2017 IL App (3d) 140356-U

Order filed January 5, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
	)	Mercer County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal Nos. 3-14-0356, 3-14-0357
v.	)	Circuit Nos. 13-CF-05, 13-CF-64
	)	
LOREN W. JASPER,	)	Honorable
	)	Gregory G. Chickris,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice McDade concurred in the judgment.
Justice Schmidt concurred in part and dissented in part.

ORDER

¶ 1 *Held*: (1) Evidence is insufficient to establish that defendant held a position of trust, authority or supervision where testimony demonstrated that defendant was not in charge of or supervising the victim.

(2) Trial court properly considered evidence of psychological impact of sexual assault at sentencing.

(3) Written judgment should be modified to reflect oral and written orders of the trial court.

¶ 2 Defendant, Loren W. Jasper, was charged in two separate cases with multiple counts of criminal sexual assault (720 ILCS 5/12-13(a)(3),(4) (West 2010)) (case No. 13-CF-05) and aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2008)) (case Nos. 13-CF-05, 13-CF-64) for incidents that occurred between April of 2009 and May of 2010 involving defendant and two babysitters, C.W. and C.T.[1] Following bench trials, he was convicted of criminal sexual assault and aggravated criminal sexual abuse in case No. 13-CF-05 and aggravated criminal sexual abuse in case No. 13-CF-64. At a consolidated sentencing hearing, the trial court sentenced defendant to consecutive terms of 28 years in prison for criminal sexual assault (case No. 13-CF-05) and 6 years in prison for aggravated criminal sexual abuse (case No. 13-CF-64). Defendant appeals, claiming that (1) the State failed to prove beyond a reasonable doubt that he held a position of trust, authority or supervision in case No. 13-CF-05, (2) the trial court abused its discretion in concluding that his prior out-of-state conviction was substantially equivalent to the charge of criminal sexual assault in case No. 13-CF-05, (3) the trial court erred in considering the psychological harm to the victims at sentencing, and (4) the judgment forms should be modified to reflect the trial court's oral and written orders. We reverse defendant's conviction and sentence for criminal sexual assault in case No. 13-CF-05 and remand for sentencing on the remaining count. We also modify the mittimus in case No. 13-CF-64 to adhere the trial court's order.

¶ 3 I. FACTS

[1] By amended information, dated September 4, 2013, and October 1, 2013, the defendant was charged with criminal sexual assault under "720 ILCS 5/11-1.20(a)(4)" and aggravated criminal sexual abuse under "720 ILCS 5/11-1.60(d)." However, at the time defendant committed these acts in 2009 and 2010, the correct statutory citations were "720 ILCS 5/12-13(a)(4) (West 2010)" and "720 ILCS 5/12-6(d) (West 2008)." The statutory provisions that existed when defendant committed the offenses will be cited in this order.

¶ 4 In September of 2013, the State charged defendant by amended information with four counts of criminal sexual assault and one count of aggravated criminal sexual abuse alleging that defendant engaged in sexual activity with C.W (case No. 13-CF-05). Count 1 alleged that on May 4, 2010, defendant inserted his finger in the vagina of C.W. when C.W. was at least 13 but under 18 years of age and that defendant was more than 17 years of age at the time. In addition, it alleged that defendant held a position of authority or trust in relation to C.W. and that he had been previously convicted in Iowa of second degree criminal sexual abuse. Count 2 also alleged a position of authority and trust but did not include the previous Iowa conviction. Counts 3 and 4 alleged that in June of 2010, defendant committed criminal sexual assault by placing his penis in the vagina of C.W. and in the mouth of C.W., knowing that C.W. was unable to give knowing consent. Last, count 5 claimed that in June 2010, defendant placed his fingers in the vagina of C.W. when she was at least 13 but under 17 years of age and that defendant was at least 5 years older than C.W.

¶ 5 Based on the investigation that occurred while the case was pending, the State also charged defendant by information with two counts of aggravated criminal sexual abuse for acts that occurred in June of 2009 involving another babysitter, C.T.

¶ 6 Defendant waived his right to trial by jury in both cases, and the trial court conducted separate bench trials.

¶ 7 A. Trial Involving C.W. – Case No. 13-CF-05

¶ 8 At trial in case No. 13-CF-05, defendant's former spouse, Valerie Black-Jasper, testified that she and the defendant resided in Cable, Illinois, in March of 2009 until the spring of 2010. They lived in a house with Valerie's two children from a previous relationship: Wren, who was 8, and Joshua who was 14. During that time, Valerie employed C.W. as a babysitter because

defendant frequently worked outside the home and she wanted someone at the house with Wren. Valerie testified that C.W. was 13 or 14 when she hired her. C.W. stayed at the house three or four days a week and often spent the night.

¶ 9 Valerie testified that defendant "did not have a say" in hiring the babysitter or how much to pay the babysitter. He did not control when C.W. came or left. If there was an emergency or C.W. needed a ride somewhere and Valerie was unavailable, defendant gave C.W. a ride. If Valerie was not home and C.W. was home with the children, defendant was the adult in charge.

¶ 10 C.W. testified that she was born on May 16, 1996. Valerie hired her to babysit Wren and Josh when she was 13 or 14 years old. C.W. babysat Wren almost every day. Defendant was at the house "on and off" while she watched the children. C.W. testified that when Valerie was gone, defendant was "[p]retty much" in charge and, if she needed anything during an emergency, she would ask defendant.

¶ 11 In May of 2010, C.W. was alone with defendant after Wren and Josh got on the school bus. Defendant asked C.W. to have sex with him and told her that if she did not agree, he would "touch Wren." C.W. agreed, and they engaged in sexual intercourse. When asked to explain the word "sex," C.W. stated that defendant "put his penis inside my vagina."

¶ 12 C.W. described other sexual encounters with defendant. On one occasion, Valerie gave C.W. permission to have a friend spend the night. Defendant drove C.W. to her friend's house in Sherrard to pick her up. On the way there, defendant put C.W.'s hand on his penis. He eventually stopped the car, and he and C.W. climbed in the back seat. C.W. testified that defendant put his fingers in her vagina first and then had sexual intercourse with her.

¶ 13 C.W. testified about another incident when Valerie's family was living in a hotel because their home had been damaged by flood waters. C.W. was babysitting Wren in the hotel room,

and then Wren left to go to her grandma's house. C.W. stayed at the hotel and had sex with defendant. C.W. also described another day, in the kitchen at the house in Cable, when defendant inserted his penis into her mouth.

¶ 14 On cross-examination, C.W. testified that Valerie paid her for babysitting the children and that defendant did not have the power to send her home. She said that if defendant came home from work and told her to go home, she would not go home; she would call Valerie. She did not feel that defendant was "in charge" of her. Defendant was around if C.W. needed a ride, but she did not trust him all of the time. C.W. stated that she did not believe that defendant was supervising her. She testified that he acted like a father to Wren and Josh when they were around, but he did not act like a father to her. C.W. never considered defendant to be a "father-figure."

¶ 15 Officer Jeff Dale testified that he and another officer transported defendant to the Mercer County Sherriff's department for questioning. After defendant was read his *Miranda* rights, he confirmed that he had engaged in sexual acts with C.W. on multiple occasions. Defendant told the officers that he believed C.W. was approximately 14 years old when he had sexual intercourse with her. Defendant memorialized his conversation with the officers in a hand-written statement. In his statement, defendant admitted to having sexual intercourse and oral sex with C.W. at various locations, including the house in Cable, the hotel room and the car.

¶ 16 At the close of the State's case, defense counsel moved for a directed finding on counts 1 through 4. The trial court granted defendant's motion on counts 3 and 4 and dismissed those counts. However, the court denied the motion as to counts 1 and 2, finding that there was sufficient proof that defendant had authority over C.W.

¶ 17 Tonya Minick testified that she was a close family friend and spent a lot of time at the house in Cable when C.W. was there. She witnessed C.W. interact with defendant. She stated that C.W. showed no indication that she was uncomfortable in defendant's presence. C.W. did not ask defendant for instructions when she was babysitting.

¶ 18 Following closing arguments, the trial court found that the State proved the allegations in counts 1, 2 and 5. The case was then continued until the conclusion of defendant's bench trial in case No. 13-CF-64.

¶ 19 B. Trial Involving C.T. – Case No. 13-CF-64

¶ 20 C.T. testified that she was born on February 9, 1993. She identified defendant in court as Valerie's ex-husband and testified that she watched Valerie's children, Josh and Wren, when the couple lived in Cable. C.T. was 15 or 16 years old at the time.

¶ 21 C.T. testified that in the summer of 2009 she was babysitting for Valerie. She was folding the laundry for Valerie, and defendant told the children to go outside and play. Defendant then took her to the bedroom, removed her pants, pulled her panties to one side, and inserted his penis into her vagina. When asked whether defendant ever made "other advancements" toward her, C.T. testified that sometimes defendant would try to hug her and other times he would try to touch her breasts. C.T. testified that she never told anyone about defendant's conduct until she was contacted by Mercer County detectives in July of 2013.

¶ 22 Detective Dusty Terrell testified that he received information concerning a second under-aged female with whom defendant possibly had sexual relations while investigating case No. 13-CF-05. He identified the second female as C.T. Terrell testified that he interviewed C.T. and obtained a written statement from her on July 5, 2013. Based on that statement and his additional investigation, charges were filed against defendant. At the conclusion of Terrell's

testimony, the trial court found defendant guilty of both counts of aggravated criminal sexual abuse.

¶ 23 C. Sentencing Proceedings

¶ 24 At the consolidated sentencing hearing, the State presented a certified copy of defendant's prior conviction from Iowa. The exhibit indicated that defendant had been convicted of "sexual abuse, second degree" on May 5, 1988, and that, following a bench trial, he was sentenced to a prison term "not to exceed 25 years." The exhibit did not provide any information relating to the factual basis for the conviction.

¶ 25 The presentencing investigation report in case No. 13-CF-64 indicated that C.W. sought counseling for the emotional trauma caused by defendant's acts of sexual assault and that she had suicidal thoughts. The report in C.T.'s case revealed that C.T. had issues with trust and refused to babysit because she was afraid that she would again be sexually abused. In sentencing defendant in case No. 13-CF-05, the trial court found that defendant "caused and/or threatened serious harm" and imposed a single term sentence of 28 years' on count 1, criminal sexual assault, as a Class X felony. In imposing sentence in case No. 13-CF-64, the court also found that defendant's conduct caused and/or threatened serious harm and imposed a single term of 6 years' imprisonment on count 1, aggravated criminal sexual abuse. The court further ordered that the sentence for aggravated criminal sexual abuse in case No. 13-CF-64 be served consecutively to the 28-year term imposed for criminal sexual assault in case No. 13-CF-05.

¶ 26 II. ANALYSIS

¶ 27 A. Criminal Sexual Assault – Case No. 13-CF-05

¶ 28 Defendant argues that his convictions for criminal sexual assault as charged in counts 1 and 2 should be reversed because the evidence was insufficient to prove that he held a position of trust, authority or supervision.

¶ 29 When presented with a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). To convict defendant of criminal sexual assault, the State must prove that the defendant committed an act of sexual penetration with a victim who was at least 13 years of age but under 18 when the act was committed and that the accused was 17 years of age or over and "held a position of trust, authority or supervision in relation to the victim." 720 ILCS 5/12-13(a)(4) (West 2010).

¶ 30 The phrase "position of trust, authority or supervision" is not defined in the statute. Accordingly, we must ascertain and give effect to the intent of the legislature, given the plain and ordinary meaning of the statutory language. *People v. Jamison*, 229 Ill. 2d 184, 188 (2008). Courts construing section 12-13(a)(4) have given these terms their common dictionary meanings. *People v. Secor*, 279 Ill. App. 3d 389, 396 (1996). The ordinary meaning of the word "trust" is "a confident dependence on the character, ability, strength, or truth of someone." Webster's Third New International Dictionary 2456 (1976). The word "supervise" or "supervision" means "to coordinate, direct and inspect continuously" (Webster's Third New International Dictionary 2296 (1976)) or to " 'superintend' " or " 'oversee' " *(People v. Kaminski*, 246 Ill. App. 3d 77, 81 (1993)). The term "authority" is defined as " '[t]he power to command, enforce laws, enact obedience, determine or judge.' " *Secor*, 279 Ill. App. 3d at 396 (quoting American Heritage Dictionary 142 (2d ed. 1985)). The language of the statute does not state that a position of trust,

authority or supervision may result from the status of the offender alone; it must exist "in relation to the victim." 720 ILCS 5/12-13(a)(4) (West 2010); *People v. Reynolds*, 294 Ill. App. 3d 58, 66 (1997).

¶ 31 In *Secor*, the 14-year-old victim spent the night at the defendant's house visiting the defendant's son. *Secor*, 279 Ill. App. 3d at 391. The court found that the defendant, as an overnight host, fell within a position of trust and supervision as described in section 12-13(a)(4). It did so by evaluating and identifying facts that were "likely to generate mutual trust." *Id*. at 394. The court emphasized that the defendant accepted the role of babysitter or chaperone and was responsible for the victim's welfare on the night of the assault. The *Secor* court concluded:

> "[I]n enacting section 12-13(a)(4), the legislature sought to prevent sex offenses by those whom a child would tend to obey *** as well as those in whom the child has place his trust ***. It is the trust that makes the child particularly vulnerable, and it is the betrayal of that trust that makes the offense particularly devastating." *Id*. at 396.

¶ 32 In *Reynolds*, a case that followed *Secor*'s analysis, the defendant argued that he did not hold a position of trust, authority or supervision because he did not have a parental relationship with the victim. *Reynolds*, 294 Ill. App. 3d at 65-66. The appellate court noted that the defendant was a Congressman, not a teacher, scout leader or babysitter. It agreed that the defendant's position as a publicly elected official did not alone create a position of trust, authority, or supervision. However, the court found that evidence at trial demonstrated that a position of trust existed in relation to the victim based on several facts: (1) the victim worked as a volunteer for the defendant, (2) the defendant sometimes served as the victim's mentor, and (3) the defendant arranged for the victim to attend a private high school. *Id*. at 66.

¶ 33 Here, unlike *Secor* and *Reynolds*, the evidence failed to establish that C.W. had placed her trust in defendant or would obey him. C.W. testified that defendant was not her employer; she was hired and paid by Valerie. C.W. followed Valerie's instructions. She further stated that she did not believe defendant was supervising her when she watched the children. She did not feel that defendant was "in charge" of her. She also stated that she did not completely trust defendant. She testified that Valerie was the only person from whom she took directions, and Valerie's testimony was consistent with C.W.'s statements. This evidence does not rise to the level of "trust," "authority," or "supervision," as those terms are ordinarily defined.

¶ 34 Even if we concluded that the step-parent of a child has an inherent position of trust or authority, the specific language of section 12-13(a)(4) does not protect a victim based on the role of the offender alone. The position of trust, authority, or supervision must exist in relation to the victim. Although evidence indicates that defendant was a parent-figure to Wren and Josh, nothing in the record suggests that defendant was a parent-figure to C.W. or that he had the power to command her actions. Thus, the trial testimony fails to sustain a finding that defendant held a position of trust, authority or supervision in relation to C.W.

¶ 35 Under these circumstances, the statutory language does not support criminal liability for sexual assault under section 12-13(a)(4) as alleged in count 1 or count 2. We therefore reverse the conviction on count 1and remand for sentencing on the lesser included offense of aggravated criminal sexual abuse stated in count 5. See *People v. Lawrence*, 254 Ill. App. 3d 601, 609-610 (1993). In evaluating the sentence authorized by statute, the trial court may consider all sentencing provisions and applicable factors. See 730 ILCS 5/5-4.5-35 (West 2010); 730 ILCS 5/5-8-2 (West 2010).

¶ 36 Defendant also claims that his conviction for criminal sexual assault as a Class X felony should be reversed because the out-of-state conviction used to enhance his sentence is not substantially equivalent to or more serious than the charged offense. In light of our decision to reverse his conviction based on the sufficiency of the evidence, we need not address this issue.

¶ 37 B. Improper Sentencing Factor – Case No. 13-CF-64

¶ 38 In his consolidated appeal, defendant argues that the trial court relied on an improper aggravating factor in sentencing him to 6 years for aggravated criminal sexual abuse in case No. 13-CF-64.

¶ 39 An appropriate sentence within the statutory guidelines is largely a matter of judicial discretion. A proper sentence must be based upon the particular circumstances of each case. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial judge is not required to set forth each and every reason or specify the weight given each factor considered in its sentencing decision. *People v. Brajcki*, 150 Ill. App. 3d 506 (1986). A judgment as to the proper sentence depends on many factors, including the seriousness of the offense and the need to protect the public and deter others. See *Stacey*, 193 Ill. 2d at 209. In determining an appropriate sentence, the trial court may consider the psychological impact of a sexual assault on the victim. *People v. Williams*, 223 Ill. App. 3d 692, 702 (1992); *People v. Sanford*, 119 Ill. App. 3d 160, 163 (1983).

¶ 40 The trial court sentenced defendant to 6 years for his conviction of the Class 2 felony of aggravated criminal sexual abuse. A conviction for a Class 2 felony is punishable by a term of 3 years and not more than 7 years. 730 ICLS 5/5-8-1(a)(5) (West 2008).

¶ 41 In sentencing defendant, the trial court considered it an aggravating factor that defendant's conduct caused and threatened serious harm to C.T. Defendant does not argue that the trial court's consideration of harm was improper because harm is an inherent element of his

convicted offense. He asserts that consideration of harm was improper because there was no evidence that he caused or threatened serious harm when he committed the offense. We disagree.

¶ 42 At sentencing, the trial judge considered the nature of the offense and the need to deter others from committing similar acts, as well as the psychological impact of the sexual abuse on C.T. The presentencing investigation report indicated that after C.T. was abused, she had issues with trust and refused to babysit because she was fearful she would again be sexually abused. Thus, evidence of psychological harm did exist and was appropriately considered by the trial court as an aggravating factor.

¶ 43 The trial court, having heard the evidence first-hand, was in a better position to weigh the sentencing factors. Its determination should not be reversed absent a clear abuse of discretion. See *People v. Cox,* 82 Ill. 2d 268, 281 (1980). The sentence imposed by the trial court was within the permissible range set forth in the statute, and the psychological impact of the incident on the victim was certainly justification for a sentence greater than the minimum term of incarceration.

¶ 44 C. Written Judgment

¶ 45 Defendant also argues that the written judgment should be modified to reflect the oral and written orders of the trial court. The State agrees.

¶ 46 In case No. 13-CF-64, defendant was convicted of both counts 1 and 2, and the trial court only imposed a six-year sentence on count 1. Both the court's oral pronouncement and written order reflect a single six-year sentence on count 1. However, the judgment sheet, entitled "Judgment-Sentence to Illinois Department of Corrections," incorrectly shows a sentence of six years on count 1 and count 2. Based on the authority granted to us under Illinois Supreme Court

Rule 615(b), we modify the written judgment to reflect a six-year sentence on count 1 and vacate the sentence on count 2. Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999) (reviewing court may reduce, affirm or modify judgment from which appeal is taken).

¶ 47 III. CONCLUSION

¶ 48 The judgment of the circuit court of Mercer County convicting defendant of criminal sexual assault and sentencing him 28 years in case No. 13-CF-05 (appeal No. 3-14-0356) is reversed, and the cause is remanded for sentencing on count 5.

¶ 49 The judgment of the circuit court of Mercer County convicting defendant of aggravated criminal sexual abuse and sentencing him to six years in case No. 13-CF-64 (appeal No. 3-14-0357) is affirmed as modified.

¶ 50 Appeal No. 3-14-0356 – Reversed and remanded.

¶ 51 Appeal No. 3-14-0357 – Affirmed as modified.

¶ 52 JUSTICE SCHMIDT, concurring in part and dissenting in part.

¶ 53 I dissent from the majority's holding that the evidence was insufficient to establish defendant's position of trust, authority, or supervision as required by section 12-13(a)(4).

¶ 54 When a criminal defendant challenges the sufficiency of the evidence at trial, "the relevant question on review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt." *People v. Secor*, 279 Ill. App. 3d at 394; *see also People v. Harre*, 155 Ill. 2d 392, 397-98 (1993); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The applicable criminal sexual assault statute requires, *inter alia*, a guilty party to hold "a position of trust, authority or supervision in relation to the victim." 720 ILCS 5/12-13(a)(4) (West 2010).

¶ 55 In *Secor*, this court held that strict applications or interpretations of section 12-13(a)(4) contravene its legislative intent:

¶ 56 "We believe that the terms 'trust,' 'authority' and 'supervision' are sufficiently definite to both warn potential defendants of the type of conduct that is prohibited and to channel the discretion of police, judges and juries. *** It is evident that, in enacting section 12-13(a)(4), the legislature sought to prevent sex offenses by those whom a child would tend to obey, such as a teacher or coach, as well as those in whom the child has placed his trust." *Secor*, 279 Ill. App. 3d at 396.

¶ 57 Several other cases decided by this court have relied upon an inference of trust, authority, or supervision in convicting defendants under section 12-13(a)(4). In *People v. Feller*, 2012 IL App (3d) 110164, we affirmed the conviction of a defendant who sexually assaulted the blind victim while helping her swim with a group of her friends. We determined that, despite the short duration of the defendant's assistance, he was in a position of trust and supervision while assisting the victim at the time of the assault. *See id.* ¶¶ 13-15. We have also held that the position of trust, authority, or supervision element is satisfied where a victim occasionally spends the night at a defendant's home and provides babysitting services to the defendant's children. *People v. Groel*, 2012 IL App (3d) 090595, ¶¶ 55-57.

¶ 58 In the instant case, defendant argues, and the majority agrees, that his lack of parenthood or employment of C.W. is dispositive. Specifically, the majority focuses its decision largely on whether defendant could order C.W. to go home and whether C.W. viewed defendant as an employer or father figure. *Supra* ¶¶ 33-34. The statute does not require a parental or employment relationship to satisfy the trust, authority, or supervision element. Nor does the

statute require that the position of trust, authority, or supervision be all-encompassing or unlimited.

¶ 59 The touchstone determination under section 12-13(a)(4) is whether the victim ever tended to obey the accused. *See Secor*, 279 Ill. App. 3d at 396. As in *Secor* and *Groel*, the facts of the instant case demonstrate, at a minimum, that C.W. tended to obey and rely upon defendant. There is no dispute that, while C.W. was babysitting Valerie's children, defendant was the adult in charge. C.W. would babysit Valerie's children and stay at defendant's home three or four days per week, often spending the night. It is also undisputed that C.W. was 13 or 14 years old when the alleged assaults occurred. She could not legally drive and relied upon defendant to give her rides when necessary.

¶ 60 As the adult head of household with his stepchildren and a teenage babysitter present, defendant was the authority figure whom the other occupants obeyed and trusted. The evidence, viewed in the light most favorable to the State, is sufficient for the trier of fact to have found the elements of section 12-13(a)(4) satisfied beyond a reasonable doubt. I would affirm defendant's conviction in Mercer County case No. 13-CF-05 (appeal No. 3-14-0356). I otherwise concur.