2018 IL App (1st) 161164-U

No. 1-16-1164

Order filed September 6, 2018

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 13 CR 3954
	)	
GLEN A. HYDE,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices Burke and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 25-year sentences for armed robbery and aggravated vehicular hijacking are not excessive when the trial court considered all evidence in aggravation and mitigation including that defendant was serving a term of mandatory supervised release at the time of the offenses.

¶ 2 Following a jury trial, Glen A. Hyde was found guilty of armed robbery and aggravated vehicular hijacking. He was sentenced to two concurrent 25-year prison terms, that is, to 10 years for the armed robbery and 10 years for the aggravated vehicular hijacking convictions, and to 15-

year sentencing enhancements on each because a firearm was used in the commission of the offenses. On appeal, he contends that his 25-year sentences are excessive in light of the facts that it was his friend, not he, that had a gun and that no one was injured. We affirm.

¶ 3 At trial, Joseph Simmons testified that he was entering his motor vehicle on the evening of January 22, 2013, when two African-American men were "right into [his] face." One man had a gun. The second man stood close to the first. The man with the gun said, " 'give me what you got.' " Simmons responded by grabbing the muzzle of the gun. The man pulled the gun back, and demanded Simmons's automobile keys. He gave the man his keys and began backing away. The man with the gun "jumped" right into the vehicle. The second man was "just kind of standing there" until the man with the gun said to "get" into the vehicle. The second man then entered the vehicle and the men drove off. Simmons did not have a good look at the men's faces. He testified that he viewed certain video surveillance and that the video fairly and accurately showed what happened. The video was admitted into evidence and then published to the jury without objection. During cross-examination, Simmons testified that the first man had a gun, and that the second man did not say anything.

¶ 4 Calumet City police officer Jose Rivas testified that he was on patrol when he observed a silver Mercedes disobey a stop sign. Rivas followed the vehicle, activated his squad car's lights, and pulled up behind the vehicle. At this point, the driver's side door opened, and defendant jumped out. Two other men also exited the vehicle. Although Travis pursued defendant, he lost sight of defendant. Defendant was detained by other officers.

¶ 5 The State then presented evidence that three latent fingerprint impressions taken from the Mercedes matched defendant's fingerprints.

¶ 6 Assistant State's Attorney Barry Quinn testified that he spoke to defendant on January 23, 2012, and that defendant agreed to memorialize their conversation in writing. Defendant's statement was admitted into evidence and was published to the jury without objection.

¶ 7 In his statement, defendant stated that he was with Odell Chadwick and that when he woke up from a nap, Chadwick was playing with a handgun. Chadwick suggested they go to a liquor store. Defendant did not want to go at first, but then agreed. Once there, Chadwick walked up to an "old guy" sitting in a motor vehicle, pulled out the gun and told the man to exit the vehicle. When defendant observed the man reach for the gun, he told Chadwick to hold on and told the man not to reach for the gun. Defendant further stated that Chadwick took the man's keys, entered the driver's seat and told defendant to "get into the car." Defendant did so. He knew it was wrong to enter the vehicle and he told Chadwick to take him straight home. About an hour later, they "drove up" to JoJuan Johnson and Chadwick offered him a ride. Johnson then entered the vehicle. Defendant stated that he again told Chadwick to take him home. However, Chadwick wanted to obtain "weed" and Johnson indicated that he knew where to obtain some. At one point, there was a gray vehicle behind them. Chadwick stopped the vehicle and ran away. Defendant also ran away because he thought " 'it was the cops.' " He was taken into custody 10 to 15 minutes later.

¶ 8 The jury found defendant guilty of armed robbery and aggravated vehicular hijacking. The matter proceeded to sentencing.

¶ 9 At sentencing, the State argued that although defendant was only 19 years old at the time of the offenses, his criminal background began at a young age when he committed a residential burglary at 17 years old. The defense responded that defendant did not have a "lengthy criminal

history," that is, he only had one prior conviction for residential burglary. The defense also noted that no one was injured and that defendant was not the person "holding the gun." Counsel acknowledged that defendant had not graduated from high school, but asserted that was "in large part" because he had been incarcerated. Moreover, defendant had not picked up any cases while awaiting trial. Counsel noted that defendant maintained his innocence and requested a minimum sentence. The trial court then asked whether defendant was on mandatory supervised release (MSR) at the time of the offense, and counsel answered in the affirmative.

¶ 10 In sentencing defendant, the trial court stated that it taken into account the factors in aggravation and mitigation. The court then stated that it had:

> "considered [that] the defendant's conduct, again through accountability, threatened serious harm, having someone point a weapon at you, certainly not knowing whether or not the weapon is going to go off, threatened serious harm to the complaining witness.
>
> The defendant does have a history of prior criminality. He was on [MSR]. In fact, he had just been placed on [MSR] *** for a non-probationable residential burglary, which he was given boot camp by me, and within approximately three months, he is charged, arrested and now convicted of the aggravated vehicular hijacking as well as armed robbery."

¶ 11 The court next stated that the sentence in this case was "necessary to deter others," and reiterated that defendant was serving MSR at time of the offenses. The court sentenced defendant to two concurrent 25-year prison terms, that is, 10 years for the armed robbery and the aggravated vehicular hijacking convictions, plus 15-year sentencing enhancements because a firearm was used in the commission of the offenses.

¶ 12 On appeal, defendant contends that his sentences are excessive considering that it was Chadwick, rather than he, who had the gun and that "no serious harm was caused."

¶ 13 "A reviewing court may 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 its judgment simply because it may weigh the sentencing factors differently. *Alexander*, 239 Ill. 2d 205 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. *Alexander*, 239 Ill. 2d 205 at 212.

¶ 14 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. *Jones*, 2014 IL App (1st) 120927, ¶ 55. 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.

¶ 15 Here, defendant was found guilty of the Class X felonies of armed robbery and aggravated vehicular hijacking and the applicable sentencing range was between 6 and 30 years in prison. See 720 ILCS 5/18-2(a)(2), (b), 18-4(a)(4), (b) (West 2012); 730 ILCS 5/5-4.5-25(a) (West 2012). Moreover, because a firearm was used in the commission of the offenses, he was subject to a 15-year sentencing enhancement. See 720 ILCS 5/18-2(b), 18-4(b) (West 2012).

¶ 16 The record reveals that at sentencing the parties presented evidence in aggravation and mitigation, including that defendant had one prior felony conviction and that he was serving a term of MSR at the time of the instant offenses. In sentencing defendant, the trial court noted that defendant was serving MSR at the time of the instant offenses and that the sentence was meant to deter others from committing similar crimes. We find that an aggregate sentence of 25 years, only 4 years above the statutory minimum and 20 years below the maximum, 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).

¶ 17 Defendant, however, contends that the trial court failed to consider, in mitigation, his potential for rehabilitation, his youth, his lack of prior violent felony convictions, and the fact that he acted "on Chadwick's orders." He argues that the minimum sentence of 21 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").

¶ 18 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.

¶ 19 However, unlike *Miller,* in the instant case defendant was not a minor and was not sentenced to a mandatory life sentence; rather, he received a sentence only four years above the statutory minimum. See 730 ILCS 5/5-4.5-25(a) (West 2012) (the sentencing range for a Class X felony is between 6 and 30 years). We also note that defendant was not a juvenile at the time of the offenses; rather, he was 19 years old. Moreover, at sentencing, the trial court was able to take into account that defendant was 19 years old at the time of the offenses, and the particular circumstances of the case when exercising its discretion to craft a sentence.

¶ 20 To the extent that defendant argues that he should have received the minimum possible sentence because he was acting upon Chadwick's "orders," this argument is not persuasive. "The accountability statute *** effectively bars courts from considering the offender's degree of participation in the crime by making all persons who participate in a common criminal design equally responsible." *People v. Miller*, 202 Ill. 2d 328, 340 (2002). See also *People v. Williams*, 262 Ill. App. 3d 734, 746-47 (1994) (at sentencing, a defendant found guilty by accountability is no less culpable). Thus, pursuant to the accountability statute, the theory under which defendant was convicted does not render his sentence excessive. See *People v. Fernandez*, 2014 IL 115527, ¶ 19 (determining that when "there is a common design to do an unlawful act, then 'whatever act any one of them [does] in furtherance of the common design is the act of all, all are equally

guilty' " (quoting *People v. Tarver*, 381 Ill. 411, 416 (1942))); see also *People v. Velez*, 388 Ill. App. 3d 493, 516 (2009) (affirming a 45-year sentence for first degree murder based on an accountability theory despite the defendant's "relatively minor" role as a lookout).

¶ 21 In the case at bar, defendant essentially asks this court to reweigh the evidence presented at the sentencing hearing and find that minimum sentences of 21 years were 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.

¶ 22 Moreover, a trial court is not required to explain the value it assigned to each factor in mitigation and aggravation; rather, it is presumed that the 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). Here, defendant cannot meet that burden, as he points to nothing in the record, other than his sentences, to indicate that the trial court did not consider the evidence in mitigation presented at sentencing. See *Jones*, 2014 IL App (1st) 120927, ¶ 55 (a reviewing court presumes that the trial court considered all mitigating factors absent some affirmative indication to the contrary other than the sentence itself).

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

¶ 24 Affirmed.