2017 IL App (5th) 150563-U

NO. 5-15-0563

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Saline County.
	)	
v.	)	No. 12-CF-155
	)	
MICHAEL REYES,	)	Honorable
	)	Walden E. Morris,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not abuse its discretion in sentencing defendant to 14 years' imprisonment for criminal sexual assault.

¶ 2 Defendant, Michael Reyes, pled guilty to the offense of criminal sexual assault of a family member under the age of 18 years, and was sentenced by the circuit court of Saline County to 14 years' imprisonment and mandatory supervised release. He filed a motion to reconsider his sentence and to vacate his guilty plea, both of which the trial court denied. Defendant appeals contending that his sentence is excessive. He asserts that the length of his sentence constitutes an abuse of the trial court's discretion given his

remorse, lack of serious criminal record, strong family support, education, and potential for rehabilitation. We affirm.

¶ 3 The victim is defendant's biological daughter, although she did not learn that defendant was her father until she was 14 years old. Once she realized defendant was her father, the victim decided to contact him via Facebook. Shortly thereafter, accompanied by her mother, the victim met defendant in Marion, Illinois. She next saw defendant a few months later when she and defendant went to visit his mother in Chicago. In March, around the time of the victim's fifteenth birthday, defendant and the victim got together again, either in St. Louis or in Chicago. The victim could not remember which city, but they stayed together in a hotel room. During the evening, defendant gave the victim alcohol. The next thing the victim remembered was that she awoke briefly and found defendant on top of her. She did not know if they had had sex that night, but in the morning, she found bloody condoms in a trash can, and she had vaginal bleeding. Shortly thereafter, defendant moved in with the victim and her mother, and her mother's boyfriend. Defendant stayed with the victim in her room, sleeping in her bed with her, until her mother made defendant sleep on the couch. Defendant was forced to move out completely when mother suspected something was happening between defendant and the victim. Prior to his leaving, however, the victim testified she believed that defendant had had intercourse, both vaginally and anally, with the victim more than 10 times, at various locations both inside, and outside, the victim's home.

¶ 4 On February 26, 2014, defendant pled guilty to one count of criminal sexual assault. The plea agreement was open, with a sentencing range of 4 to 15 years'

imprisonment. After a hearing, the court sentenced defendant to 14 years' imprisonment. Defendant filed a motion to reconsider his sentence, asserting that the sentence was excessive because the factors in mitigation justified only a minimal sentence. The court denied the motion.

¶ 5 Defendant appealed the denial of his motion. This court vacated the order denying defendant's motion to reconsider sentence and remanded for further proceedings because defense counsel had failed to file a certificate in compliance with Supreme Court Rule 604(d). See *People v. Reyes*, 2015 IL App (5th) 140376-U. On remand, defendant filed a motion to withdraw his guilty plea, and to vacate the judgment. At the hearing on defendant's motion, defense counsel noted that defendant was asking for reconsideration of his sentence because it was excessive, considering the mitigating factors presented at sentencing. The court denied both the motion to withdraw guilty plea and the motion to reconsider the sentence. Defendant again appeals the denial of his motion to reconsider sentence on the grounds that his sentence is excessive, and constitutes an abuse of the court's discretion. Given that there is no reason to overturn or reduce defendant's sentence in this instance, we affirm.

¶ 6 We initially note that a sentence within the statutory range is presumed proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46, 19 N.E.3d 1070. Criminal sexual assault of a family member under the age of 18 years is a Class 1 felony (720 ILCS 5/11-1.20(a)(3) (West 2012)), carrying a sentence from 4 to 15 years' imprisonment (730 ILCS 5/5-4.5-30(a) (West 2012)). Defendant received a sentence of 14 years' imprisonment, a sentence within the acceptable statutory range. A lengthy sentence does

not mean mitigating factors were ignored. *People v. Parker*, 288 Ill. App. 3d 417, 423, 680 N.E.2d 505, 509-10 (1997). The trial court is not required to give greater weight to mitigating factors than the seriousness of an offense, nor does the presence of mitigating factors require the minimum sentence or preclude the maximum sentence. *People v. Flores*, 404 Ill. App. 3d 155, 157-58, 935 N.E.2d 1151, 1154 (2010). Provided the trial court considers mitigating factors in fashioning a defendant's sentence, we, as a reviewing court, will not substitute our judgment for that of the trial court by reweighing such factors. *People v. Jones*, 2015 IL App (1st) 142597, ¶ 40, 47 N.E.3d 324. We further note that if the sentence is appropriate given the particular facts and circumstances of the defendant's case, it may not be attacked on the ground that a lesser sentence was imposed in a similar, but unrelated case. *People v. Fern*, 189 Ill. 2d 48, 62, 723 N.E.2d 207, 214 (1999).

¶ 7 Here, the trial court outlined the evidence in mitigation, and further considered defendant's statement in allocution, as well as the presentence investigation report. The trial court considered the relevant factors in aggravation and mitigation, and the sentence imposed was within the statutorily authorized range for criminal sexual assault of a family member under the age of 18. Defendant failed to make a showing that the trial court did not consider all the relevant factors. Defendant was originally facing up to 90 years in prison for sexually assaulting his daughter. In exchange for his guilty plea, the State agreed to drop six of the charges, and limited his sentence to a maximum of 15 years. The evidence revealed that defendant was 33 years old when he sexually assaulted his 15-year-old daughter. He took advantage of her at a vulnerable time in her life. She

had just learned that defendant was her biological father, and realized that she had additional relatives, including a half-brother she had never met. While defendant gave her gifts and initially took her to new places, defendant also gave her alcohol to drink, made her wear a string bikini to go swimming, had her hide drugs for him, and then repeatedly took advantage of her sexually. Under the circumstances presented, we see no abuse of the court's discretion in sentencing defendant to 14 years' imprisonment in this instance. Such abuse is shown only when the length of the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 215, 940 N.E.2d 1062, 1067 (2010). Neither is the case here.

¶ 8 For the foregoing reasons, we affirm the judgment of the circuit court of Saline County.

¶ 9 Affirmed.