

2018 IL App (2d) 170828-U
No. 2-17-0828
Order filed June 5, 2018

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
SECOND DISTRICT

| | | |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE |) | Appeal from the Circuit Court |
| OF ILLINOIS, |) | of McHenry County. |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 15-CF-108 |
| |) | |
| RUBEN ZENDEJAS, |) | Honorable |
| |) | Sharon L. Prather, |
| Defendant-Appellant. |) | Judge, Presiding. |

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 10 years' incarceration for aggravated driving under the influence of cannabis given the overwhelming factors in aggravation as set forth in the record.

¶ 2 Defendant, Ruben Zendejas, appeals the denial of his motion to reconsider his sentence of 10 years' incarceration after he pleaded guilty to aggravated driving under the influence of cannabis (625 ILCS 5/11-501(a)(6), (d)(1)(C) (West 2014)) in connection with a collision that left one victim paralyzed. Defendant argues that his sentence is excessive because he was not

actually impaired at the time of the collision and because his criminal history and his behavior since his incarceration show that he has rehabilitative potential. We affirm.

¶ 3 Under the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.* (West 2014)), driving under the influence of cannabis is a misdemeanor when a person drives with any amount of cannabis in his or her blood or urine resulting from the unlawful use of cannabis. 625 ILCS 5/11-501(a)(6), (c)(1) (West 2014). The crime is elevated to a felony with a sentencing range of 1 to 12 years when the person is involved in a motor vehicle accident that proximately causes great bodily harm or permanent disability to another. 625 ILCS 5/11-501(d)(1)(C), (d)(2)(F) (West 2014).

¶ 4 “[T]he trial court is in the best position to fashion a sentence that strikes an appropriate balance between the goals of protecting society and rehabilitating the defendant.” *People v. Risley*, 359 Ill. App. 3d 918, 920 (2005). Thus, we may not disturb a sentence within the applicable sentencing range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id.* at 210. We may not substitute our judgment for that of the trial court merely because we might weigh the pertinent factors differently. *Id.* at 209.

¶ 5 In determining an appropriate sentence, relevant considerations include the nature of the crime, the protection of the public, deterrence, and punishment, as well as the defendant’s rehabilitative prospects. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The weight to be attributed to each factor in aggravation and mitigation depends upon the particular circumstances of the case. *Id.* There is a presumption that the trial court considered all relevant factors in determining a sentence, and that presumption will not be overcome without explicit evidence

from the record that the trial court did not consider mitigating factors or relied on improper aggravating factors. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998).

¶ 6 Defendant spends much of his brief relying on a case that merely mentioned that the trial court considered lack of impairment in mitigation. See *People v. Way*, 2015 IL App (5th) 130096, ¶ 10, *rev'd on other grounds*, 2017 IL 120023, ¶ 38). However, defendant entirely ignores the large amount of aggravating evidence, and the record belies his assertion that he was not impaired.

¶ 7 Here, the factors in aggravation were overwhelming. The presentence investigation report showed that defendant was 24 years old at the time of the collision and had juvenile arrests for theft, criminal defacement of property, and possession of cannabis and drug paraphernalia. He also had multiple adult arrests, including three for possession of alcohol by a minor and five for possession of cannabis. He had multiple disorderly conduct convictions and multiple traffic convictions, including speeding, improper turns, disregard of a traffic device, and driving with a suspended license. Alcohol and drug abuse were listed as personal or social problems.

¶ 8 When defendant was arrested, the investigating officer detected the odor of alcohol on defendant's breath and defendant had slurred speech. Defendant failed various field sobriety tests. About five hours after the collision, a drug recognition expert noted that defendant's eye lids were droopy and his eyes were bloodshot, but no visual signs of impairment were observed. Blood and urine samples were collected about eight hours after the collision and tested positive for cannabis. A search of defendant's phone found photos of defendant using cannabis, and there were "blunts" in the ashtray of his vehicle, which also smelled of cannabis.

¶ 9 As a result of the collision, Brandon Ferreira was paralyzed from the chest down, including his hands and part of his arms. The record contains lengthy statements concerning the myriad of devastating effects that the collision had on Ferreira and his family. Ferreira spent seven to nine days in the hospital, followed by three months at a rehabilitation facility. His parents were initially told a mortality rate instead of a survival rate. After returning home, he required 24-hour care from his family. He had seven additional emergency stays. He suffered extreme headaches and emotional pain, would cry several times per day, and had suicidal thoughts. He is unlikely to hold a job, and his family is emotionally and financially devastated. Other occupants of Ferreira's vehicle were also injured. Defendant gave a statement in allocution and expressed remorse.

¶ 10 In sentencing defendant to 10 years' incarceration, the court noted that the case was one of the most horrendous bodily injury cases it had seen. It stated that it considered all aggravating and mitigating circumstances and all of the information presented. The court found no mitigating circumstances other than a lack of prior felony convictions. Defendant moved to reconsider the sentence, arguing in part that lack of impairment should have been considered in mitigation. The court, in denying the motion, specifically stated that it considered all factors in aggravation and mitigation and that there were no mitigating factors outweighing the seriousness of the crime.

¶ 11 The sentence was not an abuse of discretion. The court specifically stated that it considered all factors, and the record provides ample evidence that defendant recently used cannabis and actually was impaired at the time of the collision. The single statement of one investigator five hours later that defendant had no visible impairment does not outweigh the aggravating factors, which underlie an extremely serious offense. Defendant also contends that

he has unconsidered rehabilitative potential because he has no prior felonies and has a good record in prison. But the trial court explicitly considered defendant's lack of felony convictions, and his behavior in prison after sentencing would not be admissible in proceedings to reconsider the sentence. See *People v. Vernon*, 285 Ill. App. 3d 302, 304-306 (1996). Accordingly, the judgment of the circuit court of McHenry County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 12 Affirmed.