2018 IL App (1st) 152880-U

No. 1-15-2880

Order filed August 10, 2018

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 6550
	)	
CHRISTIAN GONZALEZ,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant, who was 17 years old at the time of the offense, to 33 years in prison for first degree murder when it specifically considered his youth at sentencing; defendant points to nothing in the record, other than the sentence itself, as support of his contention that the trial court did not "adequately" consider his youth at sentencing.

¶ 2 Following a jury trial, defendant Christian Gonzalez was found guilty of first degree murder (720 ILCS 5/9-1(A)(1) (West 2012)), and sentenced to 33 years in prison. On appeal,

defendant contends that his sentence is excessive in light of certain mitigating evidence including his youth and history of mental health issues.[1] We affirm.

¶ 3 Defendant's arrest and prosecution arose from a March 1, 2012, incident during which his high school classmate Chris Wormley was fatally stabbed, and another classmate, Kevin Hernandez, suffered a wound to the back of the head. Defendant, who was 17 years old at the time of the offense, was subsequently charged by indictment with first degree murder, attempted first degree murder, and aggravated battery.

¶ 4 At a June 2014 court hearing, defense counsel told the trial court that his investigator was looking for "several" witnesses, and that the defense anticipated the introduction of evidence pursuant to *People v Lynch*, 104 Ill. 2d 194 (1984), and the presentation of a self-defense theory at trial.

¶ 5 At a subsequent hearing, defense counsel sought to admit evidence of several incidents between the victim and defendant. Specifically, on October 13, 2011, social worker Jennifer Klesman observed as the victim and another student picked up a student and dropped that student on his head. Klesman intervened when the victim put his hands on defendant. On February 1, 2012, teacher Ruth Melindez heard the victim say that he was going to kick defendant's ass, go through defendant's pockets and take defendant's "stuff." During another February incident, approximately a week before the stabbing, the victim teased defendant and said he was going to

[1] In his opening brief defendant also contended that he was entitled to resentencing pursuant to the retroactive application of Pub. Act 99-69, § 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105), which requires the consideration of additional factors in mitigation when sentencing minors. In his reply brief, however, defendant recognized that this argument is foreclosed in light of *People v. Hunter*, 2017 IL 121306 ¶ 48 (determining that section 5-4.5-105 of the Unified Code of Corrections does not apply retroactively), and, therefore, withdrew that argument.

"get" defendant. There were two other incidents in February during which the victim used profanity toward Melindez when defendant was not present.

¶ 6 The court ruled that the October 13 and February 1 incidents could be admitted into evidence. The court reserved a ruling on the teasing incident and requested more information. The court denied the defense's motion as to the two incidents where defendant was not present. The matter proceeded to a jury trial solely on the charge of first degree murder.

¶ 7 Toi Williams testified that in March 2012, she was a team leader at a "therapeutic day school" serving high-school aged students with, *inter alia*, emotional behavioral disorders, learning disabilities and traumatic brain injuries. On the morning of March 1, 2012, the victim, defendant and Kevin Hernandez were standing in line with other students when defendant walked up behind the victim and "hit him with what appeared to be a punch." When defendant's arm came back, Williams saw a silver object with a "point." She observed four or five "punches." The victim put his hand to his neck and when he removed it, "blood shot all over the place." Hernandez was also injured.

¶ 8 Kevin Hernandez testified that he and the victim were in line for a security "pat-down" when he felt a "hit" to the back of the head. He grabbed his head, turned and saw the victim bleeding a "[m]assive amount" from the neck. He heard defendant yelling in the victim's direction "you want to keep talking sh**." Hernandez observed that defendant was wearing black gloves and was holding a "pointy" object with "a reflective service" in his hand. Hernandez later went to a hospital where he was placed in the intensive care unit and received 13 staples to the back of the head.

¶ 9 Deondre King, another student, testified that she observed defendant move like he was "[t]hrowing a punch" at the victim. At this point, King observed blood coming from the victim's neck "like a water fountain." She heard defendant say something, but could not "make it out." King also observed Hernandez "get cut" on the head "in the back swing." Although she observed blood on defendant's hands, she did not see gloves.

¶ 10 Chicago police officer Jamie Bravo testified that he responded to a call of a stabbing at a school and was directed to a male student who was bleeding "profusely" from the neck. After requesting medical assistance, he went to an adjoining room where defendant and the school principal were located. At this time, defendant was washing his hands. Bravo took defendant into custody.

¶ 11 Chicago police officer Theresa Almanza testified that during her search of a conference room, she observed blood on the corner trim of a "black television cart." When she examined the cart further, she observed a "folded hand knife" with a black handle. There appeared to be blood on the handle. During cross-examination, Almanza testified that another officer told her that defendant had "washed up" in that room.

¶ 12 The parties stipulated that Deputy Medical Examiner Dawn Holmes would testify that she performed the victim's autopsy, that she observed stab wounds to the scalp, neck and upper back, and that the victim's cause of death was multiple stab wounds.

¶ 13 After the State rested, the defense made an oral "Motion for Directed Finding" which the trial court denied. The defense rested without presenting any witnesses.

¶ 14 During the jury instruction conference, the defense requested that the jury be instructed on second degree murder based upon an unreasonable belief in self-defense. The trial court

denied the request as the testimony at trial was that there was no verbal altercation nor any type of physical altercation prior to defendant coming "up from behind the victim" and swinging. The court noted that the witnesses were "consistent" that "the victim did nothing to bring this attack upon him." The jury ultimately found defendant guilty of first degree murder, and the matter proceeded to sentencing.

¶ 15 At sentencing, Charmayne Prince, the victim's mother, read her victim impact statement which stated that following the victim's death, Prince had anxiety attacks, was emotionally drained, and missed the victim. Carleasa Wormley, the victim's older sister, then read her victim impact statement indicating that her "world shattered" with the victim's death. The victim impact statements of the victim's brothers, Davier and Charles, were also presented to the court.

¶ 16 The defense then presented defendant's mother, Valentena Colon, who testified that the instant offense occurred when defendant was 17 years old and that defendant's father did not live with the family during defendant's childhood. At the age of four, defendant was diagnosed with attention deficit hyperactivity disorder (ADHD), and bipolar disorder. Defendant was under the care of a physician and took medication for his conditions. Colon apologized to the victim's family.

¶ 17 The State argued in aggravation that defendant stabbed the victim, who was doing "nothing," multiple times in a crowd of students, and that Hernandez was also injured. The defense replied that defendant suffered from ADHD and bipolar disorder, and was receiving psychiatric treatment at the time of the victim's death. The defense also noted that the victim had previously been "aggressive" toward defendant, had threatened to beat defendant up, and that the school had placed defendant and the victim in separate classes. The defense further argued in

mitigation that defendant had mental issues and that his young mind was not fully developed. The defense then reiterated that at the time of the offense, defendant was 17 years old and suffered from ADHD and bipolar disorder. Defendant stated that he was sorry for what happened.

¶ 18 In sentencing defendant, the court stated that it took into account the statutory and nonstatutory factors in aggravation and mitigation, and that one of the factors in mitigation was defendant's age. The court noted that it was "well versed" in both Supreme Court and Illinois Supreme Court caselaw regarding "juvenile sentences" and the fact that teens are prone to "being irrational." The court also stated that it considered that defendant was 17 years old at the time of the offense and his "mental illness background." However, the court stated "for the record" that it did not believe that the instant offense was "motivated" by any type of behavioral issues; rather, there was a feud between the victim and defendant.

¶ 19 The court next stated that it believed that defendant was rational and planned the offense "in some way shape or form" and highlighted that the offense took place at a school. The court then noted that a sentence has to be fair and "commensurate with the crime that was committed," that is, the sentence "should be looked at by others to deter crimes and to deter [the] losses that both families are suffering today." The court finally noted that defendant lacked a significant criminal background, suffered from mental illness and expressed remorse. Accordingly, the trial court sentenced defendant to 33 years in prison.

¶ 20 Defendant filed a motion to reconsider sentence, alleging, in pertinent part, that his sentence was "excessive in view of the defendant's background and the nature of the offense." The trial court denied the motion.

¶ 21 On appeal, defendant contends that his 33-year sentence is excessive in light of his age, long history of mental health problems and other mitigating factors. He argues that "a minimum sentence" was appropriate.

¶ 22 As an initial matter, the State contends that defendant has forfeited review of his excessive sentence claim by failing to raise this claim with specificity in his motion to reconsider sentence. See, *e.g.*, *People v. Reed*, 177 Ill. 2d 389, 393-94 (1997). Defendant responds that he properly preserved this claim when he filed a motion to reconsider sentence which argued, in pertinent part, that defendant's sentence was "excessive in view of the defendant's background and the nature of the offense." We agree with defendant that the motion to reconsider sentence was sufficient to preserve his excessive sentence claim for review. See *People v. Heider*, 231 Ill. 2d 1, 18 (2008) (finding no forfeiture when the trial court had the "opportunity to review the same essential claim" that is later raised on appeal).

¶ 23 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 this court cannot substitute our judgment simply because we may weigh 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.

¶ 24 When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, 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. 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.* In the absence of evidence to the contrary, we presume that the sentencing court considered the mitigating evidence presented. *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 51.

¶ 25 In the case at bar, defendant was convicted of first degree murder and the applicable sentencing range was between 20 and 60 years in prison. See 720 ILCS 5/9-1(A)(1) (West 2012); 730 ILCS 5/5-4.5-20(a)(1) (West 2012).

¶ 26 The record reveals that at sentencing the parties presented evidence in aggravation and mitigation including the victim impact statements of the victim's family as well as evidence that defendant had been diagnosed with ADHD and bipolar disorder as a child. In sentencing defendant, the court noted his youth, history of mental illness and expression of remorse as well as the facts that the offense took place at school and that the court believed that defendant had planned the offense. We find that the sentence of 33 years, which falls approximately in the middle of the possible sentencing range, was not "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense" (*People v. Stacey*, 193 Ill. 2d 203, 210 (2000)), when defendant walked up to the victim, who was standing amongst their classmates, and stabbed him in the scalp, neck and back. Hernandez also suffered an injury to the

back of the head when he was injured on the "back swing" of one of the blows. Considering the unprovoked nature of defendant's actions, we cannot say that a 33-year sentence was an abuse of discretion. See *Alexander*, 239 Ill. 2d at 212.

¶ 27 Defendant, however, contends that the trial court did not "adequately account" for the evidence in mitigation that was presented at sentencing including defendant's youth. He argues that the minimum sentence of 20 years is appropriate considering his youth and potential for rehabilitation and relies on, in pertinent part, cases holding that young people lack maturity and reasoned judgment, and recognizing that young people have a greater potential for rehabilitation. See, *e.g.*, *Miller v. Alabama*, 567 U.S. 460, 474 (2012) (the "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children"); *People v. Miller*, 202 Ill. 2d 328, 341-42 (2002) ("traditionally, as a society we have recognized that young defendants have greater rehabilitative potential").

¶ 28 In ruling the eighth amendment forbids mandatory life sentences for juvenile offenders who are convicted of homicide, the Supreme Court in *Miller* explained a court must take into account how children are different from adults for purposes of sentencing and that an offender's youth and attendant characteristics must be considered before imposition of life imprisonment without the possibility of parole. *Miller*, 567 U.S. at 480, 483.

¶ 29 However, unlike *Miller*, in the instant case defendant was not sentenced to a mandatory life sentence; rather, he received a sentence in the middle of the applicable sentencing range. See 730 ILCS 5/5-4.5-20(a)(1) (West 2012) (applicable sentencing range for first degree murder is between 20 to 60 years in prison). In other words, at sentencing, the trial court was able to take

into account defendant's youth and the particular circumstances of the case when exercising its discretion to craft a sentence.

¶ 30 We also find *People v. Miller*, 202 Ill. 2d 328 (2002), to be factually distinguishable. In that case, a 15-year-old was charged with two counts of murder based solely upon accountability and transferred to the criminal division to be tried as an adult. Following a jury trial, defendant was convicted. At sentencing, the trial court refused to impose the statutorily mandated sentence of natural life in prison on the ground that application of the mandatory sentence to this minor defendant would offend the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), and the eighth amendment of the United States Constitution (U.S. Const., amend. VIII). *Id.* at 330. Defendant was then sentenced to 50 years in prison.

¶ 31 Our supreme court held the multiple-murder sentencing statute, which mandated a sentence of natural life imprisonment, was unconstitutional as applied to the defendant, who was convicted under a theory of accountability. *Id*. at 341. The court reasoned that the convergence of the automatic transfer statute, the accountability statute, and the multiple-murder sentencing statute in the defendant's case eliminated the court's discretion to consider mitigating factors like the defendant's age and degree of participation in the offense. *Id*. at 340. Our supreme court further noted although this 15-year-old acted only as a lookout and never handled a gun, he was being sentenced as though he was the adult shooter and that "this case present[ed] the least culpable offender imaginable, a 15-year-old who had 'about a minute from the time this plan began until the act was completed by other persons.' " *Id.* at 340-41.

¶ 32 We are unpersuaded by defendant's reliance on *Miller* for several reasons. First, *Miller* involved a 15-year-old, whereas defendant was 17 years old at the time of the offense. Second,

Miller involved a mandatory life sentence which frustrated the trial court's ability to exercise discretion, whereas in this case, the trial court had the ability to, and did, in fact, exercise its discretion to select a sentence in the middle of the sentencing range. Third, unlike *Miller*, defendant was not convicted pursuant to an accountability theory; rather, he walked up to the victim and stabbed him multiple times.

¶ 33 Ultimately, this is not a case where the trial court failed to specifically consider defendant's youth at sentencing. Here, the record reveals that the trial court noted that defendant was 17 years old at the time of the offense and that teens are prone to "irrational" behavior. The court also noted that it was "well versed" in both Supreme Court and Illinois Supreme Court caselaw regarding "juvenile sentences." Moreover, the trial court additionally stated that it considered, in mitigation, defendant's history of mental illness, his remorse and his lack of a criminal background. We cannot agree with defendant's conclusion that because he was not sentenced to the statutory minimum that the trial court did not assign "adequate" weight to his youth. A 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).

¶ 34 Here, defendant essentially asks this court to reweigh the evidence presented at the sentencing hearing and agree with him that the minimum sentence was more appropriate. However, that is not a proper exercise for a court of review as "the mere fact that a reviewing court might have weighed the factors differently than the trial court does not justify an altered

sentence." *Raymond*, 404 Ill. App. 3d at 1069. Consequently, defendant's argument must fail. See *Alexander*, 239 Ill. 2d at 212-13.

¶ 35 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.