

2017 IL App (2d) 150870-U
No. 2-15-0870
Order filed September 15, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kendall County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-290
)	
KRISTEN M. LEONARD,)	Honorable
)	Timothy J. McCann,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to four years' imprisonment (only one year above the minimum) for aggravated driving under the influence: despite the mitigating evidence, defendant's sentence was justified by her extraordinarily high alcohol concentration and her prior statutory summary suspension, which cast doubt on her rehabilitative potential.

¶ 2 Defendant, Kristen M. Leonard, appeals from her sentence of four years' imprisonment for aggravated driving under the influence of alcohol (ADUI) (proximately causing a death) (625 ILCS 5/11-501(d)(1)(F) (West 2012)). We hold that the sentence was not an abuse of discretion, and we thus affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted on two counts of ADUI (proximately causing a death) and two counts of ADUI (proximately causing great bodily harm) (625 ILCS 5/11-501(d)(1)(C) (West 2012)). She agreed to secure continuous remote alcohol monitoring (SCRAM) as a condition of her bail.

¶ 5 Defendant entered a nonnegotiated plea of guilty to one count of ADUI (proximately causing a death). According to the factual basis set out by the State, officers from the Oswego police department would testify that a single-vehicle crash with one fatality took place “in the early morning hours of September 15, 2013.” The officers “found one vehicle, a 2007 Jeep Grand Cherokee, that had struck a guardrail on the passenger side of the vehicle. The guardrail had entered into *** the vehicle, through the passenger side of the vehicle and exited out the back of the vehicle.” Two adults in another vehicle saw the collision; they would testify that “[t]hey noticed a vehicle driving at a high rate of speed.” The vehicle “tried to make a turn,” but failed and struck the guardrail. Defendant was the driver of the vehicle; her blood alcohol concentration was later measured as 0.236. Jason Callahan, the passenger, died of multiple blunt injuries.

¶ 6 Between defendant’s guilty plea and her sentencing, the State moved to revoke her bail on the basis that, for somewhat less than 14 hours on March 20 and 21, 2015, the SCRAM monitor had detected alcohol in her blood. The parties resolved this with an agreement that defendant would post additional bail; the State reserved the right to prove the violation.

¶ 7 At the sentencing hearing, the parties agreed that the relevant sentencing range was 3 to 14 years’ imprisonment with probation available only in “extraordinary circumstances.” The presentencing investigation report showed that defendant had no other convictions, but

nevertheless had had a statutory summary suspension of her driver's license in 2011. The State asked the court to sentence defendant to six years' imprisonment; defendant argued that extraordinary circumstances existed, and she asked the court to sentence her to probation.

¶ 8 The State called Ismael and Gina Camacho, who were direct witnesses to the crash, several officers who went to the scene, the physician who performed the autopsy of Callahan, and a technician who reported results from the SCRAM monitor. Ismael Camacho testified that, on September 15, 2013, a bit after midnight, he was driving home from church with his wife, Gina, and his child as passengers. They were on a part of Minkler Road that he drove five or six times a week. The part of the road on which the crash occurred was two lanes wide and curved where it crossed a creek on a "little bridge." As Ismael was approaching the bridge, he saw another vehicle approaching fast in the other direction, headed down a slope. To stay on the road, the vehicle would have had to follow the curve to the left, but it continued straight, stopping abruptly as it crashed into the guardrail on the bridge. Ismael drove up to the crash site while his wife called 911. He got out of his vehicle and went to the driver's window of the crashed vehicle. Defendant did not respond to him directly, but got out of the vehicle. As she did, he could smell alcohol. Defendant told him, "[M]y friend's not waking up." She walked toward the back of the vehicle, apparently trying to reach the passenger door, but suddenly fell through the railings into the creek area. He pulled her back onto the roadway, and she continued to talk about her friend not waking up. He told her that there had already been a 911 call and that she should wait. She did.

¶ 9 Gina Camacho testified next, corroborating Ismael's account.

¶ 10 Anthony Snow, a detective with the Oswego police, but a patrol officer at the time of the crash, testified that he had been dispatched to Minkler Road and was waved over at the crash site

by Ismael. At first, he did not notice much damage to the crashed vehicle, but he soon saw that the guardrail had pierced the vehicle from front to rear so that it was protruding about 15 feet from the rear of the vehicle. He encountered defendant, who smelled strongly of alcohol; she was crying “hysterically” and telling him that he had to help “him.” She also kept saying “go faster” and said that she did not want to go on living. Snow had to persuade defendant to leave the vehicle—he agreed with defense counsel’s suggestion that she did not seem to want to leave the passenger, but he persuaded her to go to the hospital. He and other officers worked to get access to the passenger, but quickly realized that the passenger’s injuries were inconsistent with survival; the guardrail had, in effect, impaled him. Another officer with the Oswego police, Chad Dickey, described the scene of the crash in similar terms.

¶ 11 Brian Nehring, an Oswego police officer who served as the evidence technician at the crash site, authenticated photographs he had taken. These showed the vehicle much as the other officers had described it. They also showed the extreme injuries suffered by the passenger. Nehring noted that he observed no skid marks on the pavement in the area where the vehicle must have approached the crash site.

¶ 12 John Scott Denton, M.D., a forensic pathologist, testified to the cause of Callahan’s death. Callahan had suffered an open head injury. His aorta was transected, so that his blood had entirely drained from his body. His lower right leg and foot had been traumatically amputated. Callahan’s ethanol level as measured in the vitreous humor was 305 milligrams per deciliter.

¶ 13 Jeffery Lisitza, an employee of Alcohol Monitors of Illinois, testified that defendant’s alcohol monitor began to show a nonzero reading at 6:02 p.m. on March 20, 2015. The highest

reading was 0.056 at 7:34 p.m., and the reading then trailed off to zero at about 8 a.m. on March 21, 2015. At 7:51 a.m. on March 21, the reading was 0.01.

¶ 14 The court heard victim impact statements from Callahan's daughter, Jesse Callahan, and his wife, Kim Callahan.

¶ 15 Defendant's witnesses were family members: her brother's wife, Natalia Leonard, her brother, Daniel Leonard, and her father, John Leonard. Daniel and Natalia explained why they believed that defendant had not deliberately consumed alcohol the night the SCRAM monitor showed readings above zero. They had all been together in their "tiny" one-bedroom apartment that night, and they had not seen defendant drink anything alcoholic. Natalia feared that she had caused the positive reading by serving a chicken dish with a wine base. Both testified to defendant's despondency after the accident.

¶ 16 John testified that defendant had been withdrawn and depressed after the accident and had received a diagnosis of posttraumatic stress disorder. He and others encouraged her to seek counseling, but she had not felt that any counselors she had seen were helpful. However, she felt comfortable enough with one of the counselors to disclose that she had been sexually abused by the father of her childhood best friend. Defendant became more withdrawn after this disclosure and started talking about suicide. However, that March—that is, one or two months before the sentencing hearing—she reached a spiritual and emotional turning point, after which she began to talk about ways that she could spend her life usefully.

¶ 17 Defense counsel asked the court to consider evidence that the guardrail had design flaws that made it unusually likely to cause severe damage. He also read part of defendant's prepared statement into the record. In that part of the statement, defendant described her relationship with Callahan, which she said was abusive. Callahan had demanded that she drive his vehicle,

something that she had never done before, and when she started driving, he kept demanding that she go faster.

¶ 18 Defendant also read part of her prepared statement herself. She had been severely depressed in the 18 months after the accident and had made plans to hang herself. The night before she planned to kill herself, she felt that God had intervened to make her understand that her life had a purpose; she said that she would therefore “pay the consequences of this tragedy and learn from this accident and [her] terrible decision to get behind the wheel that night.”

¶ 19 In its closing, the State argued that defendant’s circumstances were not extraordinary, but were typical of drivers who had made fatally bad choices. Moreover, the need to deter others from drinking and driving demanded that defendant’s sentence include imprisonment. The State argued that, although causing a death was an element of the offense, the court could nevertheless consider Callahan’s extreme injuries as a factor in aggravation. It asked the court to impose a six-year sentence.

¶ 20 The court stated that it would not consider Callahan’s injuries as an aggravating factor. It also stated that it was giving “very little weight” to the apparent alcohol consumption on March 20 and 21, stating that it was “hard *** to accept” that defendant, after months without violations, would deliberately consume alcohol just before the sentencing. It did give weight to matters relating to alcohol abuse:

“However, *** I believe that this is a case that requires a sentence of more than the minimum.

I say that because of the fact that the defendant has a prior statutory summary suspension of her driver’s license as well the extremely high blood alcohol level which she had that night.

There is no excuse for her conduct that night. She had choices and picked the wrong one.”

It found no extraordinary circumstances, and it sentenced defendant to four years’ imprisonment.

¶ 21 Defendant moved to withdraw her guilty plea or alternatively for reconsideration of her sentence. However, counsel told the court that defendant had no actual interest in withdrawing her plea. He argued that the court had given insufficient weight to the mitigating effects of defendant’s history of sexual abuse and the coercive nature of Callahan’s actions that night. He also argued that the court erred in refusing to consider evidence of Callahan’s history of domestic abuse.

¶ 22 The court stated that it did not see the evidence relating to defendant’s childhood as mitigating and that Callahan’s conduct did not reduce defendant’s culpability. The court thus denied defendant’s motion. Defendant timely appealed.

¶ 23

II. ANALYSIS

¶ 24 On appeal, defendant argues that the “judge improperly minimized the many factors in mitigation and narrowly focused on two issues: 1) [defendant’s] blood alcohol content of [0].205 ***, and 2) a 2011 summary suspension of her license.” She argues that, by failing to consider Callahan’s behavior toward defendant and her childhood experience of abuse, the court “fail[ed] to account for the ‘circumstances of the event,’ which constitute a mitigating factor.” Moreover, the court failed to give sufficient weight to defendant’s rehabilitative potential. She asks that we reduce her sentence to the minimum term of imprisonment, three years.

¶ 25 The State argues that the “trial judge gave due consideration to the mitigating and aggravating factors” and that the sentence thus was not an abuse of discretion.

¶ 26 We hold that the court did not abuse its discretion when it imposed a sentence of four years' imprisonment—one year above the minimum (625 ILCS 5/11-501(d)(2)(G)(i) (West 2012)). We may not reduce a sentence that is within the statutory range “unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense” (*People v. Horta*, 2016 IL App (2d) 140714, ¶ 40), and we must not alter a sentence absent an abuse of discretion by the trial court (*People v. Alexander*, 239 Ill. 2d 205, 212 (2010)). Within the applicable sentencing range, a trial court has great latitude in sentencing a defendant, but it may neither ignore relevant mitigating factors nor consider improper factors in aggravation. *People v. Roberts*, 338 Ill. App. 3d 245, 251 (2003). Furthermore, a “reviewing court must not substitute its judgment for that of a sentencing court merely because it would have weighed the factors differently.” *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 27 Here, the trial court clearly did not abuse its discretion. As noted, its sentence was lenient—only 1 year above the minimum and 10 years below the maximum. To the extent that the mitigating factors might have made the minimum sentence appropriate, the aggravating factors that the court cited were more than sufficient to warrant the still-lenient sentence the court imposed. Regardless of whether defendant's behavior was induced by Callahan, the court was entitled to hold defendant responsible for her decision to drive with a blood alcohol concentration that was extraordinarily high, which made the potential consequences of her decision particularly dangerous. And the court was further entitled to weigh defendant's rehabilitative potential in light of the prior summary suspension of her license. The sentence imposed was thus clearly proportionate to the offense and the pertinent factors in mitigation and aggravation.

¶ 28

III. CONCLUSION

¶ 29 For the reasons stated, we affirm defendant's sentence. 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 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 30 Affirmed.