2018 IL App (3d) 160039-U

Order filed August 22, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-16-0039
v.	)	Circuit No. 15-CF-301
	)	
ERIC JOHNSON,	)	Honorable Kathy Bradshaw-Elliott,
Defendant-Appellant.	)	Judge, Presiding.
	)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's nine-year sentence for aggravated domestic battery was upheld because it was not an abuse of discretion.

¶ 2 The defendant, Eric Johnson, was convicted of aggravated domestic battery and unlawful restraint and sentenced to concurrent terms of imprisonment of nine years and two years. The defendant appeals the nine-year sentence for aggravated domestic battery.

¶ 3 FACTS

¶ 4 The defendant, Eric Johnson, was charged with aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2016)), unlawful restraint (720 ILCS 5/10-3(a) (West 2016)), and domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2016)) for strangling, detaining, and causing bodily harm to his girlfriend, Laura N.

¶ 5 The defendant waived a jury and the case proceeded to a bench trial. Laura testified that she was living with someone else at the Quality Inn, but he left her. In mid- to late-May 2015, the defendant suggested that Laura move in with him and take care of his daughter, although the daughter was not there yet. Laura moved in and the relationship progressed to boyfriend and girlfriend. According to Laura, the defendant did not let her go outside to smoke alone after 9 p.m., and they argued about that on more than one occasion.

¶ 6 After she had been living with the defendant in his hotel room for a few weeks, on June 14, 2015, the defendant and Laura hung out with another couple at their trailer for the afternoon, drinking alcohol. They returned to the hotel around 9 or 10 p.m. Later, Laura wanted to go out to smoke a cigarette, but the defendant stood in front of her, picked her up by the arms, threw her on the bed and told her she was not allowed to go. Laura testified that she was 4'11" and weighed about 120 pounds while the defendant was 6'1" or 6'2" and weighed about 270 pounds. Laura testified that she attempted to get up and he picked her up and threw her on the bed again. After a third attempt, the defendant picked her up and laid on top of her on the bed. She was lying face down and he pushed her face into the bed. He eventually got off of her, but threw her down on the bed and sat on top of her when she tried to leave a fourth time. The defendant then got a white t-shirt, ripped it, and tied Laura's arms together. When she tried to get up again, he ripped the shirt more and tied her feet together. She was screaming, so the defendant got on top of her with one hand over her nose and mouth and the other forearm across her neck. After he

took his hands off of her mouth, she started to catch her breath and then threw up on the bed. The defendant then went into the bathroom. Laura tried to call 911 on the room phone, but the defendant came out of the bathroom and ripped it out of the wall. He then gave her back her cell phone and her electronic cigarette. Laura used Facebook to message her friend, telling him to call the police. The next morning, Laura woke up to the police at the door. After the defendant left for work, Laura told the police the story of the previous night. Pictures of the hotel room and Laura's injuries, and the shirt, were admitted as evidence.

¶ 7 The defendant testified that he was a veteran and he was working for the pipeline in May 2015 when he met Laura. He thought that the smoking areas were not safe so he would usually go out with Laura to keep her safe. After about five days, he bought her an electronic cigarette so that she would not have to keep going in and out. The defendant admitted to breaking Laura's cell phone, testifying that she threw it at him and he threw it back, and it hit the granite countertop and cracked. He testified that he disconnected the hotel phone so that he could use the table for a fan, but he did not pull the phone out of the wall. The defendant testified that on June 15, Laura was very drunk when they got back to the room around 10 p.m. She could not navigate the door lock to get the door open to go out, and the defendant took her by the arms and pushed her on to the bed. That happened several times. She was flailing and kept trying to get up, so the defendant used his shirt to tie her up. After she calmed down, she vomited blue Gatorade and whatever else they were drinking. The defendant denied putting his hands on her face or neck, testified that he would never hurt her, and testified that he thought she was too drunk to navigate the stairs.

¶ 8 The trial court found Laura's version of events to be credible, supported by the physical evidence. The trial court found the defendant guilty of all three counts and entered convictions

on all three, but found that Count III (domestic battery) merged into Count I (aggravated domestic battery). At sentencing, the trial court found that the defendant had two prior Class 2 felonies, a 1992 Illinois reckless homicide and a 2005 Florida conviction for selling methadone within 1000 feet of a convenient store that the court found to be the equivalent of a Class 2 felony in Illinois. Thus, the defendant was subject to Class X sentencing. The defendant was sentenced to 9 years in prison for aggravated domestic battery and a concurrent 2-year sentence for unlawful restraint. Defense counsel made an oral motion to reconsider the sentence, which was denied.

¶ 9 ANALYSIS

¶ 10 The defendant argues that his nine-year sentence, which exceeded the six-year minimum, was an abuse of discretion because it was excessive based upon the conduct and the seriousness of the offense. The defendant contends that the two prior felonies do not demonstrate a career criminal or a violent criminal history, but did demonstrate a substance abuse problem. The defendant also contends that the trial court ignored as mitigating factors the defendant's service to his country, his care as the sole provider for his daughter, and his lack of intent to cause harm to Laura. The State contends that the trial court acted within its discretion and properly considered all appropriate sentencing factors.

¶ 11 A trial court has great discretion in its sentencing decisions and a sentence that falls within the statutory range is not an abuse of discretion unless it is manifestly disproportionate to the nature of the offence. *People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007). While a reviewing court may reduce a sentence where an abuse of discretion has occurred, it must not substitute its judgment for that of the trial court just because the reviewing court would have weighed the factors differently. *Id.* at 800-01; Ill. S. Ct. R. 615(b)(4).

¶ 12 In this case, because he was a Class X offender, the defendant was subject to a sentence between 6 and 30 years. The trial court sentenced the defendant to the lower end of that range, 9 years. In doing so, the trial court specified that it found Laura's version of the events to be more credible and found that the defendant did use his hand, forearm, and much larger size, to impede Laura's breathing. The trial court acknowledged the defendant's mental health history, his problem with alcohol, and his history in the military, but found the defendant to be dangerous. Weighing those factors, trial court sentenced the defendant to 9 years, rather than the minimum of 6 years or the 12 years requested by the State. We find that the sentence, which was within the statutory range, was not manifestly disproportionate to the nature of the offence and was not an abuse of discretion.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Kankakee County is affirmed.

¶ 15 Affirmed.