2017 IL App (4th) 160791-U

NO. 4-16-0791

FILED
May 25, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
DANIEL BALTIERRA,	)	No. 15CF1339
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The sentence in this case is not an abuse of discretion.

¶ 2 Defendant, Daniel Baltierra, appeals his sentence of 15 years' imprisonment for the Class X felony of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2002)). We affirm the sentence because it is not an abuse of discretion.

¶ 3 I. BACKGROUND

¶ 4 A. The Offense to Which Defendant Pleaded Guilty

¶ 5 On May 20, 2016, defendant pleaded guilty to count II of the information: a count charging that, "on or about the 6th day of December, 2002 through the 6th day of December, 2003," he committed predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2002)). The victim was his adopted daughter, S.B., born December 6, 1998.

¶ 6 B. His Prior Criminal Record

¶ 7 In Champaign County case No. 15-CF-1089, a couple of weeks before the guilty plea in the present case, the Champaign County circuit court sentenced defendant to 30 years' imprisonment for predatory criminal assault of a child, an offense he committed between January 2009 and November 2011. Again, the victim was S.B. On direct appeal, we upheld the sentence. *People v. Baltierra*, 2017 IL App (4th) 160575-U, ¶ 2.

¶ 8 Otherwise, defendant's prior record consisted merely of three petty traffic offenses.

¶ 9 C. His Otherwise Apparently Exemplary Life

¶ 10 According to the presentence investigation report, defendant is a college graduate, and before his arrest, he was gainfully employed. In letters to the court, his neighbors, his pastor, and his other acquaintances had only good things to say about him.

¶ 11 D. The Evaluation by Kleppin

¶ 12 One of the documents that defendant presented in mitigation was a report by Michael Kleppin, a licensed sex offender evaluator and treatment provider. In his report, Kleppin discusses the sexual molestation defendant suffered as a child, from the second grade onward. Kleppin opines that although defendant has severe depression and anxiety, he has no personality disorder or psychopathology, and the risk of recidivism, for him, is in the low-moderate range. There are "protective factors present which may assist in the reduction of recidivistic tendenc[ies]."

¶ 13 E. The Evaluation by Osgood

¶ 14 According to an evaluation by a clinical psychologist, Judy K. Osgood, defendant was subjected to sexual abuse even earlier than the second grade, when he was exposed to pornography and was fondled by older children while in the care of a babysitter. As a child, he

watched older children engage in sexual touching, and when he declined to participate, he was excluded from the group as an outcast. The molestation went on until almost the sixth grade. He also was subjected to severe physical and emotional abuse by his parents. All this resulted in posttraumatic stress disorder and an addiction to pornography.

¶ 15 F. Letters Written on Defendant's Behalf

¶ 16 A group exhibit contained 12 character-reference letters written on defendant's behalf. They extolled him as an honest, caring, hardworking family man who was truly sorrowful for what he had done. A mother wrote that she had such confidence in his remorse that she would be willing to leave her own children in his care. S.B. wrote that she had forgiven defendant and that she sincerely hoped he would not be incarcerated; in fact, she and her brother often wept because they missed defendant so much. Defendant's son, B.B., also wrote a letter, in which he expressed his love for his father, who had been a provider, a friend, and someone who made a child feel special by believing in him.

¶ 17 G. Defendant's Statement in Allocution

¶ 18 On July 15, 2016, during the sentencing hearing, defendant made a statement in allocution. He expressed grief and distress at the suffering he had inflicted on S.B. and the rest of the family. He thought it was important that S.B. understand that none of this was her fault. He promised "to do whatever it [took] to fix [himself] and never let that happen again." He requested the court to "offer just as much mercy as [his] daughter ha[d] given [him]." Again, he said he was sorry for what he had done.

¶ 19 H. The Original Sentence and the Trial Court's Stated Rationale

¶ 20 The trial court began by stating it had "considered the information in the presentence investigation report, the evidence presented for this hearing, the recommendations of

counsel, the defendant's statement in allocution, as well as the relevant statutory factors in aggravation and mitigation." The court remarked that although defendant had "committed despicable, unspeakable acts against an innocent victim," "almost everything else in this case kind of point[ed] the other way": the court "was called upon to sentence a good person for doing a bad thing." On the one hand, defendant was "a very good person, a good father, a good provider," whose family, including his daughter, "care[d] [about him] a great deal." On the other hand, he perpetrated a heinous offense upon "the most vulnerable of victims," and for many reasons, it was the law that this offense carried "very significant penalties." Probably chief among these reasons was "deterrence individually, deterrence globally."

¶ 21 Considering, however, defendant's expressions of remorse, which the trial court believed were sincere, and considering that (after his misconduct came to light) he honestly and openly accepted responsibility and pleaded guilty, thereby sparing his daughter the pain and stress of having to testify, and considering that he was, by all indications, otherwise a good person, the court rejected the prosecutor's recommendation of 40 years' imprisonment. And yet, the court did not think the sentence should be the absolute minimum of six years' imprisonment, either, which was what defense counsel had recommended. Instead, the court sentenced defendant to imprisonment for 18 years. In arriving at that sentence, the court expressly kept in mind that defendant would be required to serve 85% of his sentence and that he already had been sentenced to 30 years' imprisonment in the Champaign County case.

¶ 22 I. The Reduction of the Sentence

¶ 23 Later, on October 14, 2016, the trial court granted a motion by defendant to reduce the sentence. The court explained that even though, by its understanding, it was supposed to disregard the sentence that defendant had received in the Champaign County case and

concentrate on the sentence that he deserved in the present case, the court was "still uncomfortable with the fact that [he had] been sentenced to essentially 48 years in prison." Given the considerable factors in mitigation, the court did not think that defendant deserved such a severe aggregate punishment. And so, the court "[felt] compelled in some ways to reduce [the] sentence in this case to try to address what [it thought was] the inequity in the total sentence." At the same time, though, the court "[felt] very constrained from a point of view of what [it thought was] just and fair in this case to do much to give [him] any relief." The court reduced the sentence in the present case to 15 years' imprisonment.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 For the Class X felony of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2002)), the minimum prison term was 6 years and the maximum was 60 years (720 ILCS 5/12-14.1(b) (West 2002); 730 ILCS 5/5-8-1(c)(3) (West 2002); 730 ILCS 5/5-5-3.2(c) (West 2002); 730 ILCS 5/5-8-2(a)(2) (West 2002)). Fifteen years' imprisonment was within that statutory range. To overturn a sentence that is within the statutory range, we have to be able to say the sentence is an abuse of discretion (*People v. Coleman*, 166 Ill. 2d 247, 258 (1995))—or, in other words, that it is a sentence with which no reasonable person (thinking reasonably) would agree (see *People v. Morgan*, 197 Ill. 2d 404, 455 (2001)). For essentially four reasons, defendant argues that the sentence is an abuse of discretion.

¶ 27 First, according to defendant, "the court failed to consider that the character and attitude of [d]efendant indicate that he is unlikely to commit another crime." On the contrary, these considerations were inherent in the trial court's remarks that defendant was "a very good

person, a good father, [and] a good provider" who was "sincere in [his] remorse" and that it was "a bewildering circumstance" that he had committed this crime.

¶ 28 Second, defendant argues the trial court "failed to give *due* consideration to [d]efendant's mental illness, his pornography addiction brought on by his exposure to pornography as a child" and that he "had been the victim of domestic violence." (Emphasis added.) But the court said it had "considered *** the evidence presented for [the sentencing hearing] hearing," and this evidence included the reports by Kleppin and Osgood. In their reports, Kleppin and Osgood discussed defendant's emotional problems and the abuse he had suffered as a child. As for whether the court gave "*due* consideration" to these matters (emphasis added), it is not our place to reweigh a mitigating factor. *People v. Pippen*, 324 Ill. App. 3d 649, 653 (2001).

¶ 29 Third, defendant says that "the court did not even explain briefly the numerous character reference letters provided from members of society who know [d]efendant and the character that he possess[es]." The trial court saw no need to "explain" them; the court took them at face value. The court accepted and believed that defendant was "a very good person." In deciding on a sentence, a trial court should take into account the defendant's "general moral character" and "habits." *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). The court explicitly did so.

¶ 30 Fourth, defendant argues that "[t]he spirit and purpose of the law as well as [his] rehabilitative potential *** exceeded the retributive purpose of the trial court imposing the lengthy sentence that it did." We disagree. The trial court had to give weight to the fact that, as a "family member as defined in [s]ection 12-12 of the Criminal Code of 1961" (See 720 ILCS 5/12-12 (West 2002)), "defendant held a position of trust." 730 ILCS 5/5-5-3.2(a)(14) (West

2002). A " '[f]amily member' is defined to include "a parent *** by *** adoption." 720 ILCS 5/12-12 (West 2002). The victim, S.B., was defendant's adopted daughter, and, as her father, he had a duty to protect her from harm, including the very type of harm that he himself inflicted upon her. By sexually assaulting her, while she was between the ages of four and six, defendant violated and abused a position of trust, a significant additional aggravating factor, which, arguably, merited a sentence that was nine years above the minimum nonextended sentence. Again, the maximum allowable sentence was imprisonment for 60 years. The mitigating factors are reflected in the fact that the 15-year prison term is so far toward the lower end of the range.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we affirm the trial court's judgment.

¶ 33 Affirmed.