

2018 IL App (1st) 151416-U
No. 1-15-1416
Order filed January 26, 2018

Fifth Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 2243
)	
ARMANDO VEGA,)	Honorable
)	Sharon M. Sullivan,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant did not receive an excessive sentence where the trial court considered all factors in aggravation and mitigation, was aware of the proper sentencing range, and reviewed defendant's criminal history.

¶ 2 Following a bench trial, defendant was found guilty of two counts of attempted first degree murder (720 ILCS 5/8-4(a) (West 2010); (720 ILCS 5/9-1(a)(1) (West 2010)), four counts of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010)), six counts of aggravated battery (720 ILCS 4/12-3.05 (a)(1) (West 2010)), and two counts of domestic battery (720 ILCS

5/12-3.2(a)(1) (West 2010)) for stabbing his brother, Raymundo Garcia, and his roommate, Mauricio Sanchez. The court merged the counts and sentenced defendant to consecutive terms of 13 years in prison for the attempted murder of Garcia and 7 years for the attempted murder of Sanchez. On appeal, defendant contends that his sentence is excessive. We affirm.

¶ 3 Defendant does not challenge the sufficiency of the evidence to sustain his conviction, so we do not discuss in detail the evidence presented at trial.

¶ 4 Prior to trial, the court ordered an examination be performed to determine whether defendant was fit to stand trial. The examination determined that defendant was fit to stand trial, sane at the time of the offense, and able to understand his *Miranda* rights. Throughout trial and sentencing, the court repeatedly asked defense counsel if she had any concerns regarding defendant's mental state and fitness to stand trial; counsel did not.

¶ 5 At trial, Sanchez testified that, when he returned to the apartment that he and defendant shared on December 31, 2011, defendant opened the door for him. Sanchez walked in the door and "felt a blow in the back." Sanchez was hit three times and asked defendant "What is happening? Why you hitting me?" He did not know he had been stabbed. Defendant grabbed Sanchez by the throat, displayed a knife, and said "I am going to kill you." Sanchez was stabbed four times before he was able to escape into the street.

¶ 6 Manuel Idrovo, defendant's upstairs neighbor, testified that, on December 31, 2011, he heard a commotion and screams for help. He went downstairs to find defendant's roommate, Sanchez, on the street screaming for help. Sanchez told Idrovo that defendant had gone crazy and was "trying to kill him." Idrovo went to get Garcia, defendant's brother who lived on the first floor of the building. He informed Garcia that "there was problems in the first apartment with

Mauricio and his brother.” Idrovo went to his apartment but later returned to the first floor to find defendant stabbing Garcia “more than a dozen times.” Idrovo successfully fought with defendant to get the knife then ran to his apartment, dropped the knife off, and returned downstairs. There, he saw defendant with a new knife, holding Garcia by his neck, and stabbing him again. Idrovo yelled at defendant, who then said “Mother***, now I’m going to kill you” and chased Idrovo upstairs. Idrovo was able to get to his apartment and lock defendant out.

¶ 7 Garcia testified that when he went to check on his brother after hearing from Idrovo, he saw defendant outside the building with a knife in his hand. He asked defendant “what was happening,” and defendant charged towards him saying “You are my brother but I am going to kill you.” Defendant then stabbed him in the abdomen and back. Idrovo came back downstairs and was able to take the knife from defendant and returned to his apartment. Defendant then went back to his apartment, grabbed a new knife, and continued his attack on Garcia. As a result of the stabbing, Garcia was hospitalized for nine days. He has to wear a belt around his abdomen to protect the bulge caused by the stab wounds. He suffered a collapsed lung and has trouble breathing as a result of the attack, and has a scar from the middle of his chest to his navel.

¶ 8 Officer Mark Bosch arrived at the scene after receiving a radio transmission of a person stabbed. Bosch and several other officers entered the apartment building and noticed blood on the wall and doors. They approached a locked door and an officer kicked it open. Bosch entered the apartment with his gun drawn and encountered defendant seated on his couch. As Bosch entered the apartment, defendant stood up, held a knife over his head, and stated “Kill me. Kill me.” Bosch told defendant to drop the knife, which he eventually did. After observing blood on defendant and several injuries, defendant was transferred to a hospital.

¶ 9 Officer George Chevere testified that he was called in to be an interpreter on defendant's case on January 1, 2012. Defendant had been discharged from the hospital and was in custody at the 16th District police station. Chevere read defendant his *Miranda* rights in Spanish and defendant indicated he understood his rights and wanted to make a statement. He said his brother gave him soup and he felt his brother put something in the soup because he "got a little crazy for a moment." Defendant said Sanchez was playing with him, and then defendant picked up a knife and stabbed Sanchez in the stomach and leg. The knife got bent, so he went to the kitchen and got another knife. Defendant stated that he then met his brother, who saw him crying and asked him "what was wrong?" Defendant then stabbed his brother two or three times in the stomach and in the back. Defendant stated that he wanted to kill his brother and Sanchez. The police then arrived with their guns out. The knife was still in his hand. He told the police "kill me, shoot me."

¶ 10 Defendant testified through a translator that he was told he had epilepsy three to four years prior to this incident. He had suffered approximately 15 to 20 seizures before December 31, 2011. Defendant stated his brother brought over soup at 7:00 p.m. that evening. Defendant fell asleep, and the next thing he remembered was waking up at the hospital. He was told that the police took him to the hospital. Defendant testified that he did not remember having a confrontation with Sanchez or Garcia, nor did he remember stabbing anyone. He remembered having the soup, going to sleep, and waking up at the hospital. He claimed he had an "attack" after falling asleep that caused him to stab people. Defendant acknowledged telling detectives that his brother gave him soup that night but denied telling them he wanted to kill Garcia and

Sanchez. He stated he did not remember telling them he got the knives, stabbed Garcia and Sanchez, and wanted to kill them.

¶ 11 The trial court found that the State proved beyond a reasonable doubt that defendant was guilty of all counts. It merged the counts into the two attempted murder counts and proceeded to sentencing.

¶ 12 The pre-sentence investigation report (“PSI”) indicated that defendant had a conviction for domestic battery from 2010 that resulted in an 8 month conditional discharge, and a violation of an order of protection from 2010 in which he was given probation that was terminated unsatisfactorily. It reported he was 62 years old at the time of sentencing, he had worked at the same company from 1978 to 2006 until he lost his job and began receiving disability assistance because of his epilepsy.

¶ 13 In aggravation, the State read to the court a victim impact statement from Sanchez in which he described how the incident has changed his life. He explained that “when [he] hear[s] a sound...[he] become[s] frightened and turn[s] around as if someone [is] following him.” He explained that he is extremely nervous, has difficulty sleeping, and now lives with “constant insecurity, with fear, with trauma, and it is so hard to face society while unable to trust anyone.” Sanchez asked the court to not set defendant free as defendant “may kill someone, a child, a teen, or an adult, at any moment.”

¶ 14 The State argued in aggravation that defendant “clearly had an intent to kill” because he stabbed two people and, when a neighbor intervened and took the first knife from him, he went to the kitchen for a second knife, and continued to stab his brother. The State further argued that defendant did not take responsibility for his actions and blamed them on his epilepsy, which the

State believed to be “preposterous.” Finally, the State pointed out that this case had two victims that were severely injured, and asked for consecutive sentencing, with a combined minimum of 25 years’ imprisonment.

¶ 15 In mitigation, defense counsel argued that defendant was 62 years old with no recollection of the evening in question. Defense counsel stated that, while in custody, defendant had six or seven documented seizures since January 2012, suffered from hypertension that was controlled by medication, and twice was beaten by cellmates. His physical condition had deteriorated since being in custody and he was on six different medications. Counsel argued what defendant described on the stand was him coming either in or out of a seizure and defendant did not remember how he felt and what happened. His statement that essentially the soup made him go after Garcia and Sanchez showed he was not thinking clearly. Defense counsel cautioned the court “whatever you do is quite frankly a life sentence with regards to [defendant].” Defense counsel asked for the minimum 12 year sentence, calling it “a significant sentence.”

¶ 16 The trial court sentenced defendant to 13 years imprisonment for the attempted murder of Garcia and 7 years for the attempted murder of Sanchez. The court found severe bodily injury to Garcia and, therefore, the sentences would run consecutively for a total of 20 years, with 3 years mandatory supervised release. The court acknowledged this was “a pretty unusual case” and that defendant was 62 years old and had worked for many years. The court stated the violence involved in the stabbings suggested “defendant is very dangerous, a dangerous person who attacked his roommate and then his brother and attacked them repeatedly.” The court stated it had considered all of the matters brought to its attention. It had reviewed the PSI and considered

defendant's background and matters brought forth in aggravation and mitigation. Defendant filed a motion to reconsider the sentence, which the court denied.

¶ 17 On appeal, defendant contends that his 20-year sentence is excessive because he was 61 years old at the time of sentencing, had a well-documented history of epilepsy, among other medical conditions, had no prior felony convictions, and was not in his right mind at the time of the offense, which provided substantial grounds tending to excuse his conduct. Defendant requests that this court reduce his sentence or, in the alternative, remand for sentencing.

¶ 18 The trial court has broad discretion in imposing an appropriate sentence, and a sentence falling within the statutory range will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, 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 is not required to explain the value it assigned to each factor in mitigation and aggravation; rather, it is presumed the trial 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).

¶ 19 We find the trial court did not abuse its discretion in imposing a 20-year sentence. Attempt murder is a Class X felony with a sentencing range of 6 to 30 years. 720 ILCS 5/8-

4(c)(1) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). Because defendant was charged with two counts of attempt murder, and the trial court ruled he was subject to consecutive sentences because it found severe bodily injury (730 ILCS 5/5-8-4 (d)(1) (West 2010)), his sentencing range was 12 to 60 years in prison. The 20-year total sentence falls within this statutory range and we therefore presume it is proper. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12.

¶ 20 Nevertheless, defendant argues the court's 20-year sentence was excessive and constitutes an abuse of discretion because it failed to seriously consider his advanced age, poor health, lack of prior felony convictions, and substantial grounds tending to excuse his conduct. The record shows the trial court did consider all these mitigating factors. It specifically stated that it considered all arguments put forth by counsel, matters raised in aggravation and in mitigation, the information contained in the PSI, defendant's background, history, and many pages of medical records and mentioned defendant's age and long work history. Further, defense counsel argued these same factors in mitigation. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004) (where mitigating evidence is presented to the trial court, it is presumed that the court considered it).

¶ 21 Defendant acknowledges the court was made aware of the mitigating evidence but asserts the record shows the court did not act on these factors in imposing sentence. However, defendant makes no affirmative showing that the court failed to adequately consider the mitigating evidence.

¶ 22 Based on the circumstances of the crimes, defendant's repeated stabbing of his brother and roommate, the court found defendant to be a "very dangerous" person, which it determined warranted a combined 20-year sentence even after consideration of the mitigating evidence and

arguments. The seriousness of the crime is considered the most important factor a court considers. *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 52. The seriousness of these violent offenses could have resulted in a 60-year consecutive sentence. We do not find the trial court abused its discretion in sentencing defendant to a 20-year combined sentence for these crimes.

¶ 23 For the foregoing reasons, we affirm the decision of the trial court.

¶ 24 Affirmed.