

No. 1-15-1206

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 02882
	)	
MICHELLE JOHNSON,	)	Honorable
	)	Bridget J. Hughes,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE ELLIS delivered the judgment of the court.  
Presiding Justice McBride and Justice Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant’s nine-year sentence for delivery of a controlled substance was not abuse of discretion.

¶ 2 After entering into a non-negotiated guilty plea to delivery of a controlled substance, defendant Michelle Johnson was sentenced to nine years’ imprisonment. On appeal, defendant contends that her sentence constitutes an abuse of discretion because the court (1) focused “primarily” on “inconclusive” evidence that the delivery of the drugs in question—here,

morphine—resulted in the death of the person to whom they were delivered and (2) showed “no consideration” for the evidence in mitigation. We affirm.

¶ 3

### BACKGROUND

¶ 4 Defendant was charged by indictment with drug-induced homicide and delivery of a controlled substance following the May 2013 death of John Maher. In February 2015, defendant agreed to enter into a non-negotiated guilty plea to the Cass 1 offense of delivery of more than 50 but less than 100 grams of a controlled substance. A plea conference ensued, during which time the court admonished defendant about the nature of the charges against her, the sentencing range she faced, and that by pleading guilty, she would waive her right to a jury trial, including the right to subpoena and cross-examine witnesses, present evidence, and require the State to prove her guilty beyond a reasonable doubt. The court then explained that, because defendant was entering into a non-negotiated plea, the court did “not have to go along with the sentence” that the State recommended. Rather, the court explained, it “could sentence [defendant] as [the court saw] fit.” The court then asked defendant if she still wanted to plead guilty, and defendant answered yes. The State then presented the factual basis for the plea.

¶ 5 The parties stipulated that if the case were to proceed to trial, the evidence would show that in 2013, defendant was employed by Illinois Cancer Specialists. In May 2013, defendant took liquid morphine that had been prescribed to a patient to her own home. Then, on May 24, 2013, defendant gave the liquid morphine to John Maher, her next-door neighbor. The following day, police officers responded to Maher’s home, and a death investigation commenced. The parties further stipulated that, if called, forensic scientist Garth Glassburg would testify that a bottle of liquid morphine recovered from Maher’s home tested positive for morphine in an

amount of more than 50 grams, but less than 100 grams. The parties further stipulated that Donna Kruger would testify that she was employed by Illinois Cancer Specialists, that she conducted an internal investigation into the morphine theft, and that defendant admitted to taking the morphine and giving it to Maher.

¶ 6 The trial court then asked whether Maher died as a result of taking the morphine. The State responded that it was not stipulating to that. Instead, the State planned to offer the fact of Maher's death in aggravation at sentencing. The court accepted defendant's plea, and the matter proceeded to sentencing.

¶ 7 The State argued that five years in prison was an "appropriate" sentence considering Maher's death, conversations with Maher's family, and defendant's lack of a felony criminal history. The court then asked why the State was "*nolle-ing*" count 1. The State explained that it chose to drop the drug-induced homicide charge after discussions with Maher's family. Summing up, the State clarified that it was "not an issue of proving it up," but was "what the victim's family want[ed]."

¶ 8 The defense then argued that defendant was a married mother with "minimal background" who had worked at that office "for many years without incident," and that Maher was defendant's next-door neighbor. The court then inquired as to defendant's "background," and defense counsel stated that defendant had prior driving under the influence (DUI) convictions "coupled with child endangerment" from 1998 and 2007. The court then asked whether there was "[a]ny other mitigation" that the defense wished to offer the court. Defense counsel replied that there was "no benefit" to anyone for defendant to be "incarcerated for longer

than the agreed-upon term,” and that defendant had an addiction problem and was asking for drug treatment.

¶ 9 The court then stated that in “good consci[ence]” it could not “go along” with the recommended sentence as “someone \*\*\* died as a result,” and this was a Class 1 felony offense. The court stated that it did not think that “the recommendation that the State gave you is appropriate considering all the aggravation and the fact that a person died as a result of something you participated in.” Accordingly, the trial court sentenced defendant to nine years in prison.

¶ 10 Defendant filed a motion to reduce sentence. At a March 25, 2015 court date, the trial court asked the State for its position on the motion, and the State responded that it took “no position.” The trial court asked the State to respond in writing to defendant’s motion and ordered a presentence investigation report.

¶ 11 During an April 2015 hearing, the court stated that it was “reconsidering” defendant’s sentence and that defendant’s sentencing hearing was “starting over.” The court stated that there was a “blind plea” without a conference pursuant to Supreme Court Rule 402 (eff. July 1, 2012), that the parties entered into an agreement, and that the court imposed a sentence that it thought was “appropriate.” The court then reiterated that “everybody agrees that this was a blind plea. There was no conference. There was no agreement.” Therefore, the only issue was the trial court’s “discretion” in rejecting the five-year recommendation and imposing a nine-year sentence. The court asked the State whether the State believed that the court abused its discretion.

¶ 12 The State responded that “taking a position with respect to whether this Court can sentence this defendant, or should sentence this defendant to an amount of years or term in the penitentiary other than the five years would be in opposite [*sic*] to our obligation to persist in our recommendation of five years.” When the court again asked whether the State believed that the court abused its discretion, the State declined to “take a position with respect to that issue.”

¶ 13 The court then turned to the specifics of defendant’s motion, specifically, that it was error for the trial court to consider the fact that Maher died as a result of defendant’s conduct. The defense argued that because “that count was dismissed it’s not incumbent upon the defendant to disprove that the death happened because of her.” The court responded that what was before the court was that defendant committed a crime, and one result of that crime was that Maher died. The court stated that a factor to consider in aggravation was whether a defendant’s conduct caused or threatened physical harm. The court asked the State whether it thought it was improper for the court to consider that a death occurred as a result of defendant’s conduct, and the State replied that it had considered “that” in its sentence recommendation. After hearing additional arguments on the issue of causation, the trial court continued the sentencing hearing so that a medical examiner could testify. The trial court stated that, because defendant alleged that the court improperly considered the fact that Maher died as a result of defendant’s actions when “the State did not prove that,” the court needed to know if it had abused its discretion in considering that fact.

¶ 14 At the next court date, defendant’s disabled 64-year old father, Steven Stietzel, testified that defendant was a “good girl” who helped him and his 75-year old wife, and that defendant’s daughter missed defendant. Defendant’s 14-year old daughter testified that defendant was an

“amazing woman” who had “been through hell” and who let Maher “into her home and he became our family.” The defense then rested. The court then told defense counsel that counsel had more witnesses because counsel told the court “that this morphine that was supplied by the defendant[,] that was delivered by the defendant to the victim, that it did not cause his death; that his death was as a result of alcohol consumption.” The court further stated that because counsel had “raised the issue,” counsel had to answer it, that is, counsel was wrong or “the State will bring in a stipulation, or you’re going to put a witness on.” After a recess, the defense again rested. The trial court then stated that it wanted to hear the State’s evidence in aggravation, and “what the cause of death of the victim was because it has been raised \*\*\* that the cause of death was not as a result of morphine ingestion.”

¶ 15 The State then called Deputy Chief Toxicologist Peter Koin of the Cook County Medical Examiner’s Office. In May 2013, certain samples taken during Maher’s autopsy were tested. These samples tested positive for morphine, ethanol, and the anti-depressant citalopram. Maher’s blood alcohol level was .256 and the concentration of morphine was 233 nanograms per milliliter in his “peripheral” blood. Although the test for 6-monoacetylmorphine, a heroin-marker, was negative, that did not mean that there was not heroin in the body at the time of death.

¶ 16 Assistant Medical Examiner Steven White performed an autopsy on Maher on May 26, 2013. He did not see any injection sites or injection puncture wounds, but did observe a “fatty liver.” A fatty liver can indicate alcohol or drug use. White opined that the level of ethanol in Maher’s blood was not lethal, whereas the level of morphine was. He concluded that Maher’s “cause of death was due to morphine and ethanol intoxication.”

¶ 17 Officer Hunter testified that he checked Maher's room and found Maher to be deceased. He observed injection bruises on Maher's right forearm and left ankle. He also recovered defendant's prescriptions for trazodone and citalopram, and observed literature for substance abuse support programs. During cross-examination, Hunter testified that he did not have medical training to determine whether a mark was caused by an injection.

¶ 18 The defense argued in mitigation that there were two issues. First, the issue of reasonable doubt as to cause of death—that is, was it morphine, alcohol, heroin or something else? The defense noted that the literature in Maher's room suggested “a long battle with addiction.” Second, in mitigation, the defense argued that defendant and Maher were “good friends” and that defendant “never meant to hurt him.” Moreover, a nine-year prison sentence was a long time considering the impact on defendant's daughter and parents. The State responded that it “persist[ed]” in its recommendation of five years in prison.

¶ 19 The court then reminded the parties that this was “a new sentencing hearing.” The court noted that the State “out and out” dismissed the charge of drug-induced homicide and amended the charge to which defendant entered a plea of guilty, delivery of a controlled substance, so that defendant would receive day-for-day credit. The court further noted that defendant was “getting a substantial amount of credit due to the electronic monitoring.” The court then stated that after hearing the testimony of the witnesses, the court had “credible evidence” that Maher died as a result of morphine and that he ingested the morphine that was delivered by defendant. The court then stated that defendant took morphine from Illinois Cancer Centers that belonged to a patient and gave it to Maher.

¶ 20 The court indicated that it had considered “every factor in mitigation” and that one factor was “the excessive hardship [that] defendant’s imprisonment would cause to her daughter.” The court “absolutely” considered that, and that was one the reasons that the court was not imposing a maximum sentence of 15 years. The court noted that defendant had some “minor” criminal background. The court finally stated that when it sentenced someone, it had to look at “the degree of harm;” the severity of the sentence depended on the degree of harm caused to the victim and may be considered as an aggravating factor when determining the length of a particular defendant’s sentence. The court did “not believe that the State’s recommendation of 5 years is an appropriate sentence based upon the degree of harm” caused to Maher. Therefore, the court sentenced defendant to nine years in prison. Defendant filed a motion to reconsider sentence, which the trial court denied. Defendant now appeals.

¶ 21 On appeal, defendant contends that the trial court abused its discretion when it sentenced her to nine years in prison.

¶ 22 A reviewing court will not alter a defendant's sentence absent an abuse of discretion by the trial court. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). This broad discretion means that we cannot substitute our judgment simply because we may have weighed the sentencing factors differently. *Id.* at 212-13. A trial court abuses its discretion in determining a sentence where the sentence is greatly at variance with the spirit and purpose of the law, or if it is manifestly disproportionate to the nature of the offense. *Id.* at 212.

¶ 23 When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including a defendant’s age, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and



the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). The trial court does not need to expressly outline its reasoning when crafting a sentence, and we presume that the court considered all mitigating factors absent some affirmative indication to the contrary other than the sentence itself. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55; *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 51. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Id.*

¶ 24 Here, defendant entered a non-negotiated plea to the Class 1 offense of delivery of a controlled substance and was subject to a prison sentence of between 4 to 15 years in prison. See 730 ILCS 5/5-4.5-30(a) (West 2012). The record reveals that at the sentencing hearing, the parties presented evidence in aggravation and mitigation, including the testimony of defendant's family members, defendant's criminal background, and the medical examiner's conclusion that Maher's "cause of death was due to morphine and ethanol intoxication." When imposing sentence, the trial court stated that it had considered "every factor in mitigation," including "the excessive hardship" that defendant's imprisonment would cause to her daughter, as well as defendant's minor criminal background and the degree of harm caused to the victim. The court concluded that it did "not believe that the State's recommendation of 5 years is an appropriate sentence based upon the degree of harm" caused to the victim and therefore sentenced defendant to nine years in prison. Based on our review of the record, we cannot say that a prison term of nine years was an abuse of discretion. See *People v. Snyder*, 2011 IL 111382, ¶ 36.

¶ 25 Defendant contends that the trial court’s sentencing determination was “primarily” focused on the harm done to Maher, failed to justify why it deviated from the State’s recommended five-year sentence and did not “take adequate account” of the impact of defendant’s incarceration on her daughter. Insofar as defendant is arguing that the trial court exhibited a “single-minded focus” on Maher’s death, to “the expense of all other evidence,” we cannot agree. The trial court may properly consider the nature and circumstances of the offense (see *Raymond*, 404 Ill. App. 3d at 1069), and the degree of harm to the victim (see *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009)) when imposing sentence. In fact, the severity of the sentence depends upon the degree of harm inflicted on the victim and, as such, may be considered as an aggravating factor in imposing the sentence. See *People v. Saldivar*, 113 Ill. 2d 256, 269 (1986). Here, the court noted on the record that it had heard “credible evidence” that Maher’s death was caused by morphine and that he ingested the morphine that was delivered by defendant. The court also noted that at the plea hearing, the parties stipulated that defendant took morphine from her place of employment and gave it to Maher.

¶ 26 Defendant responds that there was “no evidence” that Maher actually ingested the morphine that defendant delivered to him. Defendant further argues although the medical professionals testified at sentencing that Maher had morphine in his body, “the source of the morphine was not established.” A trial court has “ ‘wide discretion in the sources and types of evidence’ ” that it may consider at sentencing. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 92 (quoting *People v. Foster*, 119 Ill. 2d 69, 96 (1987)). To be admitted at sentencing, evidence must be reliable and relevant. *Id.* “ ‘The source and type of admissible information is virtually

without limits.’ ” *Id.* (quoting *People v. Sims*, 403 Ill. App. 3d 9, 23 (2010)). Additionally, the trial court may “make reasonable inferences from the evidence when sentencing a defendant.” *Id.*

¶ 27 We cannot find that the trial court abused its discretion during sentencing when it made a reasonable inference that the morphine delivered to Maher by defendant caused his death. At the plea hearing, the parties stipulated that defendant delivered morphine to Maher, and that the following day police officers responded to Maher’s home and a death investigation commenced. Moreover, at the sentencing hearing, assistant Medical Examiner White testified that Maher had a lethal level of morphine in his blood. The trial court therefore made the reasonable inference that the morphine defendant delivered to Maher caused his death. *Robinson*, 2015 IL App (1st) 130837, ¶ 92.

¶ 28 Defendant further contends that the trial court failed give any justification for imposing a nine-year sentence, rather than the five-year sentence recommended by the State, and concludes that the trial court’s only motivation was “retribution.” Although a trial court does not need to expressly outline its reasoning when crafting a sentence (*Jones*, 2014 IL App (1st) 120927, ¶ 55), here, the trial court actually explained why it deviated from the State’s recommended sentence. The trial court stated that it did not believe that the State’s recommendation of five years in prison was “appropriate” considering the “harm” caused to Maher. See *People v. Evans*, 174 Ill. 2d 320, 332 (1996) (“Following a defendant’s open guilty plea, the trial court exercises its discretion and determines the sentence to be imposed.”).

¶ 29 Defendant finally contends that the trial court failed to adequately consider the impact of defendant’s incarceration upon her daughter. Defendant argues that the trial court must not have considered her daughter’s testimony, because it imposed the same sentence before and after

defendant's daughter's testimony. As we previously noted, it is presumed that the court properly considered the mitigating factors presented, and it is the defendant's burden to show otherwise. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). Here, defendant cannot meet that burden, as the trial court specifically stated that it considered, in mitigation, the impact that defendant's incarceration would have upon her daughter and that the court was not imposing the maximum sentence in consideration of that impact. The trial court does not abuse its discretion merely because it gives the evidence presented in mitigation a different weight than a defendant would prefer. See *Jones*, 2014 IL App (1st) 120927, ¶ 55 (the presence of factors in mitigation neither requires a minimum sentence nor precludes a maximum sentence).

¶ 30 Sentencing is the trial court's domain. The mere fact that a prosecutor recommended a more lenient sentence cannot serve as the end-all, be-all, lest we impermissibly delegate that function to prosecutors. Some judges may have accepted the State's recommendation. This one did not and stated her reasons why. Then the court went out of its way to give defendant a second opportunity to address the issue of cause of death to disabuse the court of its belief that morphine caused the decedent's death. Ultimately, the sentence was higher than the recommendation but still well within the permissible range.

¶ 31 Whatever we may have done were we sitting in the trial judge's shoes, we cannot find the court's sentence an abuse of discretion. *Alexander*, 239 Ill. 2d at 212-13 (reviewing court must not substitute its judgment for that of trial court simply because it would have weighed aggravating and mitigating factors differently). We affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.