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2018 IL App (3d) 170241-U

Order filed September 12, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-17-0241
v.	)	Circuit No. 13-CF-2130
	)	
JOHN L. WIESCH,	)	Honorable
	)	Sarah-Marie Francis Jones,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The court did not abuse its discretion in sentencing defendant to seven years' imprisonment.

¶ 2 Defendant, John L. Wiesch, appeals his sentence of two concurrent terms of seven years' imprisonment, arguing that the court erred by failing to sentence him to probation where extraordinary circumstances existed and, in the alternative, abused its discretion in sentencing him to seven years' imprisonment. We affirm.

¶ 3 FACTS

¶ 4 Defendant entered a blind plea to two counts of aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (d)(1)(F), (d)(1)(C) (West 2012)), and the State dismissed two other counts of the same. The State presented the factual basis, stating that on September 26, 2013, at approximately 7:25 p.m., defendant was driving a truck, disregarded a stop sign, and struck a passenger vehicle. William and Harriet Slager, who were 83 years and 85 years old, were in the passenger vehicle. William was pronounced dead at the scene. Harriet was airlifted to the hospital and died from her injuries the next day. Defendant was also transported to the hospital. His eyes appeared bloodshot and glassy, he had a strong odor of an alcoholic beverage on his breath, and a hospital blood draw revealed his blood alcohol concentration (BAC) was 0.219.

¶ 5 At a sentencing hearing, the court told defendant the sentencing range was 6 to 28 years' imprisonment. Two daughters of William and Harriet read victim impact statements. They said the funeral director said that William's "injuries were so bad that he was barely recognizable." Harriet held William's "head in her hands" as he died and was then airlifted to the hospital where she was immediately taken into surgery. Her spleen was removed, she had broken ribs, sternum, neck, and arm, a brain bleed, and "so much internal bleeding that the doctors were not able to stop it." After surgery "[i]t became apparent that she also would not survive." They were both very active in their church and community and spent much of their time helping others. Harriet was active in the church Bible study, volunteered in the hospice program at the hospital, provided a Bible study for women in prison, and participated in a literacy program at the library. William also volunteered at the hospital and drove a bus for the school. They were both still very active. The couple was "sorely missed" by many.

¶ 6 The presentence investigation report showed that defendant had no criminal history. He had been charged with DUI in Indiana, but he pled guilty to reckless driving. He was 40 years old at the time of the accident. Defendant was attending three Alcoholics Anonymous meetings a week.

¶ 7 Defendant presented 18 witnesses to testify and five letters in mitigation, including his parents, siblings, cousins, aunt, sisters-in-law, daughter, friends, and employee. They all stated that defendant "has had to be both mom and dad" to his two daughters since his wife "walked out" on January 21, 2013. He was a good, generous, dependable man and a great father. At the time of the accident, his business and marriage were failing and he was "in a rough spot." However, after the accident he stopped drinking, put all of his attention into being a good father to his daughters, and was sorry for what he had done. He had "taken responsibility for his mistake and has turned his life into a positive example for his children." They expressed concern for the children if defendant was incarcerated.

¶ 8 Cristy Pirac testified that she was employed by Secure Continuous Remote Alcohol Monitoring and had worked with them for 10 years. Defendant had a court-ordered alcohol monitoring bracelet placed on his ankle in October 2013 as a result of the accident. Pirac had met with defendant every two to three months since then. On the day of sentencing, Pirac had checked defendant's ankle monitor and stated that defendant had been sober 1,177 days. She stated that "just about every time he has come in other than the first time I met him, he has expressed extreme remorse for the decision he made that day." Pirac stated that her daughter was killed by a drunk driver and she wished the offender in that case had been as remorseful as defendant.

¶ 9 Defendant gave a statement in allocution and apologized to the Slager family. He said since the accident he has tried to be a good person. According to defendant, he does not drink and has no inclination to do so again. After grief counseling, defendant indicated that he started to rebuild his business and was awarded custody of his daughters. At the time of the accident, he "was heartbroken and in a bad place mentally. He was struggling emotionally, financially, and physically." Defendant told the court that he thinks about what he did every day and is very remorseful.

¶ 10 The court took the matter under advisement and, later, presented a written sentencing order, stating:

> "This matter comes before the court for sentencing after a blind plea of guilty to two counts of aggravated [DUI] which ended the life of Harriet Slager, who died in a hospital bed after suffering catastrophic injuries, after watching her husband of 64 years, William, die in front of her eyes in their car. No more cruises, no more volunteering, no opportunity to watch the grandkids grow up to be meaningful adults, no more laughter and no more love. Their life long dance as a couple and a family ended on September 26, 2013 because [defendant] was driving with a [BAC] of .21, almost three times the legal limit. He stole their chance to die peacefully, and with grace. He denied the family the opportunity to have open caskets—to see them as they were in life for one last time in death.
>
> The legislature requires me to find that in a case such as this, the presumption of probation does not apply unless I make a finding that 'extraordinary circumstances' exists. Unfortunately, the statute does not tell me what that means. The case law submitted to the court did assist in that task, of

course. *People v. Vasquez*, a Second District case from 2012, gave me some direction. Persons of common intelligence can derive the meaning of extraordinary, *i.e.* something that is highly unusual and not commonly present. Do those extraordinary circumstances refer to the life of the defendant, the nature of the offense or something else entirely? The best way to parse the phrase 'extraordinary circumstances' is the evidence of the mitigating factors extraordinary? Are they highly unusual for the situation?

I have worked in the criminal justice system for 24 years and I have seen grief, pain and tears in the courtrooms of this county for those 24 years. I saw grief, pain and tears during the sentencing hearing. That's certainly nothing new and nothing unexpected. What will never change in a criminal case, especially in one such as this, is that there is always loss on both sides. The statements of grace, forgiveness and kindness that this court heard at the sentencing hearing speaks volumes about the character of the children of William and Harriet Slager, and the man that is [defendant] and the people that love him and call him a friend. Rage and anger is there too—because the Slager family got cheated of the most extraordinary thing of all—time—time to spend with William and Harriet and their time to accomplish more in life—because from what I heard about these two people, they were still living every day despite their age, despite William's physical disability. And true to their parents, their daughters keep in their prayers everyone involved in this case. The testimony of [defendant]'s daughter, parents, siblings and friends reflects their empathy for the Slagers while acknowledging their own devastation for the actions of [defendant]. I don't think any of them

would have recognized [defendant] that was completely intoxicated on September 26, 2013. That wasn't [defendant] that hosts the sleepovers, that drives across country to help family build a fireplace, and reaches out to neighbors to help his daughter shop for a dress.

There are mitigating factors, including but not limited to—the lack of criminality of the defendant, the impact of his incarceration on dependent children, the true, sincere expression of true and sincere remorse, his three years of abiding by the conditions of his bond with not a single violation, the likelihood that this type of offense will never occur again and that he never in a thousand years contemplated he would live for the rest of his life with the knowledge that he ended the life of two vibrant people who were husband and wife, parents and grandparents.

The presence of mitigating factors does not equate to extraordinary circumstances. So the question becomes—do these mitigating factors rise to the level of extraordinary circumstances thus permitting the imposition of a period of probation? Are they unusual for the situation? But for the fact that I am required to find extraordinary circumstances exist, I might very likely sentence this defendant to probation. I cannot make that finding as the statute requires me to do—for me to sentence him to probation—that those circumstances exist based on what I have heard. The mitigating factors presented to me do not rise to the level of extraordinary circumstances because they are not unusual for the situation of this defendant. As a human being, I have great sympathy for the children of [defendant] and for the children of William and Harriet Slager. However,

[defendant]'s decision making on September 26, 2013—that's the decision that takes him away from his children.

The Court, having considered the presentence investigation, the drug and alcohol evaluation, the testimony, exhibits and arguments in aggravation and mitigation, the defendant's allocution and all application relevant statutory factors in aggravation and mitigation, [defendant] is sentenced to 7 years in the Illinois Department of Corrections."

The trial court denied defendant's motion to reconsider the sentence imposed by the trial court.

¶ 11 ANALYSIS

¶ 12 On appeal, defendant argues that extraordinary circumstances existed and the trial court should have imposed a sentence of probation rather than a term of incarceration in the Department of Corrections. Alternatively, defendant argues that the trial court should have sentenced him to serve a minimum term of incarceration.

¶ 13 This court must give great deference to the trial court's sentencing decision because the trial court is in the best position to consider the "defendant's credibility, demeanor, moral character, mentality, social environment, and habits." *People v. Rennie*, 2014 IL App (3d) 130014, ¶ 28. Where a sentence is within the statutory limits, the sentence should not be disturbed on review absent an abuse of discretion." *People v. Vasquez*, 2012 IL App (2d) 101132, ¶ 68. A sentence is only an abuse of discretion if it is "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).

¶ 14 In this case, the trial court was required to sentence defendant to a term of imprisonment due to the double fatalities. Pursuant to section 11-501(d)(2)(G)(ii) of the Illinois Vehicle Code,

a person convicted of aggravated DUI, which resulted in the death of two or more persons, shall be sentenced to a term of imprisonment of not less than 6 years and not more than 28 years, "unless the court determines that extraordinary circumstances exist and require probation." 625 ILCS 5/11-501(d)(2)(G)(ii) (West 2012). "The plain language of the statute creates the presumption that a convicted defendant shall serve a term of imprisonment." *People v. Hambrick*, 2012 IL App (3d) 110113, ¶ 21. 'Extraordinary' can be described as circumstances that are 'not ordinary, "highly unusual," and "not commonly associated with a particular thing or event." ' " *Rennie*, 2014 IL App (3d) 130014, ¶ 31 (quoting *Vasquez*, 2012 IL App (2d) 101132, ¶ 70, quoting Black's Law Dictionary 260 (8th ed. 2004)). Extraordinary circumstances are only found in limited circumstances and are rare. *People v. Ikerman*, 2012 IL App (5th) 110299, ¶ 59.

¶ 15 Here, defendant presented mitigating evidence, including: (1) his lack of criminal history, (2) the impact his incarceration would have on his two daughters, (3) his sincere expression of remorse, (4) the three years of compliance with all bond conditions, and (5) testimony and letters presented to the trial court demonstrating support from defendant's family and friends. This record reveals that defendant deeply cares for his children, family, and friends. In addition, the record documents that defendant is extremely remorseful. However, "[t]he presence of mitigating factors does not equate to 'extraordinary circumstances.' " *Rennie*, 2014 IL App (3d) 130014, ¶ 31 (quoting *Vasquez*, 2012 IL App (2d) 101132, ¶ 70).

¶ 16 The trial court also found at the time of the fatal collision defendant was not just slightly over the prohibited BAC limit but "was driving with a [BAC] of .21, almost three times the legal limit." The trial court emphasized that both victims suffered "catastrophic injuries" causing the court to conclude that defendant "stole their chance to die peacefully." The court also found that defendant's conduct "denied the family the opportunity to have open caskets," and the

"opportunity to watch the grandkids grow up to be meaningful adults." In addition, the trial court considered the aggravating factor that both victims were over 60 years of age. (730 ILCS 5/5-5-3.2(a)(8) (West 2012)).

¶ 17 Based on this record, we conclude that the sentence imposed by the trial court is not only within the sentencing range, but was generously fixed by the trial court on the low end of the 6 to 28-year range. Hence, we conclude the trial court's sentence did not constitute an abuse of discretion.

¶ 18 CONCLUSION

¶ 19 The judgment of the circuit court of Will County is affirmed.

¶ 20 Affirmed.