2018 IL App (1st) 153000-U

FIRST DIVISION
September 28, 2018

No. 1-15-3000

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 16284
	)	
IGNACIO CARILLO,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion when it sentenced defendant to 10 years of imprisonment for criminal sexual assault; the court considered all factors in aggravation and mitigation, was aware of the proper sentencing range, and reviewed defendant's personal history. Trial counsel was not ineffective for suggesting a 10-year sentence.

¶ 2 Following a jury trial, defendant Ignacio Carillo was found guilty of criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2008)). The trial court sentenced him to 10 years' imprisonment. On appeal, Mr. Carillo contends that his sentence is excessive and he was denied effective assistance of counsel. We affirm.

¶ 3 I. BACKGROUND

¶ 4 R.W. testified at trial that she met Mr. Carillo in October 2009 on a dating website, Plenty of Fish. The two made plans to meet at a bar on October 15, 2009. R.W. drove with her sister into the city, dropped her sister off to go to a concert, and proceeded on to her date with Mr. Carillo. When R.W. arrived at the bar, Mr. Carillo bought her a glass of red wine. R.W. then talked with a friend of Mr. Carillo's while Mr. Carillo spoke to two other women. At some point, Mr. Carillo offered R.W. a shot of tequila. R.W. testified that by the time she finished her wine she had started to feel disoriented. She could not put words together and kept losing track of the conversation. R.W. excused herself and went to the bathroom. She had never felt this way before while drinking. While in the bathroom, R.W. texted her sister that she was not feeling well and that her sister might have to leave her concert early. When R.W. left the bathroom, Mr. Carillo was standing outside. He was angry and frustrated.

¶ 5 Mr. Carillo took R.W.'s arm and brought her to an alley where he wanted to have sex against a garbage can. R.W. told him no, and Mr. Carillo said "fine." He then grabbed R.W.'s arm and walked her to the front of the bar where Mr. Carillo's friend was waiting with R.W.'s jacket and purse. The friend had flagged down a cab, which brought them to another bar. While at the second bar, R.W. was struggling to maintain her steadiness. Mr. Carillo commented that she "was acting like he had put drugs in my drink, ruffies in my drink." He then said "let's go" and took her arm. The next thing R.W. remembered was that the two of them were in a taxi, she saw a bright light and realized she was at Clark Street and Diversey Parkway. She was still experiencing the same disorientation that occurred at the first bar, so she texted her sister that she was in trouble, needed help, and gave her location.

¶ 6 R.W. and Mr. Carillo exited the cab. He took her by the arm, brought her into a hotel, and

started to order a room. R.W. testified that she said no, left, and tried to flag a cab, but Mr. Carillo came outside, told her not to make a scene, and brought her back inside. They went to a room and R.W. texted her sister to let her know that they were at a hotel. R.W. stated that once they were in the room, her sister tried to call her and Mr. Carillo threw R.W.'s phone across the room. He then pushed her onto the bed. Mr. Carillo took her jeans and underwear off, lifted her legs and inserted his penis into her vagina. She pleaded for him to not hurt her and told him no. The hotel phone rang and Mr. Carillo answered it. He then told R.W. they wanted to talk to her. She got on the phone and the clerk asked R.W. if "she was alright and if they could come to the room." R.W. answered the door, naked from the waist down, and her sister and the clerk were standing there. R.W. and her sister gathered her belongings and left. Mr. Carillo then "rushed" out of the room half dressed and, according to R.W., was "mad" at the clerk. The two women went to Delnor Community Hospital where a sexual assault kit was performed. R.W. told the hospital employees what happened, and later spoke with a Chicago police detective. R.W. did not want to proceed with the case in 2009, but after being contacted by the police again in 2011 decided to proceed.

¶ 7 J.N. testified that she was R.W.'s sister. On October 15, 2009, she made plans to drive into the city with her sister and go to a concert while her sister was on a date. They planned on driving back to Batavia at the end of the night. J.N. received a text from R.W. saying that she was not feeling well, was afraid, and wanted to leave. J.N. tried calling her sister but had difficulty maintaining a connection. At one point R.W. told her she was in the bathroom and afraid "he would be angry." Around 11:30 p.m. R.W. told J.N. she was at a hotel near Clark Street and Diversey Parkway and she did not want to be there. J.N. left the concert she was at and hailed a cab to find R.W. J.N. went to two hotels looking for R.W. and when she described

her sister to the clerk at the Lincoln Park Inn, the clerk recognized R.W. from the description and contacted the room.

¶ 8 J.N. went to the room with the clerk and knocked on the door. R.W. answered. She was naked from the waist down and looked visibly shaken and upset. Her hair was messy and her balance was off. J.N. walked into the room to find Mr. Carillo lying on the bed, undressed and "kind of smirking." J.N. asked if he had "used a condom at least" and Mr. Carillo sarcastically said they did not do anything. J.N. gathered her sister's belongings and left the room. As they walked down the hallway, Mr. Carillo came out of the room yelling and swearing at them. The two women got in a cab and went to find R.W.'s car. They found it, then proceeded to go to a hospital so R.W. could receive treatment.

¶ 9 Lukasz Pawlik testified that he was the primary night monitor and front desk clerk at the Lincoln Park Inn from late on the night of October 15, 2009, until the early morning hours of October 16, 2009. He confirmed that Mr. Carillo and R.W. checked in and that later J.N. came and found her sister. Mr. Pawlik also testified that he called the police and they came to the hotel and spoke with Mr. Pawlik and Mr. Carillo, and then left.

¶ 10 The State presented testimony of medical personnel who examined R.W. They found no external injuries but did find signs of bruising and swelling. There was also evidence of semen that matched Mr. Carillo and also semen that matched another unknown male.

¶ 11 Prior to trial, the court had granted the State's motion, made pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.3 (West 2002)), to admit evidence of other crimes through the testimony of X.L., another woman who accused Mr. Carillo of sexual assault, to show Mr. Carillo's propensity to commit sexual assaults, lack of mistake, and lack of consent. X.L. testified that she also met Mr. Carillo on Plenty of Fish and agreed to meet him for

dinner on September 3, 2011. The two went to a bar where X.L. drank two beers and a shot. She went to the bathroom and when she came back Mr. Carillo had ordered a martini for her. She took a sip, but testified that it tasted "very salty." Mr. Carillo made a joke that he poured olive juice into it and told her to stir it up to get to the ruffie at the bottom. When X.L did not want to drink the martini, Mr. Carillo was upset and asked her to drink it three times. They went to a different bar where she ordered water, which also upset Mr. Carillo.

¶ 12 Mr. Carillo and X.L. left the second bar and walked to the parking garage where Mr. Carillo had parked. When they got to the car Mr. Carillo stood in front of X.L. and touched her legs under her dress. She told him no and pushed his arms away, but Mr. Carillo moved her underwear aside, ripped out her tampon and threw it on the ground. He put his penis in her vagina, turned her around, bent her over the car, and placed his forearm on her back while she started to cry. X.L. testified that when Mr. Carillo had finished he opened the car door and told her to sit down. Mr. Carillo wanted to go to a hotel, but X.L. said no and that she wanted to go home. On the car ride home, X.L. stated that the street lights were big and bright and although it was a 20-minute car ride, to her it felt like only one minute. Mr. Carillo asked her for oral sex, she said no, and he got upset, dropped her off, and "zoomed off." X.L. went home, grabbed a sheet and fell asleep on the couch. She went to a hospital the next day and reported what happened to the nurses at the hospital. The nurses called the police and X.L. spoke with them and informed them of what happened.

¶ 13 The State rested, and Mr. Carillo filed a motion for a directed verdict, which was denied.

¶ 14 The defense called Mr. Carillo's friend, Peter Gracey. Mr. Gracey testified that he met Mr. Carillo and R.W. at a bar on October 15, 2009. He testified that he had casual conversation with R. W. throughout the night, including times he was alone with her, and that she never

expressed any fear to him. Mr. Gracey testified that he, R.W., and Mr. Carillo went to a second bar and stayed for an hour to an hour and a half. At the end of their night they hailed a couple of cabs; Mr. Gracey got in the first cab and Mr. Carillo and R.W. got into the second one. Mr. Gracey did not remember bringing R.W.'s coat and purse outside at the first bar.

¶ 15 The defense also called to testify a police officer who supposedly was called to the Lincoln Park Inn on October 15, but the officer had no recollection of the call and did not recognize Mr. Carillo.

¶ 16 Finally, the State agreed to several stipulations offered by the defense regarding the timing of text messages between R.W. and Mr. Carillo.

¶ 17 The jury found Mr. Carillo guilty of aggravated criminal sexual assault.

¶ 18 A pre-sentence investigation ("PSI") reported that Mr. Carillo had no prior juvenile adjudications or adult convictions. He was raised in a loving and supportive home, had graduated from college, and wanted to earn an MBA from Northwestern University. He enlisted in the United States Army in 1991 and received an honorable discharge. He was not married, but had one child with whom he has a strained relationship. While incarcerated, he had attended chapel and Alcoholics Anonymous ("AA") meetings.

¶ 19 During sentencing, R.W. read a victim impact statement and explained the fear that she has lived with ever since her attack. She feared that Mr. Carillo would find her and hurt her again. She was sick to her stomach thinking about facing him in court. R.W. stated that she wanted to put the incident behind her, but could not. She was angry at herself for not saving herself. She wanted the court to know that she did not write her statement out of revenge; rather, she wanted Mr. Carillo to know what he did to her was wrong and wanted to protect other women from him. R.W. said that she wanted Mr. Carillo to know that she was trusting, and in

the end, he took advantage of her.

¶ 20 The State then called A.A. to testify in aggravation. On October 10, 2014, she met Mr. Carillo at an apartment on South Plymouth Court in Chicago to discuss renting an apartment. When she arrived, he made her a beverage and kept telling her to drink it. A.A. was not a big drinker and it tasted too strong for her, so she did not drink the entire thing. They went to a restaurant and had two or three more drinks with dinner. On their way back to the apartment, Mr. Carillo asked that she perform oral sex in the car, and she rejected his advances. They got in the elevator of the apartment and he again requested oral sex in the elevator, which A.A. performed. They went back into the apartment, he took out his penis, bent her over, and pulled up her skirt. Mr. Carillo took A.A.'s clothes off, got her on the bed, and entered her. A.A. testified that "it hurt." A.A. was crying and kept telling him to get off of her and that it hurt. Afterwards, while she was still crying, he wanted to "go" three more times, and she told him no. A.A. did not report the incident to police until December 28, 2014.

¶ 21 Mr. Carillo provided a mitigation packet to the court which contained 10 letters in support of him and requesting leniency from the court, submissions of his prior achievements, his military records, and sign-in sheets from AA meetings, anger-management classes, domestic violence classes, certificates of completion for Alpha Parenting classes, and proof of work while incarcerated.

¶ 22 Mr. Carillo addressed the court in allocution. He stated that he was embarrassed and ashamed of his behavior and took "full responsibility" for his poor judgment. Mr. Carillo stated that his belief is that one incident or mistake is no way to judge the true caliber of an individual. He asked the court to take into consideration that this was his first criminal offense at the age of 41, he had no violent background, he had tried to be a positive contributor to his community, and

he worked with numerous charitable organizations. He stated he was a father and the caretaker for his elderly parents. Mr. Carillo noted that he had made rehabilitative efforts while incarcerated by engaging in various programs, classes, and therapy. He had also taken leadership roles while incarcerated and tutored his fellow inmates in their GED courses. Mr. Carillo also stated that he was a regular attendee of daily chapel services and that he wanted to take every opportunity to rehabilitate himself throughout his sentence.

¶ 23 In aggravation the State argued that this incident was not a mistake, that there was evidence from three women that this was Mr. Carillo's *modus operandi*, his "scheme," and that it had happened multiple times. The State urged the court to consider the "selfish behavior of this predator." The State argued that Mr. Carillo was a danger to women, and asked the court to sentence him to the maximum term of 15 years' imprisonment.

¶ 24 Defense counsel argued in mitigation that Mr. Carillo had lived a law-abiding life up to that point with a number of years' worth of achievements and had been a positive force ever since he had been incarcerated. Counsel asked that the court consider the mitigation packet containing letters from friends and family and then asked the court for "just ten years considering what he is convicted of and his background."

¶ 25 The trial court stated that Mr. Carillo wanted to blame these incidents on his problem with drinking, but that these incidents were all "pretty much planned ahead of time." The court stated that it was "considering all the factors set forth in the statute about aggravation and mitigation," including the PSI report reflecting "no prior convictions for [Mr. Carillo] of any sort," but that "the most important consideration in sentencing is the crime itself." The court described sexual assault as a significant crime because it is "so personal." It also read the mitigation packet and stated that it, along with Mr. Carillo's speech in allocution, was "very

impressive."

¶ 26 The trial court acknowledged that the statute authorized a sentence of anywhere from 4 to 15 years' imprisonment and stated that fashioning an appropriate sentence was not easy because this was a case involving a significant crime, a defendant with an insignificant prior record, and an "impressive package of mitigating circumstances." However, the court stressed that the most important factor is the crime itself and "the crime itself in this case is a pretty horrific one." The court stated that it had "considered all the factors in aggravation and mitigation, the arguments by the lawyers, the testimony from A.A., R.W., and the other victim in that other incident a year later." It then stated that the appropriate sentence would be 10 years' imprisonment. Mr. Carillo filed a motion to "reduce/correct/modify the sentence," which the court denied, stating the sentence "while significant, is not inappropriate."

¶ 27 II. JURISDICTION

¶ 28 Mr. Carillo was sentenced on September 11, 2015, and timely filed his notice of appeal that same day. This court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. R. 603 (eff. Feb. 6, 2013), R. 606 (eff. Dec. 11, 2014)).

¶ 29 III. ANALYSIS

¶ 30 On appeal, Mr. Carillo contends that his 10-year sentence is excessive for his first criminal conviction, particularly due to the productive and law-abiding life he lived before his conviction, including his service to his country, and where he has demonstrated rehabilitative potential and actual rehabilitation through his efforts while incarcerated. Mr. Carillo further asserts that his trial counsel was ineffective for suggesting a 10-year sentence. We do not find an

abuse of discretion by the trial court or ineffective assistance of Mr. Carillo's trial counsel.

¶ 31 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 that 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 the 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).

¶ 32 Criminal sexual assault is a Class 1 felony. 720 ILCS 5/12-13(b)(1) (West 2010). The sentence for a Class 1 felony ranges from 4 to 15 years' imprisonment. 730 ILCS 5/5-4.5-30 (West 2010). The 10-year sentence Mr. Carillo received falls within this statutory range and we therefore presume it is proper. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12.

¶ 33 Mr. Carillo argues the court's 10-year sentence is excessive because it "does not reflect adequate consideration and application of the mitigating evidence." He claims that the mitigating factors—such as his lack of a prior criminal history, his military record, and the rehabilitative actions he has taken while incarcerated, such as attending AA meetings—show that he had demonstrated his rehabilitative potential.

¶ 34 The trial court stated it considered all factors in aggravation and mitigation, including the PSI report, the arguments by the lawyers, the testimony of the three incident victims, the seriousness of the crime, and, based on all of that, it determined that 10 years was an appropriate sentence. Further, the court specifically mentioned Mr. Carillo's mitigation packet and his own speech in allocution. The mitigation packet contained letters from family and friends, a list of prior accomplishments, a record of Mr. Carillo's military service, and records of what he had accomplished while incarcerated, namely, his attendance at AA meetings, anger-management classes, parenting classes, and his proof of work. Even if the court had not referenced this specifically, we would have to presume that the trial court took all of this mitigation into account. *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). We cannot disagree with the statement by the trial court that the seriousness of the offense is the most important factor in sentencing. The State presented evidence of the crime itself and the impact it had on the victim. It also presented evidence to demonstrate that this was not an isolated incident but rather similar to what Mr. Carillo had done on at least two other occasions. We do not find an abuse by the trial court of its broad discretion when it concluded that the appropriate punishment for Mr. Carillo was 10 years' imprisonment.

¶ 35 Mr. Carillo also argues that his trial counsel was ineffective for suggesting a 10-year sentence rather than the minimum sentence of 4 years. He claims his counsel's failure to suggest the minimum or a near-minimum sentence was both unreasonable and prejudicial for a first-time offender and that it is "reasonably likely" the judge would have imposed a shorter sentence had trial counsel argued for one. We reject this claim.

¶ 36 Criminal defendants have a constitutional right to the effective assistance of counsel. U.S.

Const., amend. VI; Const. 1970, Art. I, § 8; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). To prove ineffective assistance of counsel, a criminal defendant must show that (1) trial counsel's performance was objectively deficient, and (2) the defendant was prejudiced, meaning "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 687-88. The failure to show either deficient performance or prejudice defeats a claim of ineffective assistance. *People v. Richardson*, 189 Ill. 2d 401, 411 (2000). If a claim of ineffective assistance can be disposed of on the basis that the defendant suffered no prejudice, we need not determine whether counsel's performance was deficient. *People v. Garman*, 2016 IL App (3d) 150406, ¶ 13 (citing *People v. Griffin*, 178 Ill. 2d 65, 74 (1997)).

¶ 37 There is simply nothing in this record to support Mr. Carillo's claim that he was prejudiced by the alleged error. In order to establish sufficient prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. A reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome of the trial." *Id.*

¶ 38 Here, the trial court never suggested that it relied on defense counsel's suggestion of a 10-year sentence when determining the appropriate sentence. Rather, the court specifically stated that the most important factor in this case was the crime itself. The court explicitly stated that it had reviewed the mitigation packet and thought it was impressive, but because it was a "pretty horrific crime" the court determined that a 10-year sentence was appropriate. Furthermore, Mr. Carillo's sentence was squarely within the sentencing range and five years less than what the State had requested. Mr. Carillo has simply not established that, but for trial counsel's 10-year

recommendation, there is a reasonable probability that he would have received a shorter sentence.

¶ 39 IV. CONCLUSION

¶ 40 For the foregoing reasons, we affirm the decision of the circuit court.

¶ 41 Affirmed.