2017 IL App (2d) 150100-U
No. 2-15-0100
Order filed June 2, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. VAUGHN A. ATKINS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 14-CF-495 Honorable Kathryn E. Creswell, Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to four years' imprisonment for aggravated discharge of a firearm: despite the mitigating evidence, which the court considered, defendant's sentence was justified by the nature of the offense and his criminal history.

¶ 2 Defendant, Vaughn A. Atkins, pleaded guilty to aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)) and was sentenced to four years' imprisonment. He appeals, contending that the sentence was an abuse of discretion. We affirm.

¶ 3 Defendant was charged after an incident on I-355 near 75th Street. On March 21, 2014, Illinois State Police responded to a call of shots fired in that area. Michael Ingram told the

officers that he had been the victim of a road-rage incident. He related that the driver of a white Acura fired a silver gun toward Ingram's car through the passenger-side window. Ingram said that the driver had to reach over the front-seat passenger, a white female, who had to lean back in her seat to avoid the gun. A bullet struck Ingram's beige GMC Envoy on the rear driver's-side door. He pulled over to the right shoulder and saw the Acura switch lanes, then exit I-355 southbound at 75th Street. Ingram followed the car, which made a U-turn at the first intersection before getting back on northbound I-355. In a written statement, Ingram stated that he "possibly cut off" the Acura.

¶ 4 According to defendant, he was taking his son to a basketball game. He was driving with his wife in the front passenger seat and his two sons in the back. In bumper-to-bumper rush-hour traffic, Ingram's SUV cut him off in the far left lane. Defendant swerved onto the shoulder to avoid an accident. After traffic opened up, defendant saw Ingram's SUV and another car speeding up in the right lane. Ingram was holding up his middle finger and crossing over lanes of traffic toward defendant. Defendant feared for his family's safety; he thought that Ingram might have had a gun.

¶ 5 Defendant told his wife to roll down the window and lean her seat back. He grabbed his 9-mm handgun and loaded it while steering with his knees. He told his family to duck. As Ingram approached, defendant flashed his gun. Ingram looked, ducked, and started to drive away, at which time the gun accidentally discharged.

¶ 6 Ingram then pulled over to the shoulder. Defendant exited at 75th Street with Ingram following. Defendant turned right, trying to get away from Ingram. Defendant turned around to get back onto I-355 heading north. He did not contact the police.

¶ 7 Defendant was arrested and charged with several offenses as a result of the incident. He pleaded guilty to one count of aggravated discharge of a firearm and the State nol-prossed the remaining charges. There was no agreement on a sentence.

¶ 8 The presentence report (PSI) showed that defendant was convicted five times of driving on a revoked or suspended license. In 1990, he was convicted of prowling in Jacksonville, Florida. In 1997, his license (already suspended) was revoked for leaving the scene of an accident involving injury or death. He was convicted of unlawful possession of drug paraphernalia and cannabis in 2000 and had convictions of battery and criminal damage to property.

¶ 9 Defendant was a stay-at-home father. He suffered from diabetes, high blood pressure, high cholesterol, asthma, and chronic kidney disease. In March 2012, he suffered a seizure that led to the discovery of a brain tumor. He underwent surgery and radiation, but continues to feel physically weaker and has cognitive memory lapses.

¶ 10 At the sentencing hearing, former Lincolnwood police officer George Grubb testified about his previous encounter with defendant. On August 3, 2000, defendant was charged with criminal damage to property and battery following an incident with his ex-paramour, Lisa Bolano. Grubb said that Bolano reported that a car had cut her off while she was driving north on Cicero Avenue. She recognized defendant as the driver and drove away, but defendant caught up with her. According to Bolano, defendant got out of his car and yelled, " '[W]hat the fuck[?]' " He then punched out her front driver's-side window.

¶ 11 Grubb testified that defendant admitted that he cut off Bolano twice. After the second time, he got out of his car. Bolano attempted to drive away and brushed against him with her vehicle. In self-defense, he put his hands out and pushed against the window, shattering it.

¶ 12 Five witnesses testified about defendant's dedication as a father, describing him as a positive role model. He had coached his sons' basketball teams. Family friend Ronald Scully testified that defendant was an "awesome" father and role model. Scully was never concerned about leaving his son with defendant during sleepovers. Defendant's cousin, Sharon Booker-Brown, said that defendant volunteered in the community and served as a mentor to many children in the Elgin area. Defendant's children described their close relationship with their father. In allocution, defendant apologized for his actions, maintaining that he was only concerned about his family's safety when he acted as he did.

¶ 13 The trial court sentenced defendant to four years' imprisonment. The court found in mitigation that defendant was a good and devoted father and a good mentor. The court also noted defendant's health problems.

¶ 14 In aggravation, the court noted that defendant told medical personnel in 2014 that he had used marijuana within the past 12 months, which contradicted his statement in the PSI that he had not used it since 1999. The court then listed defendant's previous convictions. It found "extremely aggravating" his conviction of criminal damage to property "because of the similarity it has to the instant offense."

¶ 15 In regard to the present case, the court noted that defendant had a loaded gun in the car but did not have a concealed-carry permit. The court found that defendant intentionally fired the gun, explaining as follows:

> "If he was only intending to scare Mr. Ingram, there was no reason to load the gun. So I find it incredible that when he pointed the gun at Mr. Ingram's car and pulled the trigger, that he was surprised that the gun went off. That action posed a significant risk to the public safety. When you pull the trigger, the gun is going to go off."

¶ 16 The court agreed with the State that defendant tended to minimize his conduct, blaming the victims or arguing that he was in the wrong place at the wrong time. The court recognized the hardship that any incarceration would have on defendant's children, but found that the facts of the case were "just so aggravating." The court noted that during rush hour defendant fired a gun from a moving car at another moving car while defendant's wife and children were in his car. The court found that it was a "crazy, crazy act, a senseless act that poses a significant threat to the public safety."

¶ 17 Defendant moved to reconsider the sentence. The court denied the motion and defendant appeals.

¶ 18 Defendant contends that the four-year sentence was an abuse of discretion. He argues that the court gave only "cursory consideration" to the mitigating evidence that he was a devoted father who played a major role in his children's lives. He notes that his prior convictions were relatively minor and that the most recent occurred more than 10 years earlier.

¶ 19 It is well settled that the trial court has broad discretion in sentencing a defendant and that, consequently, its decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court is granted such deference because it is generally in a better position than the reviewing court to determine the appropriate sentence. The trial judge has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Streit*, 142 Ill. 2d 13, 19 (1991). Thus, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed those factors differently. A sentence within the statutory limits will be deemed excessive and an abuse of discretion only where it varies greatly from the law's spirit and purpose or where it is manifestly disproportionate to the offense. *Stacey*, 193 Ill.

2d at 210. Absent any contrary indication, we presume that the trial court considered mitigating evidence. *People v. Storms*, 254 Ill. App. 3d 139, 143 (1993).

¶ 20 Under these standards, defendant's sentence was not an abuse of discretion. Defendant essentially asks us to reweigh the aggravating and mitigating factors, which we may not do. The trial court's weighing of those factors was not inappropriate.

¶ 21 As the court noted, the most significant aggravating factor was the nature of the offense itself: defendant fired a gun at another driver during heavy rush-hour traffic simply because the other driver cut him off. In doing so, defendant endangered his own family as well as countless others on the highway. Defendant admittedly steered the car with his knees while loading the gun, then fired it through the passenger-side window, requiring his family to duck down to avoid being hit. Had defendant actually hit Ingram, Ingram could have lost control of the car, potentially causing a serious accident.

¶ 22 The court also noted defendant's lengthy criminal history. Although his previous convictions were for misdemeanors and traffic offenses, and the most recent occurred 14 years before the present offense, these facts did not require the court to completely disregard defendant's record. Moreover, as the court noted, defendant has a history of minimizing his criminal conduct. Speaking about this case, defendant blamed the victim, claiming that he was only trying to protect his family from Ingram's aggressive driving. Essentially, defendant explained his earlier convictions by blaming the victim, or claiming to have been in the " 'wrong place [at the] wrong time.' " The court could properly conclude that defendant's refusal to accept responsibility for his actions limits his rehabilitative potential.

¶ 23 Defendant complains that the court gave undue consideration to alleged similarities between this case and his previous criminal-damage-to-property conviction. While a point-by-

point comparison of similarities between the cases would serve no purpose, the court correctly noted that both cases involved defendant losing his temper as the result of a relatively trivial incident, then blaming the victim for creating the situation.

¶ 24 Defendant claims that the trial court failed to give sufficient weight to his role as a husband and father. He contends that the court's consideration of the mitigating evidence was limited to its comment that defendant was a "good man." Everyone agrees that the evidence showed that defendant is a good father who is devoted to his family. The court's comment came at the end of a more detailed recitation of this evidence. However, the court was also justifiably concerned that defendant's actions in this case greatly endangered his family. Moreover, as the State points out, the victim of defendant's previous offense was a woman defendant was dating while married to his current wife.

¶ 25 In short, nothing in the record shows that the trial court focused unduly on the evidence in aggravation or gave short shrift to mitigating evidence. We may not simply reweigh that evidence to arrive at a different conclusion. *Stacey*, 193 Ill. 2d at 210.

¶ 26 The judgment of the circuit court of Du Page County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 27 Affirmed.