2018 IL App (1st) 152998-U

No. 1-15-2998

Order filed March 16, 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. 11 CR 15238
	)	
PARISH WILSON,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's sentence of 20 years' imprisonment for second degree murder is affirmed over his contention that the trial court abused its discretion in imposing the sentence by not considering certain factors in mitigation.

¶ 2 Following a bench trial, defendant Parish Wilson was convicted of second degree murder (720 ILCS 5/9-2 (West 2010)), and sentenced to 20 years' imprisonment. On appeal, defendant contends that the trial court abused its discretion in imposing the sentence by not considering

certain factors in mitigation. For the reasons set forth herein, we affirm the judgment of the trial court.

¶ 3 Defendant was charged with 24 counts of first degree murder in the shooting death of Jennifer Jiles, two counts of attempt first degree murder of Jerry Person, and two counts of aggravated discharge of a firearm. Defendant waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 Because defendant does not challenge the sufficiency of the evidence to sustain his conviction we recount the facts to the extent necessary to resolve the issue raised on appeal.

¶ 5 The evidence adduced at trial generally showed that on July 27, 2011, the victim Jennifer Jiles was at Ana's Food Mart located at 13th Street and Kedzie Avenue with her family and friends. Defendant, who was also at the store with his family and friends, got into an argument with Jiles and defendant struck her in the face with a broomstick. On the following day, Jiles and her brothers were to meet with defendant and some of his family members and friends near the area of 13th and Kedzie. As Jiles drove to the meeting, defendant shot and killed her.

¶ 6 Felicia "Michelle" Young testified that she was Brenda Jackson's girlfriend. Jackson is Jiles' mother. On July 27, 2011, Young was at Ana's Food Mart with Jiles and Jackson. Defendant was also at the store along with his friend Vincent Beck and nephew Cordarrell Wilson. At some point in the evening, an argument took place between Jiles and defendant, and the two "exchanged words" outside of the store. Young observed defendant go into the store, grab a broom, break the wooden handle and hit Jiles in the face with the broom handle. Young eventually took Jiles to the hospital. Young testified that she did not see Jiles threaten defendant with a gun or any other type of weapon.

¶ 7 Vincent Beck testified that he has known defendant his whole life and that defendant was "[S]omething like a brother" to him. Beck testified that on July 27, 2011, he was in front of Ana's store and witnessed an argument between defendant and Jiles. Beck testified that he saw either Jiles or Young with a knife, but did not see defendant with a weapon. Beck was not sure who had the knife because "it was a lot of moving around inside the store." Beck described the knife as a "flip knife" about eight to nine inches long with a black handle. After the argument, Jiles left the store and, after a few minutes, returned with a gun. Jiles pointed the gun at defendant and pulled the trigger three times, but the gun failed to fire.

¶ 8 On the following day, July 28, 2011, Jiles' brothers, Albert and Alexander Jackson, wanted to discuss the incident with defendant and his family. On that date, Albert and Alexander met with defendant, and defendant's family and friends, including Wilson and Beck, near the intersection of 13th and Kedzie. The police arrived in the area and the group dispersed. They began walking south toward Albany Avenue. As they did so, Albert and Alexander saw Jiles and their third brother, Jerry Person, riding in Person's van. Albert saw defendant, who was near Troy Street, walk towards the van and shoot at it. Albert also saw someone inside the van shooting back at defendant. Alexander testified that, as the van turned around and started coming towards him, he heard two gunshots and saw the van crash. He then heard two more gunshots. Alexander testified that these gunshots sounded similar and were from a "small caliber." After the van crashed, Alexander heard more gunshots that were louder than the first few shots. Alexander started running toward the van and saw defendant running in the opposite direction of the van. Albert saw defendant holding a revolver and running away from the scene. When Albert

and Alexander arrived at the van, Person handed Albert a gun. Alexander saw that Jiles was bleeding from the back of her head and transported her to the hospital.

¶ 9 Person testified that, on the date in question, he was with Jiles in his van. Person had a 9 millimeter handgun in his lap and Jiles was driving the van. Jiles told Person that she had an "incident" with defendant the day before and that he hit her in the face with a stick. As they were driving on Kedzie Avenue, Person saw members of his family and defendant's family. Jiles asked the group where they were going and they responded that they were headed to a meeting by the statue at Douglas Boulevard and Kedzie. Person explained that the meeting was between his family, defendant, defendant's family and friends to resolve the conflict between Jiles and defendant. Person and Jiles changed directions and began travelling toward the meeting place. At approximately Albany and Douglas, Jiles stated "there go Parish." Person then heard three to four gunshots and the van's window behind Jiles shatter. The van spun in a circle and almost hit a building. After the van came to a stop, Person opened the side door and saw defendant with a gun in his hand walking across Douglas towards the van. Person fired several shots at defendant, who turned and ran towards 13th Street. When police arrived on the scene, Person told the officers that he grabbed a gun from his brother's lap. He explained that he lied to the officers about being in possession of the gun because he "just got out for a UUW."

¶ 10 Vincent Beck testified that, on July 28, 2011, he and his friends were trying to make peace with Jiles and defendant, so he set up a meeting between Albert and Alexander Jackson and Cordarrell Wilson. Defendant was not present at the meeting. Beck heard gunshots and saw Person's van crash. Beck testified that he saw Alexander run to the van and grab a gun from Person. Beck did not see defendant that evening and did not see defendant fire a gun. Beck left

the scene before police arrived because he was in possession of a gun and did not want to be arrested.

¶ 11 On August 17, 2011, Beck went to the police station and gave his version of the events. His statement was reduced to writing. Beck was confronted with his handwritten statement and testimony before the grand jury. He denied telling an assistant State's Attorney (ASA) that on July 28th, he saw defendant walking alone along the park, extend his arm while holding a gun, and fire two or three times at Person's van. Beck also denied telling the ASA that he saw defendant run to the van and heard three to four more shots, followed by two to three different sounding shots. Beck further denied telling the ASA that he saw defendant run eastbound on Douglas to Albany then north on Albany. Beck maintained that he did not say those things to the ASA and that he did not see defendant on the evening in question. He testified that the police and the ASA must have added things to his statement because, although he signed the statement, he did not review it.

¶ 12 On cross-examination, Beck stated that, on July 27, 2011, shortly after the fight in the store, Young and Brenda Jackson drove past and waived a gun at him and Wilson. Person and another male also rode past, pointed a gun, and asked for defendant's whereabouts. Prior to the shooting, Beck saw Person's van pull up and Jiles was driving. Person opened the van door and displayed a gun. Defendant left the area. A short time later, Beck heard several shots and saw defendant, who told him that "Jerry just shot at me."

¶ 13 Cordarrell Wilson, defendant's nephew, testified that he had known Jiles his whole life. On July 28, 2011, as defendant was eating a slice of pizza, Person pulled up in his van with Jiles driving. Person "busted the door down and upped the gun but the blue and white (police) turned

the corner and they pulled off." Some time later, as Wilson was walking toward Kedzie with Albert, Alexander Jackson and Beck, he saw defendant on Albany and heard several loud gunshots followed by lower sounding gunshots. After hearing the gunshots, Wilson saw Person's van crash. He heard more gunshots after the crash and testified that the first shots he heard sounded different from the second set of shots.

¶ 14 On October 18, 2011, Wilson was questioned at Area 4 Police Headquarters about the shooting and gave a handwritten statement. During his testimony, the State confronted Wilson with his statement. Wilson denied telling the police that on July 28th he was talking to Albert and Alexander Jackson and Beck when he heard one gunshot that sounded like a firecracker because it was not very loud. Wilson also denied telling the police that, when he looked back into the park, he saw defendant standing in the grass holding a little gun in his hand that looked like a .22 or .25 caliber revolver. He further denied telling the police that he saw defendant pointing the gun at Person's van and fire two shots at the van. Wilson finally denied telling the police that he saw the van crash and then heard three more gunshots that sounded louder than the first few he heard and that these shots were not from a .22 or .25.

¶ 15 During the shooting, Jiles sustained a gunshot wound to her head. She was transported to Mount Sinai Hospital where she was interviewed by Sergeant Pete Devine of the Chicago Police Department. Devine asked Jiles who shot her and she responded that defendant shot her. Based on Jiles' response, detectives Chris Matias and Dave Garcia compiled a photo array that included defendant's photograph and showed Jiles the photo array. Jiles identified defendant from the photo array as the person who shot her. A .22 caliber bullet fragment was recovered from Jiles' head during surgery for her injuries. Jiles died from her injuries on August 5, 2011.

¶ 16 A Chicago Police Department police observation device (POD) video was introduced into evidence and shown to the court during the testimony of several of the State's witnesses. The video depicted a van driving along Albany and a man standing in the grass with his arm extended pointing at the van, and the van crashing.

¶ 17 The State introduced several photo exhibits into evidence. After several stipulations were entered, both the State and defendant rested.

¶ 18 After hearing closing arguments, during which defendant admitted to the shooting but argued that he was acting in self defense, the court found that defendant had an unreasonable belief that he was acting in self defense and found him guilty of second degree murder. In announcing its ruling, the court noted that there was "little or no evidence in the record to sustain a defense of self defense." The court addressed the evidence and pointed out that "[t]he defendant is seen waiting in the park. He jumps out as the van passes, and there is no indication that he is under fire first, he does not flinch, so the Court finds he was not justified in the use of force." The court found that the State had proven "each and every element of the offense of first degree murder," and then considered whether a finding of second degree murder was appropriate. In doing so, the court concluded that, based on the evidence presented, "it is more likely than not that the defendant felt that he had to shoot the victim before she and her brother shot him. So understanding all those circumstances, the court finds that defendant has shown that—the existence of the mitigating factor by a preponderance of the evidence."

¶ 19 At the sentencing hearing, the State presented testimony from Jiles' sister, Alexandra Jackson, and Jiles' daughter, Evon Barnes. Both read victim impact statements to the court. Defendant presented testimony from his oldest sister, Shonda Wilson, and his father, Floyd King,

as well as letters from Christian Centers Ministries. Defendant testified in allocution, apologizing for the shooting and the damage done to both families.

¶ 20 In announcing the sentence, the trial court explained that it "had the opportunity to review the presentence investigation, the defendant's background, his social and educational, family history, his criminal history, considered the factors in aggravation and mitigation." The court also "considered the facts of the case, the defendant's statements, along with the testimony both in aggravation and mitigation." The court noted that "this is a tragic case where the defendant and the victim, the families knew each other, and whatever the reason for the disagreement was, the defendant chose to settle it through gun violence." The court then found that "at its discretion the appropriate sentence" was 20 years' imprisonment. Defendant filed a motion to reconsider sentence that was denied.

¶ 21 On appeal, defendant contends that the trial court abused its discretion in imposing the maximum sentence of 20 years for second degree murder. Defendant argues that the court did not consider his age, lack of significant criminal background, the likelihood that this type of offense would reoccur, and that he was provoked into his actions. Defendant requests this court to reduce his sentence or alternatively, remand the matter to the trial court for a new sentencing hearing with instructions to reduce his sentence.

¶ 22 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, including 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 mitigation factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 23 It is well settled that the trial court has broad discretionary powers in imposing a sentence, and the trial court's sentencing decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). A reviewing court affords such deference because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider factors relevant to sentencing. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). Because the trial court is generally in a better position than the reviewing court to determine the appropriate sentence, this court will not reweigh these factors and substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20. Rather, a reviewing court will only reverse a sentence when it has been demonstrated that the trial court abused its discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). Moreover, 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 *Fern*, 189 Ill. 2d at 54).

¶ 24 Here, we find that the trial court did not abuse its discretion in sentencing defendant to 20 years' imprisonment. In this case, defendant was convicted of second degree murder, a

Class 1 felony with a sentencing range of 4 to 20 years' imprisonment. 720 ILCS 5/9-2 (West 2010); 730 ILCS 5/5-4.5-30(a) (West 2010). The sentence of 20 years falls within the permissible statutory range and, thus, we presume it is proper. *Wilson*, 2016 IL App (1st) 141063, ¶ 12; *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 25 Defendant does not dispute that his 20-year sentence is within the applicable sentencing range and is therefore presumed proper. Rather, he contends that the court abused its discretion by failing to acknowledge several statutory factors in mitigation before imposing the sentence. These factors include his age at the time of the offense, his lack of significant criminal history, and that he was essentially acting in self defense.

¶ 26 In order to prevail on this argument, 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 cannot make that showing here where the record reveals that the trial court considered the above mentioned factors in mitigation. At defendant's sentencing hearing, the court heard arguments in aggravation and mitigation. In mitigation, the court heard testimony from defendant's oldest sister as well as his father. Defendant, in allocution, apologized to the victim's family as well as his own family for his actions on July 28, 2011. In announcing its sentencing decision, the court noted that it considered defendant's presentence investigation report that contained defendant's criminal, family and social history. The court also noted the unfortunate nature of this case and the fact that the victim, her family and defendant's family all knew each other, but for "whatever the reason for the disagreement was, the defendant chose to settle it through gun violence." The court then found the "appropriate" sentence to be 20 years' imprisonment.

¶ 27 Given this record, defendant is essentially asking us to reweigh the sentencing factors and substitute our judgment for that of the trial court. As stated above, 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). As the trial court is presumed to have considered all evidence in mitigation, and the record shows that it did, we find that the trial court did not abuse its discretion in sentencing defendant to 20 years' imprisonment for second degree murder.

¶ 28 In reaching this conclusion, we are not persuaded by defendant's reliance on *People v. Calhoun*, 404 Ill. App. 3d 362 (2010), and *People v. Pickett*, 35 Ill. App. 3d 909 (1976), because Illinois courts do not engage in comparative sentencing. See *Fern*, 189 Ill. 2d at 62 (rejecting the use of comparative sentencing from unrelated cases as the basis for claiming that a specific sentence is excessive or that the sentencing court abused its discretion); see also *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 57.

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

¶ 30 Affirmed.