2018 IL App (1st) 152025-U

No. 1-15-2025

SIXTH DIVISION
JUNE 1, 2018

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 18131
	)	
RICHARD SOWARD,	)	Honorable
	)	Mary Colleen Roberts,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 50-year aggregate sentence for attempted first degree murder is affirmed.

¶ 2 Following a 2010 jury trial, defendant was convicted of attempted first degree murder (720 ILCS 5/8-4 (a) (West 2008)); 720 ILCS 5/9-1(a)(1) (West 2008)), and aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)) and was sentenced to 20 years' imprisonment for attempted murder and a consecutive term of 30 years' imprisonment for

aggravated battery with a firearm. On direct appeal, this court affirmed defendant's convictions, but vacated his sentences and remanded the case for resentencing with instructions for the trial court to clarify its sentence in consideration of one-act, one-crime principles and the applicable sentencing range. See *People v. Soward*, 2014 IL App (1st) 120214-U, ¶¶ 51-52.[1] On remand, the trial court sentenced defendant to an aggregate sentence of 50 years' imprisonment, which consisted of a 20-year sentence for attempted murder and a 30-year sentencing enhancement based on defendant's personal discharge of a firearm that caused great bodily harm to another person. See 720 ILCS 5/8-4(c)(1)(D) (West 2008). Defendant appeals, contending that his 50-year aggregate sentence is excessive. For the reasons set forth herein, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 Because we fully set forth the facts on direct appeal, we recount them here only to the extent necessary to resolve the issues raised on appeal. See *Soward*, 2014 IL App (1st) 120214-U, ¶¶ 3-19. The evidence at trial showed that, on June 6, 2008, defendant shot Priest Arnold three times in the back after Arnold attempted to wrestle a gun away from defendant and retreat from the conflict. While Arnold was lying on the ground, paralyzed from a bullet that struck his spine, defendant once again pointed the firearm at him. Arnold testified that he heard a "little click" but was not shot again. He testified that, as a result of the shooting, he is now confined to a wheelchair and spends most of his day lying in bed at home. The jury found defendant guilty of attempted first degree murder and aggravated battery with a firearm. The jury also found that,

[1] On March 20, 2015, while awaiting resentencing, defendant filed a postconviction petition alleging that his trial counsel was ineffective for: (1) allowing two years to elapse before making a demand for a speedy trial; (2) failing to request a fitness hearing; and (3) failing to file a timely notice of appeal following sentencing. On May 28, 2015, the trial court summarily dismissed the petition. Defendant did not appeal the dismissal.

during the commission of the offense of attempted first degree murder, defendant personally discharged a firearm that proximately caused great bodily harm to another person.

¶ 5 At sentencing, the State read Arnold's victim impact statement into the record. In the statement, Arnold detailed his year-long stay in the hospital following the shooting, and explained how the pain from his injuries made it difficult to move about and provide for his family. The State also entered into evidence defendant's certified convictions: 2006 conviction for possession of a controlled substance; 2004 conviction for possession of a stolen motor vehicle; 2001 conviction for aggravated unlawful use of a weapon; and 1998 conviction for delivery of a controlled substance. The State requested a "significant sentence" for shooting Arnold and "taking away his ability to walk and enjoy life with his family."

¶ 6 In mitigation, defense counsel read a letter from defendant's nephew into the record and argued that defendant's incarceration was a hardship for his family, which included his 11 and 12-year-old sons. Counsel argued that defendant had a "rough childhood" because he suffered from a learning disability and was raised in an abusive environment. She argued that defendant had been employed as a janitor at a barber shop before the shooting and that he had struggled with alcohol abuse and mental health issues, which led to multiple suicide attempts. At the time of sentencing, defendant was being housed in the medical wing of the jail and was taking multiple psychotropic medications. Counsel requested the minimum 31-year sentence. In allocution, defendant addressed his family and told them that he loved them very much.

¶ 7 The trial court sentenced defendant to 50 years' imprisonment, which included a 20-year sentence for attempted murder, and a 30-year sentence for aggravated battery with a firearm. As the parties attempted to clarify the court's sentence, the following exchange took place:

> "[ASSISTANT STATE'S ATTORNEY]: [J]ust so I'm clear, its 20 years on attempt murder, 30 years for the previously charged aggravated battery with a firearm, which I believe will merge into the attempt murder.
>
> THE COURT: Sorry. The personally discharging firearm and firearm aggravated merged, so that's 30 years.
>
> ***
>
> THE COURT: And 20 on the attempt first degree murder. Is that clear?
>
> [DEFENSE COUNSEL]: 20 on the attempt first degree murder with a 30 year enhancement?
>
> THE COURT: Correct, so it's 50 total."

Defendant's mittimus reflected that he had received a 20-year sentence for attempted murder and a consecutive 30-year sentence for aggravated battery with a firearm.

¶ 8 On direct appeal, this court affirmed defendant's convictions over his contentions that: (1) the trial court violated his rights to a fair trial and to confront witnesses against him; (2) trial counsel rendered ineffective assistance. *Soward*, 2014 IL App (1st) 120214-U, ¶¶ 22-45. However, we vacated his sentences and remanded the case for resentencing, with instructions that the trial court clarify its sentence "in consideration of the one-act, one-crime rule and the applicable sentencing range." *Soward*, 2014 IL App (1st) 120214-U, ¶ 52.

¶ 9 On remand, the trial court resentenced defendant to 20 years' imprisonment for attempted murder and an additional 30-year enhancement for the jury's finding that defendant personally

discharged a firearm and caused great bodily harm to another person. The court issued a *nunc pro tunc* sentencing order, and denied defendant's motion to reconsider sentence. This appeal followed.

¶ 10 ANALYSIS

¶ 11 We note that we have jurisdiction to review this matter, as defendant filed a timely notice of appeal following the denial of his motion to reconsider sentence. Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); Ill. S. Ct. R. 606 (eff. Dec. 11, 2011).

¶ 12 Defendant does not dispute that his 50-year sentence is within that applicable sentencing range. Rather, he argues that his 50-year sentence is excessive because the trial court failed to accord sufficient weight to his "troubled family background, lack of prior violent offenses, and rehabilitative potential" where his sentence constitutes a *de facto* life sentence.

¶ 13 The Illinois Constitution requires that a trial court impose a sentence that reflects both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. In reaching this balance, a trial court must consider a number of aggravating and mitigating factors, as well as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). Although the trial court's consideration of mitigating factors is required, it has no obligation to recite each factor and the weight it is given. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. Absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 14 Ultimately, because a trial court is in the superior position to weigh these factors, its sentencing decision is entitled to great deference and we review a sentence within statutory limits for an abuse of discretion. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20; *Alexander*, 239 Ill. 2d at 212-13. In reviewing a defendant's sentence, this court will not reweigh these factors and substitute its judgment for that of the trial court merely because we would have weighed these factors differently. *Busse*, 2016 IL App (1st) 142941, ¶ 20. When a sentence falls within the statutory range, it is presumed to be proper, and "will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.' " *People v. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 15 As noted above, we presume that the trial court considered all factors in mitigation. See *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. "To rebut this presumption, a defendant must make an affirmative showing that [the] sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Defendant has failed to make such a showing, as the record reveals that the court was in receipt of this information when it made its sentencing determination. The details of defendant's difficult childhood and the nature of his prior convictions were contained in his PSI report and were argued by counsel in mitigation. As the record reflects that the court was in receipt of this information at sentencing, defendant is essentially asking us to reweigh the sentencing factors and substitute our judgment for that of the trial court. This we cannot do. See *Busse*, 2016 IL App (1st) 142941, ¶ 20 (a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently).

¶ 16 Defendant further argues that, based on the average life expectancy of African-American males, his sentence is tantamount to a life sentence and does not recognize any potential for rehabilitation. However, a sentencing court is not required to award a defendant's rehabilitative potential greater weight than the seriousness of the offense. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 17. This court has stated that "[i]n fashioning the appropriate sentence, the most important factor to consider is the seriousness of the crime." *Busse*, 2016 IL App (1st) 142941, ¶ 28. Here, the seriousness of defendant's offense cannot be understated. Arnold testified that defendant shot him three times as he attempted to run away from him, and that defendant attempted to shoot him again as he lay on the ground, paralyzed from a bullet which struck his spine. The shooting left Arnold confined to a wheelchair, and he testified that he spends most of his day in lying in bed at home.

¶ 17 Moreover, although defendant's sentence guarantees that defendant will not be released from prison until he is nearly 74 years old, the legislature explicitly allowed for the instant enhancement to take the form of a natural life sentence. See 720 ILCS 5/8-4(c)(1)(D) (West 2008) ("an attempt to commit first degree murder during which the person personally discharged a firearm that proximately caused great bodily harm *** to another person is a Class X felony for which 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court"). Thus, we cannot say that defendant's sentence is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. See *People v. Horta*, 2016 IL App (2d) 140714, ¶ 50 (noting that, where the legislature has authorized a natural life sentence for an offense, a sentence that was "tantamount to a life sentence" was not greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the

offense). Accordingly, we find that the trial court did not abuse its discretion by sentencing defendant to a 50-year aggregate sentence for attempted murder during which he personally discharged a firearm and caused great bodily harm to another person.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.