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2018 IL App (3d) 170234-U

Order filed April 18, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal Nos. 3-17-0234 and 3-17-0254 Circuit Nos. 15-CF-862 and 16-CF-4
CHARLES F. RUNYON,)	Honorable
Defendant-Appellant.)	John P. Vespa, Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not consider facts that were outside the record during sentencing. The court also did not abuse its discretion when it determined defendant's sentences.

¶ 2 Defendant, Charles F. Runyon, appeals, arguing that the circuit court erred in imposing his sentences. Defendant does not challenge his convictions of predatory criminal sexual assault of a child or aggravated criminal sexual abuse. We affirm.

¶ 3 **FACTS**

¶ 4 Defendant entered an open plea in which he pled guilty to predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)) and aggravated criminal sexual abuse (*id.* § 11-1.60(c)(1)(i)).

¶ 5 As to the charge of predatory criminal sexual assault of a child, the factual basis provided that on or about December 13, 2015, the seven-year-old victim, C.F., was being babysat by her step-grandfather, defendant. When C.F.'s mother picked her up that afternoon, C.F. told her mother that defendant kept "touching her bottom," while she was at his residence. C.F. also stated that defendant rubbed her vagina under her clothing while she sat on his lap. C.F.'s mother reported the incident to the police.

¶ 6 During the investigation, C.F. was interviewed at the local child advocacy center. The interview was recorded, and C.F. gave a substantially similar description of defendant's conduct.

¶ 7 Defendant also agreed to speak with the police. The interview was recorded. Defendant told the officers that he did put his hands inside C.F.'s clothing while she was seated on his lap. Defendant also stated that he made direct contact with C.F.'s vagina.

¶ 8 Regarding the charge of aggravated criminal sexual abuse, the factual basis provided that during defendant's interview with police regarding the allegation that he abused C.F., defendant also told officers that he had "fondled" his eight-year-old step-grandson, Z.S. Defendant indicated that on three occasions in the prior year he would "grab and stroke" Z.S.'s penis while defendant bathed Z.S. Police spoke with Z.S. who provided a substantially similar version of the events to the officers.

¶ 9 A presentence investigation report (PSI) was prepared and submitted to the court prior to sentencing. The PSI showed that defendant, who was 47 years old at the time of the offenses, previously served as a member of the United States Air Force. Defendant also volunteered as a

Sunday school teacher at local churches. Defendant's criminal history only included minor traffic offenses. In addition, the PSI noted that defendant reported being the victim of a sex offense committed against him as a child.

¶ 10 Included in the PSI is a sex offender evaluation for defendant, which included the evaluator's summary of defendant's statements to police. The summary noted that defendant told police that when defendant rubbed C.F.'s vagina, "[s]he tried to move his hand but he put it back," and that defendant continued to reach into her pants even though C.F. tried to move his hand two or three times. However, the evaluation noted that defendant's responses to the questioning indicated a high level of victim empathy and remorse. In addition, the evaluator indicated that defendant fell within the low risk category for recidivism.

¶ 11 At the sentencing hearing, C.F.'s mother read a statement to the court. C.F.'s mother stated that her "whole world changed" when C.F. told her what defendant did to her. C.F.'s mother described how the incidents affected different members of her family and that C.F. was hurt by defendant's actions. In addition, C.F. told her mother that she is now afraid to trust people.

¶ 12 In addition, Z.S.'s mother read a statement to the court. Z.S.'s mother stated that she looked up to defendant after her father passed away and that she thought defendant was a good role model for her children. However, after learning of defendant's abuse, Z.S.'s mother was "shattered." Z.S.'s mother stated that Z.S. went to counseling as a result of defendant's abuse, but the counseling sessions gave him flashbacks to the abuse. Z.S. also speaks with his school counselor every day and still has nightmares. Z.S.'s mother stated that she did not forgive defendant and that defendant deserved to be in prison the rest of his life.

¶ 13 In mitigation, the defense submitted four letters on defendant's behalf. Defendant also made a statement in allocution. Defendant apologized for his actions. Defendant acknowledged that he would receive a term of imprisonment but stated that he planned to participate in counseling that would help restore him to useful citizenship. Defendant also stated that he understood that he deserved punishment for his actions.

¶ 14 After the evidence in mitigation and aggravation was presented, the State argued the court should impose a sentence of 20 years' imprisonment for the predatory criminal sexual assault of a child conviction and a 7-year sentence for the aggravated criminal sexual abuse conviction.

¶ 15 In response, defense counsel noted the mitigating factors, including defendant's military service, and activity within his church. Defense counsel also noted that defendant had taken accountability for his actions. Further, counsel emphasized the information contained in the PSI which showed defendant's low risk for recidivism and the fact that defendant had reported being sexually abused at a young age. Also, counsel noted that defendant had no prior history of delinquency or criminal activity. Ultimately, counsel asked for a sentence of 12 years' imprisonment for his conviction for predatory criminal sexual assault of a child and probation for his conviction for aggravated criminal sexual abuse.

¶ 16 After hearing the arguments of the parties, the court stated,

“Having considered the [PSI], the evidence presented, the arguments, and the statement of allocution, statements from the victims' mother, the financial impact of incarceration, the statutory matters in aggravation and mitigation which I'll get to in a second, the history and character of the defendant, and having due regard for the circumstances and nature of the offense, I find as follows.

That the following statutory factors in mitigation apply. The defendant's criminal conduct neither caused nor threatened serious physical harm to another.

The defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another. The defendant has no history of criminal activity. That's it for statutory factors in mitigation.

Now statutory factors in aggravation. The sentence is necessary to deter others from committing the same crime. That's it for statutory factors in aggravation.

However, a non-statutory factors [*sic*] in aggravation is that the defendant was the victims' grandfather. Someone who is supposed to protect those children from people like the Charles Runyons of the world. That trust could not have been more violated."

The court then sentenced defendant to 40 years' imprisonment for predatory criminal sexual assault of a child and 7 years' imprisonment for aggravated criminal sexual abuse. The court added that the sentences would have been higher but for defendant's lack of prior criminal history and his military service. Both sentences were ordered to run consecutively.

¶ 17 Defendant filed a motion to reconsider sentence. Defendant argued the sentences were excessive, disproportionate, and varied greatly from the spirit and purpose of the sentencing statutes. Defendant contended that the court failed to consider defendant's age, history and character, or rehabilitative potential when it imposed the sentences.

¶ 18 At a hearing on defendant's motion, defense counsel asked the court to reconsider defendant's sentence and give greater consideration to defendant's age, lack of criminal history,

rehabilitative potential, his low risk to reoffend, and the fact that defendant was the victim of sexual assault at a young age. Counsel also asked the court to consider that defendant cooperated with law enforcement during the investigation and that defendant pled guilty rather than taking the cause to trial.

¶ 19 In response, the court explained that it did consider defendant's criminal history and his military service during sentencing. The court also noted that it considered the fact that defendant cooperated and pled guilty rather than putting the victim's through a trial. The court stated that it gave every consideration at sentencing, but it could not get over the "insurmountable" hurdle of the violation of trust caused by defendant when he committed his crimes against his grandchildren. The court then made the following comments,

"[C.F.] kept pushing [defendant's] hand away. She's sitting in his lap. He has his hands down her pants on her vagina, rubbing the vagina. She is pushing him away. But he's stronger. He keeps doing it. She loses that fight, that physical fight or if you don't like the word fight—

Anyway, she loses that struggle because she's only seven. Her grandfather is 47 at the time. So, he gets to keep rubbing her vagina, rubbing her chest.

In addition to—I don't think I mentioned that at sentencing by the way. *** I don't think that was ever brought to light in sentencing that he physically overpowered her. Now, if somebody equates that with punching here, well, you to got too limited of a mind then I guess. Overpowering. She pushed, her little hand tried to push his hand away. He successfully thwarted that attempt by her. That's right. I didn't consider that.

In addition to the trust violation, you have physical overwhelming of the seven-year-old little girl. Seven or eight-year-old little girl.

I can appreciate that he has no priors, but that's a fantastic statutory factor in mitigation. He pleads guilty. Did not put us through the rigors of a trial. So cooperative that he ended up getting a second file launched against him that he was sentenced on—that's one of the two that we're talking about here today.

I considered all the statutory factors. I considered low risk to re-offend, no priors, took responsibility. I considered his age. Rehabilitation. Taking rehabilitation into account on this. I took all those into account that people don't like what I did. That's fine and understandable, and I'll get over it. But I see no way that I can grant defense's motion to reconsider; and it is, therefore, denied.”

¶ 20

ANALYSIS

¶ 21

I. Improper Evidence at Sentencing

¶ 22

On appeal, defendant first contends that the circuit court erred because it considered evidence not in the record when imposing defendant's sentence. Specifically, defendant contends that the court considered the fact that defendant used his physical strength to continue touching C.F. despite C.F.'s attempt to move defendant's hand away. The record belies defendant's argument.

¶ 23

Contrary to defendant's argument, the evidence that defendant physically overpowered C.F. was in the record. The sex offender evaluation contained in the PSI stated that defendant told police that C.F. attempted to prevent defendant from putting his hand in her pants several times, but defendant did not stop. See *supra* ¶ 10. Thus, the court could properly consider it at

sentencing. See *People v. Roesler*, 195 Ill. App. 3d 1007, 1013 (1990) (a sentencing court must consider the PSI when imposing the sentence and the court has wide discretion as to the type of evidence it uses at sentencing).

¶ 24

II. Excessive Sentences

¶ 25

Next, defendant contends that his sentences are excessive because the court failed to adequately consider in mitigation that defendant “acted under a strong provocation,” his conduct was the result of circumstances unlikely to reoccur, he would likely comply with the terms of a period of probation, and that defendant had been the victim of sexual abuse. Further, defendant contends that the circuit court gave too much weight to the factors in aggravation (breach of trust and deterrence). In essence, defendant argues that the court gave insufficient weight to the potential factors in mitigation and aggravation. We construe defendant’s argument as an invitation to reweigh the sentencing factors, which we are prohibited from doing. See *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 26

On review, we give “substantial deference to the trial court’s sentencing decision because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant’s credibility, demeanor, moral character, mentality, environment, habits, and age.” *People v. Snyder*, 2011 IL 111382, ¶ 36. “[T]he reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently.” *People v. Stacey*, 193 Ill. 2d 203, 209 (2000).

¶ 27

“[A] reviewing court may not modify a defendant’s sentence absent an abuse of discretion.” *Snyder*, 2011 IL 111382, ¶ 36. “An abuse of discretion will be found where ‘the sentence is “greatly at variance with the spirit and purpose of the law[] or manifestly

disproportionate to the nature of the offense.” ’ ’ *Id.* (quoting *Alexander*, 239 Ill. 2d at 212, quoting *Stacey*, 193 Ill. 2d at 210).

¶ 28 Here, defendant pled guilty to predatory criminal sexual assault of a child. The sentencing range for this conviction was between 6 and 60 years’ imprisonment. 720 ILCS 5/11-1.40(b)(1) (West 2014). Defendant also pled guilty to aggravated criminal sexual abuse and was subject to a sentencing range between 7 and 14 years’ imprisonment. 730 ILCS 5/5-4.5-35(a) (West 2014); *id.* § 5-5-3.2(b)(3)(i). Defendant’s consecutive sentences of 40 and 7 years are within the applicable statutory range and, therefore, presumptively valid. See *People v. Busse*, 2016 IL App (1st) 142941, ¶ 27 (sentence within the statutory range is presumptively valid).

¶ 29 At the sentencing hearing, the court considered the relevant factors in mitigation before it imposed defendant’s sentences, and the court specifically referenced several mitigating factors—defendant’s conduct did not cause serious physical harm, defendant’s military service and community service, and defendant’s lack of criminal history. The court further clarified the factors in mitigation at the hearing on defendant’s motion to reconsider sentences by adding that the court also considered defendant’s rehabilitative potential, his low risk of recidivism, age, and defendant’s acceptance of responsibility. Several aggravating factors support defendant’s sentence. These factors include the need to deter others in the community from committing similar offenses and the seriousness of the crimes. Regarding the seriousness of the crimes, defendant’s acts were particularly egregious in that he committed them in a position of trust by abusing his own step-grandchildren while he was babysitting them. See *People v. Zehr*, 143 Ill. App. 3d 875, 879 (1986) (a sentencing court may consider nonstatutory factors during sentencing). We find no abuse of discretion.

¶ 30

CONCLUSION

¶ 31 The judgment of the circuit court of Peoria County is affirmed.

¶ 32 Affirmed.