2017 IL App (2d) 151058-U
No. 2-15-1058
Order filed July 20, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARTIN MARTINEZ, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 06-CF-344 Honorable Susan Clancy Boles, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to 15 years' imprisonment (on a 6-to-30 range) for predatory criminal sexual assault of a child: given the evidence that defendant presented a substantial risk of reoffending, the court was entitled to find inapplicable the mitigating factor that his character and attitudes showed that he was unlikely to reoffend; despite the mitigating evidence, which the court considered, defendant's sentence was appropriate given the nature of the offense and defendant's criminal history.

¶ 2 Defendant, Martin Martinez, appeals from the judgment of the circuit court of Kane County sentencing him to 15 years in prison upon his pleading guilty to one count of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2004)). Defendant contends

that the trial court abused its discretion in finding a statutory mitigating factor inapplicable and in failing to give adequate weight to certain nonstatutory mitigating evidence. Because the court did not abuse its discretion in sentencing defendant, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant entered an open guilty plea to one count of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2004)), a Class X felony with a sentencing range of 6 to 30 years in prison (730 ILCS 5/5-8-1(a)(3) (West 2004)). Defendant was sentenced to 15 years' imprisonment.

¶ 5 The following facts were established at defendant's sentencing hearing. Defendant began having sex with his girlfriend's daughter (C.T.) when C.T. was 10 or 11 years old. The sex occurred at least 20 times over a 4-year period. Defendant impregnated C.T. when she was 14 years old but continued to have sex with her.

¶ 6 Dr. Lesley Kane, a licensed clinical psychologist, conducted defendant's sex-offender evaluation. For the most part, defendant was candid, but at times he withheld information that he likely deemed detrimental to his case. He also attempted to present himself in an overly favorable light.

¶ 7 Defendant admitted to Dr. Kane that he had regularly consumed about a half to a full pint of hard liquor and a 12-pack of beer in one sitting. He claimed that in November 2005 he stopped drinking alcohol. However, he stated that he had not received any formal alcohol-abuse treatment and that when he had tried to quit drinking in the past he had failed.

¶ 8 Defendant also admitted having used marijuana daily and cocaine weekly. According to defendant, in November 2005 he stopped using both of those drugs. Defendant never participated in any drug-treatment programs or attended any substance-abuse support group. He

received some pastoral counseling at his church. Dr. Kane opined that, because defendant had made a number of failed attempts to abstain from alcohol and drugs, he was likely to relapse if he did not receive comprehensive treatment. Because substance abuse is an acute risk factor for defendant reoffending, maintaining his sobriety would be an essential component of his rehabilitation.

¶ 9 Defendant reported to Dr. Kane that he was under the influence of alcohol and/or drugs during each of the sexual encounters. C.T. corroborated that assertion.

¶ 10 Dr. Kane indicated that defendant's score on the Static-99 assessment showed that he was a low risk to reoffend. However, because of certain dynamic risk factors, such as his lack of appreciation for the factors that caused him to offend, it would be difficult for defendant to establish precautionary plans to prevent a future offense. Thus, Dr. Kane opined that defendant was a low to moderate risk to reoffend.

¶ 11 A letter from a therapist at Kids Hope United stated that defendant voluntarily attended weekly group sex-offender treatment. According to the therapist, defendant actively participated in the program. The therapist recommended that defendant continue such treatment.

¶ 12 According to defendant's mother, defendant's 76-year-old father was disabled from two severe strokes. She described defendant as the only family member who could handle her husband. Defendant also assisted in the upkeep of his parents' home and provided them financial assistance.

¶ 13 Nancy Steele, defendant's former employer, described defendant as a good worker who was trustworthy and very dependable. According to Steele, she would reemploy defendant upon his release from prison.

¶ 14 Defendant's sister and two family friends submitted letters supporting defendant.

¶ 15 In allocution, defendant apologized and asked for forgiveness. He stated that he had started counseling and promised that he would do everything he could to never commit another offense.

¶ 16 The presentence investigation report showed that defendant had an extensive criminal history spanning nearly 25 years. His convictions included aggravated assault, aggravated battery, burglary, resisting and obstructing a peace officer, and numerous alcohol-related driving offenses. Defendant had served prison time as well.

¶ 17 Defendant asked for the minimum prison sentence of 6 years, whereas the State sought a 25-year prison sentence. In sentencing defendant, the trial court noted that it had "carefully considered each of the statutory factors in mitigation and [found] that none of them [was] applicable to the facts of this case." The court added that, although defendant's incarceration would cause a hardship for his parents, it did not rise to the level of an excessive hardship to his dependents.

¶ 18 As for statutory aggravating factors, the trial court found that defendant had a substantial criminal history and that the sentence was necessary to deter others from committing the same type of crime. The court further found that, in repeatedly sexually assaulting C.T., defendant did not let his thoughts of the victim's plight interfere with his pleasure. The court noted that defendant was so lacking in concern that he did not use contraception and that he used the victim like a possession to satisfy his sexual desires without any regard for the effect on her. The court characterized defendant as depraved.

¶ 19 In considering the nonstatutory mitigating factors, the court noted that the sexual evaluation indicated that defendant could be rehabilitated. The court added that defendant had a good work history and that he acknowledged his crime by pleading guilty. The court noted that

defendant had taken a substantial step toward his rehabilitation. Having due regard for defendant's character and background, the nature and circumstances of the offense, and the public interest, the court sentenced defendant to 15 years in prison.

¶ 20 Defendant filed a motion to reconsider. In support of that motion, defendant submitted a letter from Karie Degand, his girlfriend and C.T.'s mother. Degand described defendant as a good provider and stated that she did not believe that defendant was a danger to C.T. or her other children. She asked that defendant's sentence be reduced to six years in prison.

¶ 21 Two medical doctors submitted letters regarding defendant's father's health. One stated that, because defendant's father was incapacitated, defendant's mother could not care for his father. The other opined that defendant's mother would benefit greatly from any assistance in caring for defendant's father.

¶ 22 The trial court denied the motion to reconsider. Defendant, in turn, filed this timely appeal.

¶ 23 II. ANALYSIS

¶ 24 On appeal, defendant contends that the trial court abused its discretion in imposing the 15-year prison sentence, because: (1) the court found inapplicable, despite overwhelming evidence to the contrary, the statutory mitigating factor that defendant's character and attitudes indicated that he was unlikely to commit another crime; and (2) the court did not give adequate weight to various nonstatutory mitigating factors, such as defendant's financial support to his family, defendant's care for his ailing parents, the support of his family and friends, and his guilty plea.

¶ 25 A sentence within the applicable statutory range is reviewed for an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A reviewing court may alter such a sentence

only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212. As long as the trial court does not consider incompetent evidence or improper aggravating factors, or does not ignore pertinent mitigating factors, it has wide discretion in sentencing a defendant to any term within the statutory range. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). Great deference is given to the trial court's sentencing determination, as the trial court is in the best position to fashion the appropriate sentence. *People v. Reed*, 376 Ill. App. 3d 121, 127 (2007). The trial court's broad discretion means that we cannot substitute our judgment simply because we might weigh the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13. Absent an abuse of discretion, the sentence of the trial court may not be altered upon review. *People v. Perruquet*, 68 Ill. 2d 149, 153 (1977).

¶ 26 Relevant factors in determining an appropriate sentence include the nature of the crime, protection of the public, deterrence, and punishment, as well as the defendant's rehabilitative potential and youth. *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123. A trial court must base its sentence on the particular circumstances of each case, considering such factors as the defendant's credibility and demeanor, general moral character, mentality, social environment, habits, and age. *Harmon*, 2015 IL App (1st) 122345, ¶ 123. Because the most important sentencing factor is the seriousness of the offense, the trial court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Alexander*, 239 Ill. 2d at 214. When mitigating factors were presented to the trial court, it is presumed that those factors were considered, absent some contrary indication other than the sentence itself. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004). Similarly, we presume that

the trial court considered any mitigating evidence presented. *Benford*, 349 Ill. App. 3d at 735. Although the trial court cannot ignore mitigating evidence, it may determine the weight to attribute to it. *People v. Powell*, 2013 IL App (1st) 111654, ¶ 35.

¶ 27 We first address whether the trial court abused its discretion in finding inapplicable the statutory factor that defendant's character and attitudes indicated that he was unlikely to commit another crime (see 730 ILCS 5/5-5-3.1(9) (West 2004)). It did not.

¶ 28 The trial court did not ignore the factor. Indeed, it stated that it had carefully considered each of the statutory mitigating factors. However, the court found that the factor did not apply under the facts of this case. We agree.

¶ 29 Although there was some evidence showing that defendant's character and attitudes indicated that he was unlikely to commit another crime, such as his acknowledgement of his crime, his expressed remorse and claim that he would not reoffend, and his voluntary participation in sex-offender treatment before sentencing, there was substantial evidence to the contrary.

¶ 30 Defendant had an extensive criminal history that spanned nearly a quarter of a century. He had been imprisoned previously, yet continued with his criminal behavior.

¶ 31 Further, defendant repeatedly committed the offense in this case over a four-year period. He did so even after impregnating the victim. Defendant's continued and persistent criminal conduct showed a substantial risk of reoffending.

¶ 32 It was also undisputed that defendant abused alcohol and drugs and that he committed his crimes while under the influence of either or both. Moreover, he had been unable to successfully abstain from using alcohol or drugs and was not involved in any formal program to do so. Indeed, Dr. Kane opined that defendant was likely to relapse in the absence of any

comprehensive substance-abuse program. Defendant's unabated abuse of alcohol and drugs, which often led to his criminal conduct, evinced a substantial risk of reoffending.

¶ 33 Significantly, Dr. Kane opined that defendant was a low to moderate risk to reoffend. Although defendant contends that the risk assessment supported a finding that defendant's character and attitudes showed a likelihood of his not committing another crime, it was certainly within the trial court's discretion to consider that evidence as not supporting the mitigating factor, especially in light of the other strong evidence that defendant was a substantial risk to reoffend.

¶ 34 Based on the evidence that defendant was a substantial risk to reoffend, we cannot say that the trial court abused its discretion in finding inapplicable the mitigating factor that defendant's character and attitudes showed that he was unlikely to commit another crime.

¶ 35 That leaves the issue of whether the trial court gave adequate weight to the nonstatutory mitigating evidence. As noted, we are not to reweigh the mitigating evidence. See *Alexander*, 239 Ill. 2d at 212-13.

¶ 36 Here, the trial court acknowledged the mitigating evidence. It recognized the support defendant provided his family, especially his parents. The court also considered the supporting letters and the significance of defendant's guilty plea. That the court did not accord the weight to those factors that defendant urges does not show an abuse of discretion. As noted, there was substantial aggravating evidence, such as the nature and circumstances of the offense and defendant's extensive criminal history. The court also recognized the need to deter others from committing such an egregious offense. In light of the various sentencing factors, we cannot say that the 15-year sentence, which was below the midpoint of the statutory range, varied greatly

from the spirit and purpose of the law or was manifestly disproportionate to the nature of the offense. See *Alexander*, 239 Ill. 2d at 212. Thus, the court did not abuse its discretion.

¶ 37 III. CONCLUSION

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

¶ 39 Affirmed.