2017 IL App (1st) 143321-U

No. 1-14-3321

Order filed May 4, 2017

Fourth Division

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. 13 C5 50052
	)	
RAFAEL MCCREE,	)	Honorable
	)	John J. Hynes,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MCBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Judgment affirmed over defendant's claim that his 10-year sentence for the aggravated battery of a peace officer is excessive in light of the nature of the offense, the financial impact of incarceration, and his rehabilitative potential.

¶ 2 Following a jury trial, defendant Rafael McCree was found guilty of aggravated battery of a peace officer, and based on his criminal history, sentenced to a Class X term of 10 years' imprisonment with three years of mandatory supervised release. On appeal, defendant maintains that the court abused its discretion in imposing sentence without adequately considering the

nature of the offense, the financial impact of incarceration, and his rehabilitative potential, which included his education, employment history, family ties, and his significant community involvement.

¶ 3 Defendant was charged with the Class 2 felony of aggravated battery of a peace officer in violation of section 12-3.05(d)(4)(i) of the Criminal Code (720 ILCS 5/12-3.05(d)(4)(i), (h) (West 2012)).

¶ 4 The evidence presented at trial showed, in relevant part, that in the late evening hours of December 24, 2012, defendant was intoxicated and in the emergency room at Advocate Christ Medical Center where he received treatment for lacerations on his forehead and thumb. Defendant's thumb was x-rayed and Dr. Trale Permar sutured his forehead. Before he was discharged, defendant told his treating nurse, Fatima Karim, that he was leaving. Although Karim explained that he could not leave because he was intoxicated, defendant made his way toward the emergency room exit. Karim testified that hospital policy prohibits patients who are not "clinically sober" from leaving without someone to drive them home. When defendant kept walking, Karim told another nurse, Thomas Giusto, that defendant was intoxicated and trying to leave alone. Giusto asked defendant to return to his room, but he was not "real compliant with [Giusto]" so hospital security was called.

¶ 5 Defendant became agitated and violent when hospital public safety officer Dione Fears responded to the call and asked defendant to come back to his room. Once defendant initiated physical contact by shoving Fears, additional security personnel and hospital staff tried to restrain him. After Fears regained his balance and joined their efforts to restrain him, defendant punched Fears repeatedly. During the struggle, defendant threatened "to kill the staff and the nurses for laughing at him," and he told the security guards and nurses that he "was going to kill

the black mother*** that did that to him." Although defendant did not injure Fears physically, he did feel as though he was in danger. After defendant was restrained on the ground, hospital security officer Michele Guerrero handcuffed him, and defendant was eventually arrested by Oak Lawn police officer Matthew Harland.

¶ 6 Defendant moved for a directed finding, which the court denied. Dr. Permar testified that he believed defendant had someone to give him a ride and he was preparing defendant's discharge paperwork when he learned defendant's lacerations were bleeding again. Defendant rested without testifying and the jury found him guilty of aggravated battery.

¶ 7 Defendant filed a motion for a new trial, which the court denied. A sentencing hearing followed.

¶ 8 In aggravation, the State argued that defendant caused or threatened serious bodily harm when he attacked a security guard who was trying to help him, and then repeatedly threatened hospital staff, nurses, security guards and police officers. The State requested that the court consider all of the statements defendant made during the incident, including those that the court excluded from trial because they were more prejudicial than probative, and then repeated them for the court. Defendant threatened to kill security guards and nurses for laughing at him and said "he was going to kill [the] black mother*** for doing this to him." He told witnesses that he was going to bring his "40-cal" back to the hospital and murder numerous people. Defendant stated that he had been to prison before, had no problem killing multiple people, and would be the first African-American to make the news for mass murder. Defendant also said he was a "Four Bird gang member," that he would rape and kill the nurse who was in the room helping to clean him, and that he would "pay someone $50 to rape and kill that little b*** nurse if he wanted to."

¶ 9 In further aggravation, the State pointed out that defendant was subject to mandatory Class X sentencing in light of his prior felony convictions for: Class 4 possession of a controlled substance in 1989; Class 2 robbery in 1988; Class 2 burglary in 1989; and first-degree murder in 1991, for which he was sentenced to 35 years' imprisonment and released in 2009. Given the aggravating nature of defendant's criminal history and the nature of the offense, the State recommended "a very extensive" term in the Illinois Department of Corrections.

¶ 10 In mitigation, defense counsel emphasized that defendant did not cause physical injury and that it was the security guards who injured him when he tried to leave the hospital. Defendant was not charged with intimidation and according to counsel, none of the witnesses testified that they were afraid of defendant. Defense counsel argued that rather than punish defendant for things that he said after the security guards tackled him, the trial court should look at what defendant has done. Counsel pointed out that many members of defendant's community had written letters detailing his numerous volunteer efforts and that several people from his community were present in court along with his friends and family.

¶ 11 Counsel read four of the letters at the hearing. Anthony Shell, the executive director of a supported living facility for seniors, wrote that defendant was "an excellent volunteer" and the administrative staff was "very pleased" with his dedication to their volunteer program. Diane Cross indicated that she had worked with defendant on various projects in the community and that "he is a changed young man," who "works diligently in the church and shows many traits of positive humanistic — human, good deeds." Jonny Battle wrote that defendant mentored young men and had become a leader in his men's fellowship group. Battle explained that the "monumental" changes defendant made in his life had impacted the lives of many others. The president of the Usher Board at South Park Baptist Church, Clevey Seymour, indicated that he

had "witnessed a wonderful change" in defendant, who was his "best usher, volunteer, homeless feeder, and youth mentor." Counsel noted that this incident caused defendant great embarrassment and then argued for the minimum sentence of six years' imprisonment.

¶ 12 In allocution, defendant said he was "ashamed and embarrassed for [his] actions." He was remorseful and never intended to hurt anyone. In the five years since his release, defendant stated that he had changed his whole life around. He started his own business and employed people to help former felons. Because of his decision to change his life, defendant said, "I am not the person who I used to be. My background is exactly what it is. My background."

¶ 13 Prior to imposing sentence, the trial court indicated that it reviewed its notes from the trial, the presentence investigation (PSI) report "in its entirety," and the numerous letters written on behalf of defendant. With regard to mitigation, the court noted that since his release from prison, defendant had done some "good work in the community," been employed, and was trying to turn his life around.

¶ 14 The trial court then considered defendant's "extensive" criminal history, which included "the ultimate crime of violence, murder," and that his conduct caused or threatened to cause serious bodily harm as aggravating factors. The court explained that defendant "went off on" all the personnel in the trauma center of a hospital, threatening nurses and security personnel who were trying to help him and prevent him from harming others, and "causing havoc in that area." Although no one was physically hurt, the court found that the conduct and surrounding circumstances, "especially" in light of what defendant said, were "very egregious." Witness testimony "very clearly" showed that they were placed in harm's way and afraid of defendant.

¶ 15 After taking "all the factors in aggravation and mitigation into account," the trial court sentenced defendant to 10 years' imprisonment with three years of mandatory supervised release. Defendant filed a motion to reconsider sentence, which the court denied.

¶ 16 On appeal, defendant maintains that his 10-year sentence is excessive in light of the nature of the offense, the financial impact of incarceration, and his rehabilitative potential, including his education, employment history, family ties, and his community involvement. In addition to the facts presented to the court at the sentencing hearing, defendant points out facts relating to his education and employment history in the PSI, which reflects that he: earned a GED while incarcerated; has certifications in construction, culinary arts, custodial maintenance, and painting from McMurry College; worked for two construction companies where he ultimately obtained a $60,000 salary; and that he started his own business, R & R General Contractors & Concrete Solutions, where he hired former felons as laborers. In light of these factors, defendant maintains that the trial court abused its discretion and requests that we reduce his sentence to the six-year statutory minimum.

¶ 17 Due to his criminal background, defendant was subject to the 6 to 30-year Class X felony sentencing range. 730 ILCS 5/5-4.5-25(a), 4.5-95(b) (West 2012). Because the 10-year term imposed by the trial court falls within the prescribed statutory range, we may not disturb his sentence absent an abuse of discretion. *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. 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. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 18 In this case, the evidence at trial established that defendant pushed a security guard in a hospital and repeatedly threatened hospital security personnel and nurses, after having been convicted of four prior felonies, including first-degree murder. The mitigating evidence, including defendant's education, employment history, and extensive community involvement was presented to the court in the PSI and at the sentencing hearing, where defense counsel highlighted the lack of physical harm and the numerous accounts that defendant had turned his life around. The court expressly considered its notes from trial, the PSI "in its entirety," and all the factors in aggravation and mitigation, including defendant's reform efforts since his incarceration. In determining that the offense was "very egregious," the court found that the witnesses "were clearly" in harm's way and afraid of defendant. The court also considered defendant's "extensive" criminal history, which included "the ultimate crime of violence, murder" in aggravation. The trial court then imposed a sentence on the lower end of the 6 to 30-year sentencing range.

¶ 19 Considering the factors in aggravation and mitigation, 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 *id.* 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 10 years in the Illinois Department of Corrections.

¶ 20 Defendant nevertheless maintains that in light of his positive change since his release from prison, the trial court abused its discretion where it failed to expressly consider the financial

impact of incarceration or the likelihood that defendant's 10-year sentence may hinder, rather than serve, the goal of restoring him to useful citizenship. We find that defendant's argument amounts to a request that we substitute our judgment for that of the trial court and reweigh the sentencing factors, which is not our function.

¶ 21 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). The trial court need not detail precisely for the record the process by which it determines a sentence or the weight afforded to the mitigating and aggravating factors. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). While a trial court may not ignore pertinent mitigating factors (*People v. Jones*, 2014 IL App (1st) 120927, ¶ 56), 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)).

¶ 22 In this case, the court expressly considered the numerous letters submitted on defendant's behalf, his "good work in the community," employment history, and that he had been trying to turn his life around since his incarceration. Ultimately, defendant has not pointed to anything other than the sentence itself to overcome the presumption that, in imposing sentence, the trial court adequately considered the costs of incarceration and the goal of restoring him to useful citizenship. See *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 22. Regardless of how we might have weighed defendant's rehabilitative potential, we may not substitute our judgment for that of the trial court and reweigh the factors in mitigation and aggravation as defendant requests. See *People v. Stacey*, 193 Ill. 2d 203, 209 (2000).

¶ 23 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.