2018 IL App (3d) 170716-U

Order filed June 5, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois, |
| Plaintiff-Appellee, | ) | |
| v. | ) | Appeal No. 3-17-0716 Circuit No. 13-CF-777 |
| JUAN M. GONZALEZ, | ) | Honorable Sarah-Marie F. Jones, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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

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**ORDER**

¶ 1 *Held*: The circuit court did not abuse its discretion in imposing a cumulative sentence of 40 years' imprisonment.

¶ 2 Defendant, Juan M. Gonzalez, argues on appeal that his aggregate 40-year sentence is excessive. We affirm.

¶ 3 FACTS

¶ 4 Defendant entered an open plea to two counts of predatory criminal sexual assault of a child. 720 ILCS 5/11-1.40(a)(1) (West 2012). The factual basis established that on March 17, 2013, defendant was drinking alcohol with his friend, Alejandro, at Alejandro's house. Alejandro's four-year-old daughter was present at the house. Around 1 p.m. defendant indicated he was going to purchase additional alcohol. The child wanted to go with defendant, and her parents allowed her to accompany him. Defendant was gone approximately 45 minutes, which was longer than it should have taken. Alejandro and the child's mother, Enedina, became concerned. They tried to call defendant's cell phone, but he did not answer. Enedina finally contacted defendant, and defendant told her he had stopped at his house to use the bathroom before going to the store. Defendant and the child returned to Alejandro's house and the two began to drink again. The child took a nap, and when she woke up, she told Enedina that defendant had kissed her private area when they had stopped at his house. When Enedina confronted defendant, defendant admitted he kissed the child, but stated it was normal and he had done it with other children.

¶ 5 The child completed a victim sensitive interview and indicated defendant had kissed her vagina and put his penis on her vagina while her pants were down and she was lying on the bed at defendant's house. The child stated defendant told her not to tell anyone. Defendant gave a videotaped statement in which he admitted he took the child to his house, "he got sexually excited [and] got an erection."

> "He indicated that he walked the victim to his bedroom, sat her down on the bed, pulled her pants down, lifted her leg, kissed and licked her vagina, but he indicated that he did not put his tongue inside. He pulled his pants down and ***

masturbated and was licking the victim's vagina, indicated that he then ejaculated on the floor, wiped his penis *** and then wiped his penis on the victim's vagina.

After cleaning up with a rag, he pulled the victim's pants up and he told the victim not to tell anyone."

Defendant was 42 years' old.

¶ 6 The court admonished defendant and told him the sentencing range was from 6 to 60 years' imprisonment on each count that he would serve consecutively. The court found the plea knowing and voluntary and accepted it.

¶ 7 The presentence investigation report (PSI) showed that defendant's criminal history consisted of five Class A misdemeanors: (1) domestic battery in 1997, (2) domestic battery in 1999, (3) domestic battery in 2004, (4) driving while under the influence of alcohol in 2005, and (5) driving on suspended license in 2005. He came to the United States illegally in 1994, and his family still lived in Mexico. He was married, but his wife had medical issues and lived in government housing in Joliet. He completed sixth grade and was taking English as a second language classes at the Will County adult detention facility. For the past 10 years he had consumed about 6 to 12 beers every day. The PSI stated that defendant could benefit from a sex offender evaluation and an alcohol evaluation.

¶ 8 At sentencing, the State read a victim impact statement written by Enedina. The statement read that the child was always "a happy, healthy and well-adjusted little girl" before the incident. But after, "her personality changed." Enedina said the child had started blaming herself, "stating that *** had she not asked to use the rest room, this wouldn't have happened to her." At school, the child started having fits of anger and "[t]eachers now describe her as rebellious, easily distracted and having low self-esteem." The victim impact statement was the

only evidence presented. The court gave defendant the opportunity to give a statement in allocution, and defendant stated, "The only thing I ever want to do is go back to Mexico and see my mom. I haven't seen her in 20 years. And continue to live my life."

¶ 9 The court noted that both counts were Class X felonies and defendant was eligible for 6 to 60 years' imprisonment, mandatorily consecutive to be served at 85%. The court stated it read the PSI and "heard in evidence in the State's case in chief a victim impact statement prepared in accordance with statute and read into the record without objection by defense counsel, argument and aggravation, mitigation, the defendant afforded his right of allocution." The court sentenced defendant to 20 years' imprisonment on each count, to be served consecutively. After pronouncing the sentence, the court stated, "[Defendant] took advantage of a toddler that he knew, knew the parents to satisfy his own sexual desires. The Court considers all the appropriate statutory factors in aggravation, mitigation and the financial impact of incarceration."

¶ 10 Defendant filed a motion to reconsider, arguing the sentence was excessive in light of his lack of felony criminal history and "his taking responsibility for his actions." The court denied the motion. Defendant appealed.

¶ 11 On June 19, 2015, this court granted defendant's motion for summary remand for strict compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). *People v. Gonzalez*, No. 3-13-0919 (2015) (unpublished minute order). On remand defendant filed another motion to reconsider, raising the same allegations. The court denied the motion, stating:

> "I appropriately considered the applicable and statutory factors in aggravation and mitigation, the victim impact statement, the matters that were heard at sentencing, the nature and circumstances of this offense, the statute that governs

the sentencing on this type of case, and I did consider his lack of any serious criminality."

Defendant appealed.

¶ 12 On appeal, this court again remanded for strict compliance with Rule 604(d). *People v. Gonzalez*, 2017 IL App (3d) 160183. On remand, defendant again filed a motion to reconsider alleging his sentence was excessive. The motion alleged the court failed to give full consideration of defendant's lack of felony criminal history, consistent work history, and his wife's medical issues. The motion further mentioned defendant had only one disciplinary action in the Department of Corrections, for hanging a towel on the bottom bunk and had been diagnosed with alcoholism. The court again denied the motion, stating, "[T]he Court at *** the original sentencing hearing *** did properly consider the factors in aggravation and mitigation, the nature of the offense, all applicable statutory factors, including the impact of incarceration, were properly considered by the Court and are properly considered again on the motion to reconsider sentence."

¶ 13 ANALYSIS

¶ 14 On appeal, defendant contends his "aggregate 40-year sentence, which will most likely prevent him from having any opportunity for release during his lifetime, was excessive where he had no prior felony convictions, he maintained regular employment and lived a law-abiding life for a substantial period of time both before and after he committed the present offenses, and he accepted responsibility by pleading guilty to both of the charged offenses." Because we find the court considered all the applicable evidence, including the factors in aggravation and mitigation, we disagree.

¶ 15 The circuit court "has wide discretion in sentencing a criminal defendant." *People v. Markley*, 2013 IL App (3d) 120201, ¶ 31. On review, a circuit court's sentencing decisions are given great deference and will not be altered absent an abuse of discretion. *People v. Jackson*, 375 Ill. App. 3d 796, 801 (2007). The circuit court is given this deference because it is in the better position to determine the appropriate facts since it has the opportunity to weigh factors like "the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). It is not our duty on appeal to reweigh the factors involved in the circuit court's sentencing decision. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010). It is presumed that the court considered any mitigating evidence absent some indication, other than the sentence itself, to the contrary. *People v. Thompson*, 222 Ill. 2d 1, 37 (2006). When a sentence falls within the statutory range, it does not constitute an abuse of discretion unless it is manifestly disproportionate to the nature of the offense or greatly at variance with the spirit and purpose of the law. *Alexander*, 239 Ill. 2d at 215.

¶ 16 We construe defendant's argument as an invitation for this court to reweigh the sentencing factors, which we refuse to do. *Id.* at 214-15. There is no indication in the record that the court failed to consider any of the factors in mitigation and aggravation or any of the evidence presented at sentencing. On numerous occasions, the court specifically stated that it considered all the evidence and all the factors in mitigation and aggravation. Though defendant may believe his rehabilitation potential merited a lesser sentence, the court was not required to agree. We emphasize that a defendant's potential for rehabilitation is not entitled to greater weight than the seriousness of the offense. *People v. Coleman*, 166 Ill. 2d 247, 261 (1995). The seriousness of the offense is the most important factor the court considers in sentencing a defendant. *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010). The fact that defendant performed

sexual acts on a four-year-old child was very serious, as the court noted at sentencing. The two 20-year sentences defendant received were well within the range of 6 to 60 years' imprisonment, which were required to be served consecutively. 720 ILCS 5/11-1.40(b)(1) (West 2012); 730 ILCS 5/5-8-4(d)(2) (West 2012). In fact, his 40-year sentence was in the lower third of the possible 120 years. We cannot say the sentence imposed was "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210.

¶ 17 CONCLUSION

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

¶ 19 Affirmed.