2018 IL App (1st) 153638-U
Order filed: April 27, 2018

FIFTH DIVISION

No. 1-15-3638

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. 14 CR 2267
	)	
JONATHAN REYES,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion and was aware of the proper sentencing range and considered all factors in aggravation and mitigation, including defendant's youth, upbringing, and criminal and personal history, when it imposed defendant's 24-year sentence.

¶ 2 Following a bench trial, defendant-appellant, Jonathan Reyes, was found guilty of aggravated battery with a firearm in violation of 720 ILCS 5/12-3.05(e)(1) (West 2014), and sentenced to a term of 24 years' imprisonment. On appeal, defendant argues that his sentence is excessive because the court did not consider his youth and other mitigating factors, and that the sentence will offset the rehabilitative efforts he has made. For the following reasons, we affirm.

¶ 3 Defendant was charged with five counts of attempted first degree murder, two counts of aggravated discharge of a firearm and, as relevant here, one count of aggravated battery with a firearm which stemmed from the shooting and injury of Rudolfo Roman. Because defendant does not challenge the sufficiency of the evidence to sustain his conviction, we include only a limited discussion of the evidence.

¶ 4 At trial, Rudolfo testified that, on September 16, 2014, he resided at 2215 North Kilbourn Avenue in Chicago (residence) with his parents and his sister, Magaly and that he has lived there his entire life. Rudolfo's residence stood in the territory of the Maniac Latin Disciples gang (Disciples). The territory of rival gang, the Latin Eagles, was "just houses down" from the residence. When Rudolfo was 14 years old, he was "forced" to become affiliated with the Disciples, but he did not associate himself with members of the gang.

¶ 5 On the evening of September 16, shortly before 9 p.m., Rudolfo was sitting on the front stairs of the residence with Magaly and her friends, Bernice Paredes and Blanca Silva. It was Mexican Independence Day and people were outside "representing" with flags. A young man with tattoos on his face, whom Rudolfo did not know, approached the locked gate of the fence in front of the residence. Rudolfo identified defendant in court as this man. Defendant said: "What's up folks?" Rudolfo understood that defendant was referring to Rudolfo's gang affiliation. Rudolfo cautiously responded: "What's up?" Rudolfo did not flash any gang signs or communicate to defendant in any way that he was affiliated with a gang. Defendant asked: "Where the [Disciples] at?" Rudolfo told him that he did not know. Defendant said: "come walk with me." When Rudolfo said "no," defendant said: "you don't believe me. I am a Disciple from Mozart Park." Rudolfo believed that Mozart Park could have been some other Disciple

territory. When defendant pulled out his wallet to give him a "business card," Rudolfo "had a bad feeling."

¶ 6 Defendant put away his wallet, lifted his right sleeve and told Rudolfo: "I got a tattoo." Defendant pulled down his sleeve, pulled it back up, looked at Rudolfo and said "If you don't believe me come look at my tattoo man." Rudolfo stood up to walk over to defendant. Defendant pulled a black, .9 millimeter handgun from his waistband and fired multiple shots at Rudolfo, who was then standing about five or six feet away. When the first shot was fired, Rudolfo put up his left hand in front of his face. A bullet went through his hand, and Rudolfo collapsed. Defendant fled while still firing the gun.

¶ 7 Rudolfo was struck by nine bullets. He was in a coma for three days and hospitalized for one month. His injuries included a cracked rib that pierced his lung, and a cracked femur which required a metal rod to be placed in his right leg between his kneecap and his hip. He had to use a wheelchair for three months because he could not walk. As a result of nerve damage to his shoulder, he could not open his left hand. At the time of trial, nearly one year after the incident, he walked with a cane and was seeing a physical therapist five times a week.

¶ 8 When Rudolfo came out of the coma, Chicago police detective Phil Greco spoke with him and presented an array of six photographs. Rudolfo identified defendant almost immediately by the tattoo on his face. He also verified defendant's approximate age and the .9 millimeter weapon used during the offense.

¶ 9 On November 19, 2014, Rudolfo went to the police station with his mother and sister. There they met with Detective Greco, Detective Thomas Skelly and an Assistant State's Attorney (ASA). Rudolfo made a statement to the ASA. The police told Rudolfo that they had

an individual in custody. Although Rudolfo did not wish to see this individual, the police never actually asked him to view the person they had in custody.

¶ 10 Magaly testified similarly to her brother and stated that she gave a description of the shooter to the police when they arrived at the scene. Magaly identified defendant in court as the shooter. When she, Bernice, and Blanka were questioned at the scene, Magaly did not mention to the police that the shooter had a facial tattoo, but Bernice did. Magaly told police that the firearm looked like "a niño," a term used to describe a .9 millimeter.

¶ 11 At the hospital, Magaly spoke to Detectives Greco and Skelly and told them about a tattoo of the head of an eagle on the shooter's arm, which she knew to be the symbol of the Latin Eagles gang. Magaly searched Facebook for photographs of Latin Eagles and found photographs of defendant which showed the tattoo on his arm. At Detective Skelly's request, she sent the photographs to him.

¶ 12 Detectives Skelly and Greco and Officer Ocampo testified regarding their investigation of the case.

¶ 13 Detective Skelly met with Officers Ocampo and Hernandez, who were familiar with the neighborhood where the shooting took place, at Area North police headquarters. The detective showed the photographs to Officers Ocampo and Hernandez, who were familiar with the area where the shooting occurred. Officer Ocampo recognized defendant and provided the detective with defendant's full name. Using defendant's full name, Detective Skelly found a photograph of a person who appeared "very similar" to the person in Magaly's photographs. Detective Skelly assembled a photographic array of six photographs which included defendant and presented the photographic array to Magaly, who identified defendant.

¶ 14 The parties stipulated that Chicago police evidence technician, Officer Abuzanat, would testify that he recovered cartridge casings, fired bullets, and expended shells at the residence. The parties further stipulated that Chicago police firearms expert, Officer Soaniewicz, would testify that he determined the recovered cartridge casings were fired from a firearm capable of firing .9 millimeter ammunition.

¶ 15 The trial court ultimately found defendant guilty of aggravated battery with a firearm and acquitted defendant of the other charges. The court denied defendant's motion for new trial.

¶ 16 A juvenile social investigation report (JSI) was prepared which stated that: defendant was 16 years old at the time of the offense; his grandmother had been his primary caretaker; his mother had been out of his life since he was a baby and had never really acknowledged his existence; and his father had been continuously incarcerated and, when not incarcerated, had minimal contact with defendant. Defendant's grandmother had a prior history of abusing heroin, but had been sober for five years. Defendant reported that his grandparents took good care of him, but he did not want to be around his grandmother when she was using drugs. Because of his strained family relationship, defendant searched for a bond with other people and a father figure. As a result, he joined a gang when he was 11 years old which was "a huge mistake." Defendant had a daughter and he wanted to give her a better life. Defendant admitted that, as a young gang member, he struggled with violent behavior toward others.

¶ 17 The JSI further provided that defendant had admitted he did not know Rudolfo, but that he had targeted him because he was a rival gang member. At first, defendant denied responsibility for the shooting but, eventually, he admitted to shooting Rudolfo and expressed remorse. Defendant said that he committed the act on his own and did not blame other gang members for coercing him into the shooting. In the JSI, the probation officer expressed a belief

that defendant was remorseful and felt guilty. While in the juvenile detention center, defendant was housed on "Level IV," the highest level attainable by detainees based on exemplary behavior. He had performed very well academically and had received over 30 certificates and commendations for his good behavior.

¶ 18 Defendant had 14 prior arrests and two findings of delinquency for aggravated assault and reckless discharge of a firearm for which he had been committed to the Illinois Department of Juvenile Justice in September 2011. Defendant was first paroled on April 18, 2012, and violated his parole in three separate instances. He had been out of custody for a few months before being arrested for the shooting of Rudolfo.

¶ 19 In aggravation, the State highlighted the "brutal nature" of this "heinous" crime and defendant's use of deception in persuading Rudolfo to approach him so he could shoot him nine times at "close range." The effects of defendant's actions would be with Rudolfo for the rest of his life. The State pointed out that: defendant had a prior 2011 finding of reckless discharge of a firearm; his only reason for the shooting was that Rudolfo was a member of a rival gang; and he had not been instructed by other gang members to commit the offense but, rather, he shot Rudolfo of his own volition. In light of his criminal history and the cruel attack, the State requested a sentence within the maximum range of sentencing.

¶ 20 The State read the victim impact statements of Magaly and Rudolfo. In her statement, Magaly expressed her continuing puzzlement as to why her brother had been shot, that defendant has taken away her peace of mind, and that her mother lost her job because she had to take care of Rudolfo during his recovery. Rudolfo stated that he now had post traumatic stress disorder, and loud noises sent him into a panic. The metal rod that replaced his femur causes him constant pain, making it difficult for him to sit up or lay down for long periods of time. He requires

assistance to do almost everything. A number of specialists have said that, because of the severity of the damage, his nerves would never be restored to their previous condition. Rudolfo was afraid, to "the deepest part of his soul that defendant will join society again and try to kill someone else like defendant tried to kill him."

¶ 21 In mitigation, defense counsel emphasized that defendant had been abandoned by his mother at a very early age, and that his father, who had been in and out of the penitentiary, had also abandoned him. Defendant had been raised by his aunt and his grandmother, who overcame a drug addiction to raise defendant to the best of her ability. Counsel argued that, the poor choices defendant had made when he was a young adolescent, led him to where he is today, and that defendant was a perfect example of youths who do not have the assistance or support of a loving family and home. Counsel pointed out that defendant has admitted that what he did was wrong, and that he felt genuine remorse, especially for the victim. Counsel hoped that defendant could be rehabilitated to become a productive member of society, asked the court to consider defendant's behavior while in detention, and requested a lower sentence.

¶ 22 In allocution, defendant admitted to the court that what he had done was "wrong," and stated that it had destroyed his family and the victim's family. He said that he had been meeting with "a man" at the detention center, who had been teaching him and helping him to change. He shared a quote that he now lives up to—essentially that he had become a man and put the ways of childhood behind him. He looked forward to being released as soon as possible in order to raise his daughter, and hoped to personally apologize to the victim one day.

¶ 23 The trial court sentenced defendant to 24 years' imprisonment. In doing so, it acknowledged that defendant had a troubled family life which created "issues" for him that led to him joining a street gang and becoming heavily involved in gang activities. However, the court

was "very concerned" that defendant had been found delinquent for another shooting and had spent time at the Juvenile Justice Center, but that, "after everything that was available in the juvenile court and was given to him in the hopes to try to get his attention, he came back on this case, which [is] a very bad one." The court further explained it had "no joy in sentencing very young people, almost children to jail," but concluded that defendant was a "dangerous young man *** [who] is willing to shoot people for *** no reason at all." It gave defendant the benefit of the doubt and tried to be moderate in its findings, but this was not the first time defendant had "been down this road." Looking at the factors in totality, the court sentenced defendant to 24 years' imprisonment.

¶ 24 The court denied defendant's oral motion to reconsider the sentence. Defendant appeals.

¶ 25 On appeal, defendant argues that his 24-year sentence is excessive because it failed to account for his diminished culpability as a juvenile or the neglect he suffered as a child, and it is disproportionate to his rehabilitative potential, given the changes he made in his life prior to sentencing.

¶ 26 As a preliminary issue, as the State points out, defendant made an oral motion to reconsider sentence and did not file a written motion. Generally, both a contemporaneous verbal objection and a written post-sentencing motion addressing an issue are required to preserve the sentencing issue for review. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). However, the requirement of a written motion is waived where the defendant makes an oral motion to reconsider his sentence and the State does not object. *People v. Shields*, 298 Ill. App. 3d 943, 950 (1998) (citing *People v. Enoch*, 122 Ill.2d 176, 188 (1988)). Here, the State did not object to defendant's oral motion to reconsider sentence. We may, therefore, address sentencing issues on appeal based on any ground that appears in the record, despite defendant's failure to file a

written motion. *People v. Davis*, 356 Ill. App 3d 725, 731 (2005) (citing *Shields*, 298 Ill. App. 3d at 950-51).

¶ 27 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 (and the cases cited therein) (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).

¶ 28 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). Further, a reviewing court "may not substitute its judgment for that of the trial court simply because it would have weighed those factors differently." *People v. Fern*, 189 Ill. 2d 48, 53 (1999).

¶ 29 Aggravated battery with a firearm is a Class X felony. 720 ILCS 5/12-3.05(h) (West 2014). The sentence for a Class X felony ranges from 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2014). The 24-year sentence falls within this statutory range and we, therefore, presume it is proper. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12.

¶ 30 Nevertheless, defendant argues that his 24-year sentence was excessive and constitutes an abuse of discretion because the trial court failed to adequately consider defendant's age, family background, and rehabilitative efforts prior to sentencing. Defendant acknowledges that this mitigating evidence was brought to the trial court's attention but asserts it did not properly consider these factors while imposing the sentence.

¶ 31 A sentence should reflect both the "seriousness of the offense" and "the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11; *People v. Jones*, 2015 IL App (1st) 142597, ¶ 38. However, the seriousness of an offense, and not mitigating evidence, is the most important factor in sentencing. *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123. The trial court is presumed to consider "all relevant factors and any mitigation evidence presented" (*People v. Jackson*, 2014 IL App (1st) 123258, ¶ 48), but "has no obligation to recite and assign value to each factor" (*People v. Perkins*, 408 Ill. App. 3d 752, 763 (2011)). Instead, 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 (citing *People v. Canet*, 218 Ill. App. 3d 855, 864 (1991)).

¶ 32 Here, defendant essentially argues that the court failed to take certain factors into consideration, but he makes no affirmative showing that the court failed to adequately consider the mitigating evidence here. The record shows that the mitigating factors regarding defendant's youth, family history, and rehabilitative efforts and potential were presented to the court in the juvenile social investigation report. Further, these factors were argued in mitigation by trial counsel at sentencing, and defendant set forth his contrition and efforts to change his life when addressing the court. A trial court is presumed to have considered all mitigating evidence presented, including those factors mentioned in the presentencing investigation report. See

People v. Sauseda, 2016 IL App (1st) 140134, ¶ 20. Further, the court in sentencing defendant, specifically mentioned defendant's family background and what circumstances drove him to join a gang, and noted its reluctance to sentence "young people, almost children" to jail. The record thus shows that the court did consider the mitigating evidence defendant raises here.

¶ 33 Further, as discussed, the seriousness of the crime is considered the most important sentencing factor. *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 52. Based on the circumstances of the crime—defendant's unprovoked repeated shooting of a complete stranger from close range within months of being released from parole on a prior firearm offense—the trial court found defendant was "a very dangerous young man *** [who is] willing to shoot people for barely no reason ***." Although the court stressed its obligation to be fair to defendant, it was not required to give more weight to the mitigating factors than to the seriousness of the offense. *Id.* Defendant shot Rudolfo so many times that he was hospitalized for one month, suffered a cracked rib, a cracked femur which required a rod to be placed in his leg, a pierced lung, and permanent nerve damage to his left hand. The trial court considered everything in mitigation and chose not to sentence defendant to the maximum sentence, deciding a 24-year sentence to be proper. We find that the trial court did not abuse its discretion in imposing the 24-year sentence.

¶ 34 As defendant points out, in *Miller v. Alabama*, 567 U.S. 460, 471-72 (2012); *Graham v. Florida*, 560 U.S. 48, 70 (2010); and *Roper v. Simmons*, 543 U.S. 551, 559 (2005), the Supreme Court held that sentencing courts must consider the special characteristics of juvenile offenders, including their lack of maturity, underdeveloped brains, and rehabilitative potential. However, our supreme court has repeatedly held that the rationale of these three cases applies "only in the context of the most severe criminal penalties," specifically capital punishment, natural life

imprisonment, or *de facto* life imprisonment. *People v. Patterson*, 2014 IL 115102, ¶ 110; *People v. Reyes*, 2016 IL 119271, ¶ 9. Defendant did not receive the most severe criminal penalty. His 24-year sentence, which is to be served at 85% (730 ILCS 5/3-6-3(a)(2)(ii) (West 2014)), did not result in a *de facto* life sentence where, as defendant concedes, he would be eligible for release at approximately 37 years of age. Therefore, the rationale of *Miller*, *Graham*, and *Roper* does not apply here.

¶ 35 Defendant cites several cases in which the court reversed a young defendant's sentence. But all sentences are determined on a case-by-case basis. We find defendant's authority unpersuasive. See *People v. Fern*, 189 Ill. 2d 48, 62 (1999) (a claim that a sentence is excessive must be based on the particular facts and circumstances of the case, and may not be attacked on the ground that a lesser sentence was imposed in a similar, but unrelated, case).

¶ 36 Lastly defendant argues that his sentence will result in a "tremendous burden on Illinois taxpayers" at the approximate value of $475,315. The trial court is required to consider the financial impact of defendant's incarceration on the State and its taxpayers based on the financial impact statement filed by the Department of Corrections with the clerk of court. 730 ILCS 5/5-4-1(a)(3) (West 2014). However, the court does not need to list the value it gives to every sentencing factor and, absent evidence to the contrary, we presume it considered the financial impact prior to sentencing. *Sauseda*, 2016 IL App (1st) 140134, ¶ 22.

¶ 37 Therefore, we find the trial court did not abuse its discretion in imposing a 24-year sentence, which was within the statutory guidelines, did not vary from the purpose of the law, and was not manifestly disproportionate to the nature of the offense.

¶ 38 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 39 Affirmed.