THIRD DIVISION
February 8, 2017

No. 1-14-3872

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 13877
	)	
EARNEST McGEE,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's life sentence for first-degree murder affirmed over claim that the sentence was excessive in light of mitigating factors.

¶ 2 Following a bench trial, defendant Earnest McGee was found guilty of first-degree murder for the shooting death of his mother, Aletha McGee, and sentenced to natural life in prison. On appeal, defendant maintains that the trial court abused its discretion by sentencing him to natural life without adequately considering his history of mental illness, alcohol

dependency, troubled childhood, negligible criminal background, and significant education and employment history. For the following reasons, we affirm.

¶ 3 Defendant was charged with multiple counts of first-degree murder, armed robbery, home invasion, and residential burglary for the murder of his 62-year-old mother in her home at 9032 South Dobson in Chicago, Illinois.

¶ 4 At trial, Stefanie McGee-Staples, Aletha's daughter, testified that when she could not reach her mother on June 26, 2012, she called her son, Steven Taylor, and her brother, defendant, who said he had not seen her. Taylor testified that after several unsuccessful attempts to contact his grandmother that day, he called defendant and asked him to have the police conduct a "well[-]being check."

¶ 5 Chicago police officer Salvador Salgado testified that at 9 p.m. on June 26, 2012, he and Officer Rodgers responded to a call for a well-being check at Aletha's residence. Identifying himself as the resident's son, defendant met the officers at the front of the house and indicated that he had checked all the doors and windows, but found nothing open. When Officer Salgado and his partner searched the perimeter, they found the door to the detached garage ajar and no vehicle inside. The officers then discovered that the rear door to the residence was unlocked and a key had been broken off in the lock. As Officer Salgado walked down toward the basement after searching the first floor, he smelled an odor, which he described as the smell of death. Officer Salgado and his partner discovered Aletha's body in a recliner in the basement partially dressed in a white t-shirt. Aletha had multiple gunshot wounds to her body and face.

¶ 6 Phyllis Lee, defendant's off and on girlfriend, testified that in June of 2012, she was pregnant with their third child and they lived together at 74th Street and Stony Island. After an

early morning argument on June 24, 2012, defendant gave Phyllis back the house keys and left. Defendant subsequently tried contacting Phyllis multiple times and she eventually took his call the next afternoon. Defendant told her that he needed to speak with her and they agreed to meet in a park where Phyllis was going to take her children. At the park, defendant told Phyllis that he "killed his momma," that they were arguing, and he shot her. Defendant showed Phyllis Aletha's car, which was parked across the street from the park, and told her that the gun was inside. Defendant stayed at her house that night and while he was lying down, Phyllis sent text messages to her brother, John Lee. Sometime before defendant left on June 26, 2012, he went into the kitchen.

¶ 7 John Lee testified that when he was at Phyllis's house on the morning of June 27, 2012, he discovered keys and a credit card with Aletha's name on it in a kitchen drawer. Two of the keys were broken. John placed the keys and credit card in a bag and took Phyllis to the police station, where he turned the bag over to the police.

¶ 8 Chicago police sergeant Brian Forberg testified that in the late evening hours of June 26, 2012, he was a detective assigned to investigate Aletha's shooting death. After obtaining the license plate number of Aletha's vehicle, an "all-call" was put out, which meant that officers should stop the vehicle and secure any occupants if the vehicle was observed. The vehicle was discovered near a public park about three blocks from defendant and Phyllis's residence. After returning to the police station, Detective Forberg spoke with Phyllis and John, who turned over keys and a credit card with Aletha's name on it. Detective Forberg instructed officers to locate defendant and place him into custody. Once defendant was arrested, he was placed in an interview room and advised of his *Miranda* rights.

¶ 9 Chicago police officer Jill Kolssak testified that she recovered several items from the trunk of Aletha's vehicle, including a box of cleaning supplies containing a .357 revolver handgun. Officer Kolssak found six expended bullet casings in the handgun, which had a maximum capacity of six bullets.

¶ 10 It was stipulated that Dr. Ariel Goldschmidt performed Aletha's autopsy and observed gunshot entrance wounds to her: right posterior frontal scalp; right temple; right shoulder; right chest; right upper abdomen; and right proximal, lateral arm. It was Dr. Goldschmidt's opinion to a reasonable degree of medical and scientific certainty that Aletha died as a result of multiple gunshot wounds and that the manner of death was homicide. It was stipulated that discharged cartridge cases recovered from Aletha's body, the basement, and the kitchen were fired from the .357 magnum recovered from Aletha's vehicle.

¶ 11 Stefanie McGee-Staples testified that on July 9, 2012, she and Taylor went to see defendant in Cook County jail. When Stefanie asked defendant, "Why did he shoot [their] mother," defendant responded, "Because she was on some bullshit." Stefanie explained that she had heard defendant use that same expression in the past when Aletha "was getting on his nerves." After Stefanie asked defendant whether their mother suffered, he responded, "That's between me and momma." Regarding that visit, Taylor testified that as he approached the window in the visitation room, defendant said, "I apologize." Taylor then asked, "Why did you do it?" and defendant responded, "Because she was on some bullshit."

¶ 12 After the State rested, the defense entered a document dated June 16, 2011, which expressed Aletha's desire to have Taylor make decisions on her behalf in the event of sickness or death.

¶ 13 The trial court found defendant guilty of first-degree murder and personally discharging a firearm that killed Aletha.

¶ 14 At the outset of the sentencing hearing, defense counsel tendered to the trial court a summary report prepared by a neuropsychologist, Dr. Robert Hanlon, who examined defendant in 2013. The trial court indicated that it read the presentence investigation report (PSI) and "considered the report from the clinical — from Dr. Hanlon for information about the defendant's background, not to any form of arguable defense, it's mitigating circumstances, that's all."

¶ 15 In the PSI, defendant admitted that despite having completed a substance abuse program after his 2010 conviction for driving under the influence (DUI), he continued to drink every day until the month of his arrest for this crime and that he would drink a fifth of liquor. Believing that something was mentally wrong with his mother, defendant stated that when he was growing up, she would beat him with extension cords, her hand, sticks, and belts, and that she tried to poison him. According to defendant, his father was schizophrenic and his sister, Stefanie, was bi-polar. Defendant reported that he was hospitalized at two different mental health facilities between the ages of 15 and 17, after which he received off and on treatment, and was prescribed a drug called "Mellairl." He stopped taking Mellairl at age 18 and at the time of the PSI interview, he was prescribed a pill for depression but he did not know what it was called. Defendant told the investigator that he sometimes thinks about suicide and that he hears voices which sometimes tell him to hurt somebody else.

¶ 16 Dr. Robert Hanlon's October 20, 2014, report was based on two evaluations he conducted in October 2013. It stated:

> "It is my opinion with a reasonable degree of neuropsychological and scientific certainty that [defendant] manifests chronic mental illness. His history and his symptoms at the time of the current evaluation were consistent with a schizophrenic-spectrum disorder, specifically Schizoaffective Disorder, characterized by psychotic symptoms including auditory hallucinations and paranoia, combined with chronic depression. In my opinion, his mental illness significantly contributed to his behavior at the time of the crime for which he has been convicted."

Dr. Hanlon noted that defendant "revealed no evidence of symptom exaggeration or malingering." In addition, Dr. Hanlon made several behavioral observations including that defendant's "[f]rustration tolerance was preserved, based on his engagement and perseverance on a series of cognitively-demanding tests. Self-regulation of behavior, including initiation, persistence, and termination of responses, were within normal limits."

¶ 17 The State proceeded with its case in aggravation by presenting victim impact statements. Testifying in court, Taylor recalled that his grandmother had worked overtime shifts and second jobs to put food on the table, clothes on their backs, and to pay for the best schools money could buy. Although she would "sometimes stress certain ideas and points," Taylor was grateful for her efforts and he understood that she was doing her best to prevent them from ending up where defendant had. She always kept her home open to defendant when he had nowhere else to go. Taylor feared for his life if defendant were to get out of prison. Addressing defendant, Taylor said, "I'm baffled at your apathetic attitude. Right now you look like you're sitting in the DMV waiting for them to call your number so you can get a new license, not like you're on trial for the

murder of your mother." Taylor expressed hope that when the judge sentenced defendant, he would do what defendant had never done for his mother or himself: "man up."

¶ 18 Stefanie testified that their mother always took care of defendant. She cooked for him, washed his clothes, and paid his bills even after he became an adult. She stated, "I love my brother, but I'm afraid of him. He could do this to me or any one of my children for any reason at all. Please don't let him see the light of day for what he has done to my mother." Addressing defendant, Stefanie stated, "You've taken away a great mother who did the best she could do for us."

¶ 19 The State presented written statements from Francee Luster and Wilma Allen, Aletha's sisters, which the court indicated that it read.

¶ 20 In allocution, defendant stated, "I ain't did nothing. The State lying. The State paid these people off."

¶ 21 In its argument in aggravation, the State maintained that the eighth statutory aggravating factor, that the offense was committed against a person 60 years of age or older, applied because Aletha was 62. Pointing to the PSI where defendant stated that his mother abused and tried to poison him, the State argued that defendant continually blamed everyone except himself for his problems. The State noted that despite his claims, the evidence showed that Aletha clothed and housed defendant, who repaid her by shooting her six times and then repeatedly blaming his actions on others. Highlighting the victim impact statements and defendant's demeanor as he sat before the court on trial, the State recommended the maximum sentence for first-degree murder and the 25-year enhancement for personally discharging a firearm that proximately caused great bodily harm and death to Aletha.

¶ 22 In mitigation, defense counsel pointed to Dr. Hanlon's opinion that defendant's psychological condition contributed to the offense. Defense counsel argued that the opinion was relevant to the fourth statutory mitigating factor: whether, while failing to establish a defense, there were substantial grounds to excuse or justify the defendant's criminal conduct. In light of the unique relationship involved in this situation, defense counsel argued that the circumstances were not likely to reoccur and then noted that defendant's imprisonment would entail hardship to his dependants.

¶ 23 In addition, defense counsel highlighted the "non-statutory mitigating factors: th[at] defendant comes from a broken home; that he claims physical abuse and emotional abuse; that there's evidence of alcoholism, mental illness, obviously; his age, the defendant is not young." Defense counsel pointed out that defendant had an employment and education background, and no gang involvement. Counsel requested the minimum sentence of 20 years for first-degree murder so that defendant would be sentenced to a total of 45 years' imprisonment after the addition of the 25-year firearm enhancement.

¶ 24 Prior to announcing sentence, the trial court discussed the statutory factors in mitigation and aggravation. Regarding the first factor in aggravation, the court explained that, as a factor inherent in the offense, it did not consider the death itself. However, the court did consider the "brutality" of the crime in shooting his own mother six times, and where it took place. The trial court then noted defendant's DUI conviction from 2010, for which he received 18 months supervision, community service, and he was required to participate in the Sheriff's Work Program. In 2005, defendant received three years' probation and 108 days in the County jail for

false report of vehicle theft, which resulted in an unsatisfactory termination. The court acknowledged the applicability of the aggravating nature of Aletha's age.

¶ 25 Turning to the factors in mitigation, the trial court found that defendant contemplated that his conduct would cause serious physical harm and that he was not acting under strong provocation. Regarding the fourth factor, the court stated:

> "Substantial grounds to excuse, justify the defendant's criminal conduct while failing to establish a defense, the report from the Dr. Hanlon, he talks about the defendant's psychiatric, quote, unquote, history, hard to excuse a crime like this or establish a defense."

¶ 26 The trial court acknowledged that defendant's criminal history was not significant and that the circumstance would not be likely to reoccur if defendant was in the penitentiary. After finding that any hardship to defendant's dependants was a hardship of his own choosing and that the danger of his medical condition did not apply, the court stated:

> "The most important factor is not [*sic*] in the sentence for someone is whether or not that person, quote, unquote, can be restored to useful citizenship. That phrase is always used. With a crime like this involving the nature of the crime, it's hard to believe that [defendant] could ever be restored to useful citizenship.
>
> *** [F]rom all things I heard today, the victim impact statements that I heard that the victims read them, and what I read from Mr. [*sic*] Wilma Allen, she treated the young man well, perhaps not his thought, but I heard today she treated

him well, and even if she didn't to some extent, it would hardly mitigate a crime like this.

Defendant, for whatever reason, I'll just use his language, not mine, as I said before, decided to shoot his own mother six times, because, as he put it, she was on some bullshit. If you do bad things, there are bad consequences. There's pretty hard to find a worse thing that murdering your own mother, the person who gave you life.

* * *

The Court considered all the factors in mitigation, the statements made today in the form of victim impact statements, the four of them, two orally, and two I read. I don't believe there's any way to restore Mr. McGee to useful citizenship. He has earned his right to go to prison. I'm not going to quibble and say 20 years for this and say 25 for that. This is the kind of case that cries out for the sentence of life imprisonment. And that's what it's going to be. Life without parole. There's no MSR on the life sentence."

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

¶ 28 On appeal, defendant maintains that the trial court abused its discretion by sentencing him to natural life in prison despite his history of mental illness, alcohol dependency, troubled childhood, negligible criminal background, and his significant education and employment history.

¶ 29 Reviewing courts afford broad deference to a trial court's sentencing decisions (*People v. Stacey*, 193 Ill. 2d 203, 209 (2000)) and must not disturb the sentence absent an abuse of

discretion (*People v. Snyder*, 2011 IL 111382, ¶ 36). Where the sentence falls within the prescribed statutory limits, an abuse of discretion occurs only if the sentence imposed 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). The sentencing range for first-degree murder is 20 to 60 years (730 ILCS 5/5-4.5-20(a) (West 2012)) and if the court finds that the defendant personally discharged a firearm that proximately caused death, a trial court may exercise its discretion and impose a life sentence (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012)).

¶ 30 The Unified Code of Corrections enumerates a non-exhaustive list of factors that, if present, a trial court must consider in imposing sentence. 730 ILCS 5/5-5-3.1(a), 3.2(a) (West 2012); *People v. Brunner*, 2012 IL App (4th) 100708, ¶ 49. In addition, a trial court considers "all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding." *People v. Ward*, 113 Ill. 2d 561, 527-28 (1986). Thus, the trial court may consider the seriousness, nature, and circumstances of the offense, the degree of harm to the victim, and the manner in which the victim's death was brought about as aggravating factors. *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009).

¶ 31 We find that the trial court did not abuse its discretion in imposing the statutory maximum sentence of natural life imprisonment without the possibility of parole. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012). At the sentencing hearing, the trial court expressly considered the statutory factors in mitigation and aggravation, Dr. Hanlon's psychological evaluation of defendant, the PSI containing defendant's account of his childhood and alcohol abuse, the statements at the sentencing hearing, and the nature and circumstances of the crime. The trial court noted that, despite defendant's claims to the contrary, the victim impact statements

reflected that his mother treated him well. The record reflects that after defendant shot his own mother twice in the head, and six times in all, he left her body to rot in the basement and tried to cover up his crime. In considering the "brutality" of defendant's crime, the trial court determined that there was no opportunity for rehabilitation or redemption. Additionally, defense counsel argued defendant's mental condition, history of abuse and alcoholism, as well as his education and work background favored a more lenient sentence. Absent some indication to the contrary, the trial court is presumed to have considered the mitigating evidence in imposing sentence. *People v. Canet*, 218 Ill. App. 3d 855, 864 (1991). As such, the record reflects that the trial court examined the relevant sentencing considerations and we cannot say the trial court abused its discretion in this case.

¶ 32 Defendant nevertheless maintains that the trial court should have found that his troubled childhood, mental illness, and alcohol dependency were mitigating circumstances that, when taken in combination with his minimal criminal background and history of employment, warrant a sentence less than life. We disagree.

¶ 33 Our supreme court has considered and rejected similar contentions that drug abuse (*People v. Shatner*, 174 Ill. 2d 133, 138, 160 (1996)) and mental impairments (*People v. Tenner*, 175 Ill. 2d 372, 382 (1997)) must be considered as mitigating factors. In *Shatner*, the defendant argued that he did not receive a fair sentencing hearing because the sentencing judge did not consider his drug abuse history in mitigation. *Shatner*, 174 Ill. 2d at 159. Our supreme court explained that underlying the defendant's claim was the idea that he was less culpable for his criminal behavior because drugs were partly to blame for his actions. *Id.* at 160. In rejecting the defendant's claim, the *Shatner* court held that "the sentencing judge was free to conclude, under

the circumstances, that defendant's drug history simply had no mitigating value but was, in fact, aggravating." *Id.* Here, despite his completion of the substance abuse program after his DUI, defendant admits that he would drink a fifth of liquor and that he continued to drink every day until the month of his arrest for this crime. In light of defendant's failure to ameliorate his alcohol abuse after it resulted in a DUI, we do not find that the trial court abused its discretion in not considering defendant's alcohol abuse as mitigating evidence.

¶ 34 Similarly, in *Tenner*, our supreme court rejected the defendant's claim that his counsel was ineffective for failing to obtain a mental evaluation to present in mitigation at a death penalty hearing. *Tenner*, 175 Ill. 2d at 382. The *Tenner* court noted that "information about a defendant's mental or psychological impairment is not inherently mitigating." *Id.* Thus, our supreme court has repeatedly held that a trial court may view evidence of mental or psychological impairment "'as either mitigating or aggravating, depending, of course, on whether the individual hearing the evidence finds that it evokes compassion or demonstrates possible future dangerousness.'" *People v. Coleman*, 183 Ill. 2d 366, 406 (1998) (quoting *Tenner*, 175 Ill. 2d at 382).

¶ 35 In this case, the record reflects that the trial court considered Dr. Hanlon's report and mental illness background. The trial court could have found that defendant's mental impairments and alcohol abuse were not mitigating in nature, or even if they were somewhat mitigating, the trial court was not required to give defendant's rehabilitative potential more weight than the seriousness of the offense. See *People v. Anderson*, 325 Ill. App. 3d 624, 637 (2001). We thus find no abuse of discretion in the trial court's consideration of defendant's psychiatric history.

¶ 36 Finally, in considering defendant's claims that his mother abused him, the trial court noted that the written and testimonial victim impact statements reflected that "she treated him well, and even if she didn't to some extent, it would hardly mitigate a crime like this." The trial court, having observed the proceedings and the defendant, is in a superior position to evaluate the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age than the reviewing court, which must rely on the "cold" record. *Alexander*, 239 Ill. 2d at 213. Thus, in light of the trial court's superior position to evaluate these factors and the statements from several family members, we cannot find that the trial court abused its discretion in expressing doubt as to the veracity of defendant's allegations of abuse.

¶ 37 In sum, defendant's claim amounts to a request that we substitute our judgment for that of the trial court, re-balance the factors, and independently conclude that defendant's life history, as the defendant argued in *Shatner*, rendered him less culpable for his actions. See *Shatner*, 174 Ill. 2d at 160. That is not our function. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). Accordingly, based on our review of this record, we find no abuse of discretion where, as explained above, the trial court considered defendant's relevant life history but found he lacked rehabilitative potential and that the "brutality" and serious nature of the offense outweighed any potential mitigating value of that history. See *Brunner*, 2012 IL App (4th) 100708, ¶¶ 56, 66 (upholding the defendant's sentence over his claim that the trial court abused its discretion because it did not adequately consider that he was "'abused and unwanted as a child and [had] had substantial and long-standing mental illnesses'").

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

¶ 39 Affirmed.