2017 IL App (3d) 150482-U

Order filed October 18, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court |
| | ) | of the 10th Judicial Circuit, |
| | ) | Peoria County, Illinois, |
| Plaintiff-Appellee, | ) | |
| | ) | Appeal No. 3-15-0482 |
| v. | ) | Circuit No. 14-CF-840 |
| | ) | |
| COURTNEY A. BLAKES, | ) | Honorable |
| | ) | Kevin W. Lyons, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Holdridge and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held*: (1) Defendant's sentence did not violate the proportionate penalties clause and was not excessive. (2) The trial court did not violate defendant's right to self-representation.

¶ 2 Defendant, Courtney A. Blakes, was convicted of attempted first degree murder and aggravated battery. On appeal, defendant argues that his aggregate sentence of 60 years' imprisonment violated the proportionate penalties clause of the Illinois Constitution or, alternatively, that his sentence was excessive. Defendant also argues that the trial court violated

his right to self-representation when it did not permit defendant to proceed *pro se* on his posttrial motion. We affirm.

¶ 3 FACTS

¶ 4 Defendant was charged with attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2014)); aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2014)); aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2014)); and domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) for causing an injury to Julie Hill by shooting her with a firearm. Defendant was also charged with aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2014)) for causing an injury to Blade Ballew by shooting him with a firearm. Additionally, defendant was charged with aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1) (West 2014)) and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)). The State dismissed the charge of domestic battery prior to trial.

¶ 5 A jury trial was held. Hill testified that she and defendant were previously in a relationship. On the day of the incident, defendant learned that Hill had been intimate with Ballew. Defendant was unhappy that Hill had been seeing Ballew, and he sent Hill a Facebook message saying, "I thought we was together though. You think I'm going to let you come down here to see dude? I'm gonna start World War III." Hill and defendant continued to exchange messages on Facebook. Defendant sent Hill a message saying, "Whatever. You don't think I will kill a mother fucker, do you?" Hill responded, "Well, I don't know. I'm be [*sic*] at Kyra's house after school. Come kill me." Defendant responded, "Okay. I will." Hill did not take defendant's message seriously at the time; she just thought he was very upset. Hill intended to meet with defendant in order to calm him down. After school, Hill went to Ballew's house. Defendant lived two blocks away from Ballew.

¶ 6 Hill was watching a football game with Ballew and his mother in Ballew's mother's bedroom. Hill and Ballew were seated next to each other on a couch near a window. Hill looked out the window and saw defendant standing in the yard near a tree. Hill stated that "everything went black" a few seconds later. Ballew was on the ground, and Hill's face was bleeding. Hill believed she was going to die because her breath got shorter and shorter. Hill repeatedly stated that defendant shot her to everyone around her. Hill went to the hospital, and her left eye had to be removed. At the time of trial, she still had pellets from the gunshot in her face, and she had permanent scars. Hill also swallowed one of her teeth when defendant shot her, and she had to undergo oral surgery.

¶ 7 Ballew testified that pellets from the gunshot struck his face as well. Photographs of Ballew's injuries showed that there were cuts on his face where the pellets had hit him.

¶ 8 The jury found defendant guilty of attempted first degree murder, both counts of aggravated battery, aggravated discharge of a firearm, unlawful possession of a weapon by a felon, and aggravated domestic battery.

¶ 9 Defendant filed a motion for a new trial through counsel.

¶ 10 Defense counsel also filed a motion for court review pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), alleging that defendant sought to file a *pro se* posttrial motion alleging ineffective assistance of counsel. Counsel attached a handwritten *pro se* motion for a new trial to the motion for court review. The *pro se* motion contained 33 paragraphs. The last paragraph stated: "Ineffective assistance of counsel." The motion did not go into any further detail concerning the claim of ineffective assistance of counsel.

¶ 11 A hearing was held on the posttrial motions. Defense counsel explained that defendant had given him the handwritten motion for a new trial, which included a claim of ineffective

assistance of counsel. Defense counsel filed the *Krankel* motion after seeing defendant's *pro se* ineffective assistance of counsel claim. The court asked defendant to explain his claim of ineffective assistance of counsel. Defendant stated: "The assistance that I have received was ineffective to my case, meaning he had no effect to my case, little to none to the whole case but no effect to my case." The court found that defendant's claim of ineffective assistance lacked merit.

¶ 12 Defense counsel then stated: "Your honor, I believe that [defendant] would like to address the Court regarding argument of the motion for new trial. I think he's made it clear to me that he does not want me to have anything more to do with the case." The court then stated that it would not give both defendant and defense counsel a turn to argue the motion for a new trial. The court asked defendant what he wanted to do, and defendant replied, "I would like to argue my motion for new trial." The court told defendant to "[g]o ahead." Before defendant could begin his argument, the court added: "[Defense counsel] is still your attorney. I'm not removing him, or he's not withdrawing; but if you are the person who's insisting in arguing the motion, now would be the time." Defense counsel stated: "Your Honor, if I'm going to be representing him, then I would be the one to argue the motion, I believe." The court told defense counsel to proceed with his argument, and defense counsel argued the motion. The court denied the motion.

¶ 13 The matter proceeded to a sentencing hearing. A presentence investigation report (PSI) showed that defendant was 20 years old on the date of the incident. Defendant turned 21 years old two days later. Defendant had a prior conviction for domestic battery in that he restrained Charlene Smith and cut her hair with scissors. The day after the domestic battery occurred, Smith obtained an order of protection against defendant. In her application for an order of protection, Smith stated that defendant smacked her, choked her, pulled her by her hair, cut a large chunk of

her hair off, slammed her into shelves, dragged her into the kitchen, and threw a chair at her. Smith stated that defendant told her he would kill her.

¶ 14 Defendant was convicted of violation of an order of protection on two occasions for telephoning and communicating with Smith. On another occasion, defendant was convicted of knowing damage to property and violation of an order of protection for harassing Smith by damaging her vehicle. Defendant also had a prior conviction for domestic battery against Hill. In that case, defendant spit on Hill, slapped her right eye with the back of his hand, grabbed and squeezed her arms, scratched her legs with a key, and punched her in the arms and legs. Defendant's third conviction for violation of an order of protection and his second conviction for domestic battery were Class 4 felonies. His other prior convictions were Class A misdemeanors.

¶ 15 At the sentencing hearing, Hill read a statement. Hill said that she had nightmares and posttraumatic stress syndrome as a result of the incident. Immediately after she was shot, Hill believed she might die because she lost a lot of blood. Hill had to drop out of college after the incident. She had three surgeries the day she was shot and two more a few months later. Hill's left eye was completely removed, and replaced with a prosthetic eye. Hill still had to undergo an oral surgery because one of the pellets from the gunshot hit a tooth that she swallowed. Hill stated that she could no longer play softball with her father, which she once enjoyed, because her perception was off and she was afraid of getting hit in the face.

¶ 16 Defendant made a statement in allocution in which he denied committing the shooting, but said he was sorry that it happened.

¶ 17 After hearing arguments, the court sentenced defendant to consecutive sentences of 40 years' imprisonment for the attempted first degree murder for shooting Hill (a 15-year sentence plus a 25-year mandatory add-on for use of a firearm) and 20 years' imprisonment for the

aggravated battery of Ballew. The court did not enter a sentence on the other counts, as they merged. In delivering its sentence, the court stated that it had considered the PSI, the evidence and arguments of the attorneys, defendant's statement in allocution, the statutory matters in aggravation and mitigation, and defendant's history and character. The court reasoned that the following aggravating factors applied: (1) defendant had a history of prior criminal activity, and (2) defendant's sentence was necessary to deter others from committing the same crime.

¶ 18 ANALYSIS

¶ 19 I. Sentence

¶ 20 Defendant challenges his sentence on two grounds. First, defendant argues that section 5-8-4(d)(1) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-4(d)(1) (West 2014)) is unconstitutional as applied to him because it requires that his 40-year sentence for attempted first degree murder run consecutively to his 20-year sentence for aggravated battery when he only committed one act. That is, he fired one shot that injured both victims. Alternatively, defendant argues that his sentence is excessive and should be reduced in light of the circumstances of the offense, his youth, and his potential for rehabilitation. We address each argument in turn.

¶ 21 A. Constitutional Claim

¶ 22 Defendant argues that section 5-8-4(d)(1) of the Code violates the proportionate penalties clause of the Illinois Constitution as applied to him. Section 5-8-4(d)(1) provides:

> "(d) Consecutive terms; mandatory. The court shall impose consecutive terms in each of the following circumstances:
>
> (1) One of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury." *Id.*

Defendant acknowledges that the one-act, one-crime doctrine does not prohibit the court from imposing two separate convictions when there are two separate victims even when a defendant committed only one act. *People v. Shum*, 117 Ill. 2d 317, 363 (1987) ("In Illinois it is well settled that separate victims require separate convictions and sentences."). However, defendant contends that the one-act, one-crime case law in combination with the mandatory consecutive sentences required by section 5-8-4(d)(1) of the Code results in a constitutionally disproportionate sentence in his case.

¶ 23 The proportionate penalties clause of the Illinois Constitution states: "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. "[A] sentence violates the proportionate penalties clause if it is so cruel, degrading, or disproportionate to the offense that the sentence shocks the moral sense of the community." *People v. Guevara*, 216 Ill. 2d 533, 543 (2005).

¶ 24 In this case, the application of section 5-8-4(d)(1) of the Code, which requires the imposition of consecutive sentences where one offense was a Class X felony resulting in severe bodily injury, is not "so cruel, degrading, or disproportionate to the offense that the sentence shocks the moral sense of the community." *Id.* Defendant's conduct was very serious. Defendant fired a gun through the window of a home, hitting both Hill and Ballew, who were seated on a couch by the window. Hill suffered severe injury from the gunshot, ultimately resulting in the loss of her eye. Ballew was also injured by pellets from the gunshot. Though defendant may have only intended to injure Hill, he injured Ballew as well. "Where a single act injures multiple victims, the consequences affect, separately, each person injured." *People v. Pryor*, 372 Ill. App. 3d 422, 434 (2007). Thus, "separate victims require separate convictions and sentences." *Shum*,

117 Ill. 2d at 363. Where, as here, one victim was severely injured and another victim was injured as well by one shot fired in their direction, it does not shock the moral conscience of the community to require defendant to serve sentences of imprisonment for each victim consecutively.

¶ 25 In reaching our holding, we reject defendant's reliance on *People v. Miller*, 202 Ill. 2d 328 (2002). In *Miller*, the 15-year-old defendant was tried as an adult and convicted of two counts of first degree murder on an accountability theory. *Id*. at 330. The evidence showed that two men approached the defendant while he was standing on a street corner and asked him to act as a lookout for them. *Id*. at 330-31. The defendant agreed and acted as a lookout while the two men shot two other men. *Id*. The trial court imposed a sentence of 50 years' imprisonment, and the State appealed. *Id*. at 332-33. The *Miller* court held the multiple-murder sentencing statute—which mandated a sentence of natural life imprisonment—was unconstitutional as applied to the defendant, who was convicted under a theory of accountability. *Id*. at 341. The court reasoned that the convergence of the transfer statute, the accountability statute, and the multiple-murder sentencing statute in the defendant's case eliminated the court's discretion to consider mitigating factors like the defendant's age and degree of participation. *Id*. at 342. Accordingly, the *Miller* court affirmed the 50-year sentence imposed by the trial court. *Id*. at 343.

¶ 26 We find *Miller* to be factually distinguishable from the instant case. In *Miller*, the court held that a statutory scheme mandating a sentence of natural life imprisonment for a juvenile offender convicted of first degree murder on an accountability theory violated the proportionate penalties clause. *Id*. Unlike *Miller*, the instant case involves an adult defendant who acted as a principal. Moreover, section 5-8-4(d)(1) of the Code (730 ILCS 5/5-8-4(d)(1) (West 2014)) did not require the court to impose a 60-year sentence in this case. Rather, defendant faced a

minimum aggregate sentence of 37 years' imprisonment. The court imposed a sentence in excess of the minimum based on defendant's criminal history and the need for deterrence. Thus, unlike the multiple-murder sentencing statute in *Miller*, the challenged statute in the instant case did not remove the court's discretion to consider defendant's age and level of culpability.

¶ 27 B. Excessive Sentence

¶ 28 We next address defendant's alternative claim that the trial court abused its discretion in imposing a 60-year aggregate sentence. Specifically, defendant argues that his sentence was excessive because (1) defendant only committed one act and is required to serve consecutive sentences due to the fact that there were two victims, and (2) the trial court failed to consider the mitigating factors of defendant's youth and the nature of the offense.

¶ 29 The trial court has broad discretion in imposing a sentence, and we give great deference to the sentencing decisions of the trial court. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). " '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. [Citations.] Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. [Citation.]' " *Id.* at 213 (quoting *People v. Stacey*, 193 Ill. 2d 203, 209 (2000)). "[A] sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210.

¶ 30 Here, both the offenses of which defendant was convicted—attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2014)) and aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2014))—were Class X felonies with possible sentencing ranges of 6 to 30

years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2014). Additionally, defendant was subject to a mandatory add-on of "25 years or up to a term of natural life" to his attempted first degree murder sentence for personally discharging a firearm and thereby proximately causing great bodily harm to another person. 720 ILCS 5/8-4(c)(1)(D) (West 2014). As we have discussed, defendant's sentences were required to run consecutively pursuant to section 5-8-4(d)(1) of the Code (730 ILCS 5/5-8-4(d)(1) (West 2014)). Thus, defendant faced a possible aggregate sentencing range of 37 to 85 years' imprisonment, or up to natural life imprisonment.

¶ 31 We find that the aggregate sentence of 60 years' imprisonment, which falls in the middle of the possible sentencing range, was not "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210. Defendant discharged a gun in the direction of Hill and Ballew, causing serious injury to Hill. Most notably, Hill permanently lost one of her eyes. Pellets from the gunshot also hit Ballew, causing injury to him as well. While defendant was relatively young at the time of the offense—20 years old—he had already incurred six adult criminal convictions. Two of his prior convictions were felonies, and all of his prior convictions involved acts of violence against intimate partners or the violation of an order of protection. Given the serious nature of defendant's conduct, the severe injury to Hill, and defendant's criminal history, we find that the 60-year sentence imposed by the trial court was not an abuse of discretion.

¶ 32 We reject defendant's argument that the trial court failed to adjust its sentence to account for the fact that defendant's sentences were required by statute to run consecutively even though he only committed one act. Though defendant only fired one gunshot, he injured two people sitting next to each other on a couch inside a home. Given the egregious nature of defendant's

conduct, we do not believe that the trial court abused its discretion in imposing a 60-year sentence merely because defendant may have intended to injure only one person instead of two.

¶ 33 We also reject defendant's argument that the following remarks made by the trial court during sentencing showed that the court was biased against the offense of attempted first degree murder:

> "But I do know that my impression is that the legislature has crafted an attempted murder offense with added gun tack-ons because given it such an incredible strong sentence that the Court can't avoid in large part because sometimes in attempted murder in some ways it's worse than a murder some people will say. Torture, at some point, blinding them, cutting off an arm. Reckless homicide sometimes, DUI driver, even totally unintended, crashes into somebody, and the person is paraplegic or quadraplegic [*sic*] for the rest of their life. Sometimes those people say, I wish I had died. So I can't really say that it's a mitigating factor for you that nobody died."

Defendant argues that the legislature regards attempted first degree murder as less serious than first degree murder given that the sentencing range for attempted first degree murder is 6 to 30 years' imprisonment while the sentencing range for first degree murder is 20 to 60 years' imprisonment. See 720 ILCS 5/8-4(c)(1) (West 2014); 730 ILCS 5/5-4.5-20(a), 5-4.5-25(a) (West 2014). However, defendant ignores the mandatory add-ons for use of a firearm contained in the attempted first degree murder statute, including the add-on of 25 years' imprisonment to natural life imprisonment that applied in this case. 720 ILCS 5/8-4(c)(1)(D) (West 2014). The legislature's imposition of these lengthy add-ons shows that the legislature believed that, in some cases, attempted first degree murder should be punished as severely as first degree murder. Thus,

we find nothing improper about the trial court's statement that "sometimes in attempted murder in some ways it's worse than a murder some people will say."

¶ 34 Defendant also argues that the following statement showed that the trial court failed to consider his rehabilitative potential due to his youth:

> "You are a very volatile person. I cannot see you becoming less volatile in the Department of Corrections. I cannot see you becoming happier. I cannot see you becoming kinder, gentler, so I don't see any winners here, but you can prove me wrong but that is not in the cards."

Defendant contends that young defendants like him have greater rehabilitative potential, and cites several cases in which the reviewing court lowered the sentences of young offenders. See *People v. Calva*, 256 Ill. App. 3d 865, 876 (1993); *People v. Clark*, 374 Ill. App. 3d 50, 75 (2007); *People v. Brown*, 243 Ill. App. 3d 170, 176 (1993); *People v. Bigham*, 226 Ill. App. 3d 1041, 1049 (1992).

¶ 35 We find that the trial court's statement that defendant was a "very volatile person" is supported by his conduct in the instant case and his prior convictions, all of which were crimes against intimate partners. Though defendant's youth may have weighed in favor of a finding that he had a strong potential for rehabilitation, his significant criminal history weighed against such a finding. It was not improper for the court to consider defendant's criminal history, and we will not reweigh the factors considered by the trial court. See *Alexander*, 239 Ill. 2d at 213. Furthermore, all of the cases cited by defendant in which young offenders received reduced sentences involved defendants with little to no criminal history and are thus distinguishable from the instant case. See *Calva*, 256 Ill. App. 3d at 876 (no history of prior criminal activity); *Clark*,

374 Ill. App. 3d at 74 (no prior felonies); *Brown*, 243 Ill. App. 3d at 176 (no criminal history); *Bigham*, 226 Ill. App. 3d at 1049 (one nonviolent felony nine years prior).

¶ 36 Finally, defendant argues that it was contradictory for the court to say "you can prove me wrong but that is not in the cards." Though the court's statement was somewhat poorly worded, it appears that the court was trying to express that it believed that it was unlikely that defendant would become less volatile in prison, but defendant could try to prove the court wrong. Read in context, it appears that when the court said "not in the cards" it meant unlikely as opposed to impossible.

¶ 37 II. Right to Self-Representation

¶ 38 Defendant argues that the trial court violated his right to represent himself during posttrial proceedings. Specifically, defendant contends that he made an unequivocal request to represent himself when he stated that he wished to argue the posttrial motion himself instead of through counsel. We find that defendant did not make an unequivocal request to proceed *pro se*, and, consequently, the court did not err in failing to allow defendant to represent himself.

¶ 39 A defendant has the right to represent himself pursuant to the sixth amendment to the United States Constitution. *People v. Burton*, 184 Ill. 2d 1, 21 (1998); *Faretta v. California*, 422 U.S. 806 (1975). "In order to represent himself, a defendant must knowingly and intelligently relinquish his right to counsel." *Burton*, 184 Ill. 2d at 21. "It is well settled that waiver of counsel must be clear and unequivocal, not ambiguous." *Id.* "In determining whether a defendant's statement is clear and unequivocal, a court must determine whether the defendant truly desires to represent himself and has definitively invoked his right of self-representation." *People v. Baez*, 241 Ill. 2d 44, 116 (2011). "A defendant waives his right to self-representation unless he

'articulately and unmistakably demands to proceed *pro se*.' " *Burton*, 184 Ill. 2d at 22 (quoting *United States v. Weisz*, 718 F.2d 413, 426 (D.C. Cir. 1983)).

¶ 40 In this case, defendant did not unequivocally invoke his right to self-representation. Defendant never clearly and unambiguously stated that he wished to waive his right to counsel and represent himself, either in the *pro se* posttrial motion or in court. Though defendant stated that he wished to argue his posttrial motion himself rather than have counsel argue it, defendant did not say that he wanted to waive his right to counsel and thereafter proceed *pro se*. Defendant had no right to self-representation for the limited purpose of arguing his posttrial motion while retaining his court-appointed counsel. *People v. Patrick*, 406 Ill. App. 3d 548, 564 (2010) ("Defendants have the right either to have counsel represent them or to represent themselves, but they do not have the right to both."). Thus, his statement that he wanted to argue his posttrial motion himself was not an unequivocal request to proceed *pro se*.

¶ 41 We acknowledge that defendant appeared to be dissatisfied with his counsel. Defendant made an allegation of ineffective assistance of counsel in the *pro se* posttrial motion attached to counsel's motion for a *Krankel* inquiry and defense counsel indicated that defendant wanted him to have nothing more to do with the case. However, it is unclear from this whether defendant definitively wished to waive his right to counsel and proceed *pro se*. While the court asked defendant if he wanted to argue the posttrial motion himself, the court did not ask defendant if he wanted to waive his right to counsel and thereafter represent himself in posttrial and sentencing proceedings. We cannot divine from this record that defendant would have said yes to such a question. It is just as plausible that defendant wanted the court to appoint a new attorney. It is also possible that if he were given the options of having his appointed counsel represent him or representing himself in all posttrial and sentencing matters rather than just the argument on the

one posttrial motion, defendant would have chosen to keep his appointed counsel despite his dissatisfaction with his performance.

¶ 42 In any event, our supreme court has stated that "[a] defendant waives his right to self-representation unless he 'articulately and unmistakably demands to proceed *pro se*.' " *Burton*, 184 Ill. 2d at 22 (quoting *Weisz*, 718 F.2d at 426). Here, defendant made no articulate and unmistakable demand to represent himself. Thus, the trial court did not err in failing to allow defendant to represent himself.

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 45 Affirmed.