate to the offense. *Alexander*, 239 Ill. 2d at 212.

¶ 24 In this case, the mitigating evidence, including that defendant was 27 years old at the time of the offense, his education, employment history, and supportive home environment, was presented to the court in the PSI and at the sentencing hearing, where defendant's mother testified on his behalf and defense counsel highlighted Carr's minor physical injury and defendant's insignificant criminal history. Absent some indication to the contrary, other than the sentence itself, reviewing courts presume that a trial court considered the mitigating evidence in imposing the sentence. *People v. Cole*, 2016 IL App (1st) 141664, ¶ 55 (citing *People v. Burton*, 184 Ill. 2d 1, 34 (1998)).

¶ 25 Here, the trial court expressly considered that defendant had "no history of prior criminality." The trial court noted that defendant was a "big guy" who repeatedly failed to take "no for an answer" during both the prior confrontation at the courthouse and after he "decided to violate her house" and then forced open her door after she locked herself inside. Regarding the severity of the injury, the court found that although "[i]t might have been a minor injury that day," defendant's offense had "lasted with [Carr] for a long period of time." Ultimately, the court found that the "nature and the facts of this case" were "very, very, very aggravating," and in light of its consideration of "all of the factors in aggravation and mitigation" and the PSI, the court sentenced defendant to 12 years' imprisonment, which was on the lower end of the 6 to 30-year Class X sentencing range. Although the sentence must strike a proper balance between the protection of society and the rehabilitation of a defendant, the trier of fact, and not the reviewing court, is tasked with weighing the nature of the offense and a defendant's rehabilitative potential. *People v. Anderson*, 325 Ill. App. 3d 624, 637 (2001). Accordingly, we cannot say that

defendant's sentence was greatly at variance with the purpose and spirit of the law or manifestly disproportionate to the offense. See *Alexander,* 239 Ill. 2d at 215 (finding that the appellate court erred in reweighing the sentencing factors where the sentencing judge adequately considered the appropriate factors). We therefore find that the court did not abuse its discretion in sentencing defendant to 12 years in the Illinois Department of Corrections.

¶ 26 We are mindful of defendant's contention in his reply brief that the sentencing court's reasoning extends beyond the scope of proper aggravating factors because the court's reference to his violation of the sanctity of Carr's home is a consideration inherent in the offense. However, the trial court is not required to refrain from any mention of factors that constitute elements of an offense. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 50. In determining whether the trial court improperly imposed a sentence, reviewing courts consider the record as a whole and should not focus on isolated statements removed from their context. *People v. Walker*, 2012 IL App (1st) 083655, ¶ 30. In addition, the court need not detail precisely for the record the process by which it determines a sentence. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). We find that the trial court was merely commenting on the evidence presented at trial and did not err in this respect. See *Bowen*, 2015 IL App (1st) 132046, ¶ 52 (finding that the trial court did not err in mentioning conduct that was inherent in the offense at his sentencing hearing because, viewed in context, the court was commenting on the nature and circumstances of the offense).

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.