NOTICE
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2018 IL App (4th) 160182-U

NO. 4-16-0182

FILED
June 7, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
DONALD C. MOSS,	)	No. 14CF1601
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant.

¶ 2 In November 2015, a jury found defendant guilty of aggravated domestic battery (720 ILCS 5/12-3.05(f)(1) (West 2014)) and attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2014)). In January 2016, the trial court sentenced defendant to 30 years in prison. Defendant appeals, arguing his sentence is excessive. We affirm.

¶ 3 I. BACKGROUND

¶ 4 At defendant's trial, Megan Stauffer testified she met defendant, Donald C. Moss, in 2013. They dated for eight or nine months. Stauffer worked at Wal-Mart, which is where they met. After they broke up, defendant would sometimes show up at Wal-Mart and leave letters in her mailbox.

¶ 5 On November 21, 2014, during a work break, she shared a cigarette with a male

coworker at her car at approximately 3 p.m. At about 4:40, after leaving work, she heard a knock on her car window while she was stopped at a stop sign in the store parking lot. Defendant was standing outside her car. She rolled down her window, and he asked if she could give him a ride to a car a few stoplights down the road. He was wearing a dark coat, a black hat, and gloves. Stauffer agreed to give him a ride.

¶ 6 Stauffer followed his directions down Prospect Avenue. After they passed the hill near Olympian Drive, defendant said the car was not there anymore. He apologized and said she could take him back. Stauffer made a U-turn at the next intersection. Defendant mentioned he had not had a cigarette in a while. As Stauffer was looking for a cigarette for him, she felt an impact in her chest and was getting hit. She could feel something in her chest. She looked down and saw a knife in her chest with blood flowing from the knife's location. Defendant was still swinging at her. She started to scream. Defendant was yelling at her, asking who she was with on her smoke break. She kept screaming while trying to get out of the car. She was able to get a door open, but defendant shut it. She was finally able to get the door open again, got out of the car, and ran into traffic. Defendant got out of the car behind her. Some other people stopped and helped Stauffer and kept defendant away from her. The blade from the knife was still in her chest. At some point, she sat up, the blade fell out of her chest, and the wound started bleeding more.

¶ 7 James Albers testified he was driving with his wife on Prospect Avenue when he saw Stauffer trying to get out of the car. When she got out of the vehicle, she was screaming and running down the road. She had a knife blade sticking out of her chest. Albers stopped his car as did the car behind him. Albers's wife ran to help Stauffer. A man also got out of Stauffer's vehicle, whom Albers identified as defendant. Defendant was yelling at Stauffer, repeatedly

saying, “Bitch, get back in the fucking car now or I’ll kill you.”

¶ 8 On November 21, 2014, Stauffer was in critical condition at the hospital. The police arrested defendant on November 22, 2014.

¶ 9 Dr. Michael Vernon Colla, a cardiothoracic surgeon, assisted in Stauffer’s care at the hospital. Stauffer had a deep wound to the right of her breastbone, consistent with a knife stab wound. Stauffer was taken to the operating room for surgery. The doctors found the wound had penetrated through the soft tissues overlying the heart, blood had leaked into the pleural cavity, and the pericardium had been penetrated. The doctors also found a slit in the right ventricle of Stauffer’s heart. The doctors had to cut through Stauffer’s breast bone to get to the site of the injuries to her heart. They repaired the injury to her right ventricle, placed chest tubes in both lung cavities, performed a blood transfusion, gave her fresh frozen plasma and platelets, and then closed her chest.

¶ 10 The jury found defendant guilty of both aggravated domestic battery and attempt (first degree murder).

¶ 11 In January 2016, defendant was sentenced. At the hearing, the trial court found the convictions merged. Investigator Duane Smith of the Urbana police department testified that in September 2007 defendant struck two young boys (5 and 8 years old) who had been in his care with a belt. The boys had welts on their extremities, backs, and torsos. In separate interviews, both boys said defendant had caused their injuries with a belt. Defendant admitted hitting the boys with a belt. The boys’ mother was Alicia Workman.

¶ 12 Officer Richard Coleman of the Urbana police department testified he was employed by the Champaign County Sheriff’s Office in May 2008. He investigated a domestic battery reported by Workman. Workman told him defendant entered her vehicle, struck her three

to four times in the face, and choked her. She had marks on her face and neck. He did not speak with defendant and did not know if he had been arrested or prosecuted.

¶ 13 Pamela Ford, a comanager at the Wal-Mart located on Prospect Avenue, testified defendant worked overnights at Wal-Mart when she was the overnight manager. She terminated defendant after he got into a fight with another employee at work. She was not present at the altercation. She testified it was Wal-Mart's policy to terminate both the aggressor and the non-aggressor in a fight between employees.

¶ 14 Vickie Hanthorne testified she was present for the fight at Wal-Mart. After the fight, defendant told her he would pull a knife on someone regardless of how big or small the other person was. Hanthorne was dating Stauffer at the time of the hearing.

¶ 15 Officer Roger Schroeder, a correctional officer with the Champaign County Sheriff's Department, testified he witnessed defendant slap another inmate at the jail after a short verbal exchange. A fight then occurred, and other officers were called to help break up the fight.

¶ 16 Stauffer testified she and defendant had been in a dating relationship, which began around the end of 2013. She said she had to be very careful around defendant sometimes because little things would change his attitude very quickly. On those days, she tried to make sure he was content at all times. She was still dating defendant in April 2014 when they had an argument at Wal-Mart in the parking lot. Later the same day, she was inside working in the candy aisle, and defendant approached her in the aisle. He said he was sorry, but Stauffer said she did not care if he was sorry. She testified his demeanor changed. He started choking her and then slammed her against a pallet. She was able to get away from him and ran to the manager's office. She reported the incident to the police.

¶ 17 Stauffer also read a victim impact statement. She described how she had to

undergo emergency open heart surgery and the pain she endured. She also described her extensive recovery process both physically, psychologically, and emotionally. She testified she has high anxiety and post-traumatic stress disorder. She also testified about the stress of all the medical expenses. She said defendant should be sentenced to a minimum of 30 years in prison.

¶ 18 Alma Moss, defendant's grandmother, testified on defendant's behalf. She testified defendant took care of his children and helped provide financial support. She raised him from when he was 9 until he was 18. He then was in the military. She believed he was honorably discharged.

¶ 19 Defendant's sister, Tyesha Sumling, also testified on defendant's behalf. She stated defendant loved his kids and had a great relationship with them.

¶ 20 Before sentencing defendant, the trial court stated:

> "This Court has considered the report of Court Services, the other documents tendered in mitigation. I've considered the appropriate evidence that was presented here, all relevant statutory factors including, but not limited to, the nature and circumstances of the offense, the evidence and applicable factors in aggravation and mitigation, the character, history and rehabilitative potential of the Defendant, the victim's statement, the Defendant's statement in allocution and the arguments and recommendations of counsel."

The court found the mitigating evidence was far outweighed by the aggravating evidence. The court also found defendant had no rehabilitative potential. The court sentenced defendant to 30 years in prison with three years of mandatory supervised release.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant argues the trial court's imposition of a 30-year prison sentence is excessive. According to defendant, "[d]espite [his] rehabilitative potential, as illustrated by his high school education, work history, military service, strong family ties, and lack of any felony criminal background," the court imposed the maximum sentence available. In addition, defendant argues the court "failed to balance the retributive and rehabilitative purpose of its punishment, which required it to consider both the seriousness of the offense and the objective of restoring Moss to useful citizenship." Defendant argues he was denied a fair sentencing hearing and asks this court to either reduce his sentence or remand the case for resentencing.

¶ 24 A trial court has broad discretionary powers in imposing a sentence, and its sentencing decision is entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010). We will only find a trial court abused its discretion if the sentence imposed strays greatly from the purpose and spirit of the law or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212, 940 N.E.2d at 1066. We give the trial court deference because the trial judge observed defendant and the proceedings and is in a better position to make a sentencing decision than is a reviewing court. *Alexander*, 239 Ill. 2d at 212-13, 940 N.E.2d at 1066.

¶ 25 Before the trial court sentenced defendant, it specifically noted it had considered the appropriate evidence presented at the sentencing hearing and all of the relevant statutory factors, "including, but not limited to, the nature and circumstances of the offense, the evidence and applicable factors in aggravation and mitigation, the character, history, and rehabilitative potential of the Defendant, the victim's statement, the Defendant's statement in allocution and the arguments and recommendations of counsel." The court also found the evidence in aggravation far outweighed the evidence in mitigation.

¶ 26 The trial court then addressed the nature of defendant's crime, noting defendant committed a vicious and unprovoked attack, which he planned in advance. The court noted this was not an incident caused by sudden impulse, impairment, or mental infirmity. Instead, defendant armed himself with a knife and then gained access to Stauffer by taking advantage of her kindness. He then stabbed her in the chest and then continued to strike her, doing everything he could to keep her from being able to exit her vehicle. The court stated defendant likely would have killed Stauffer if not for good samaritans who stopped to help the young lady.

¶ 27 The trial court also noted this was an incident of domestic violence, and defendant had a history of domestic violence. The court also addressed the profound impact of this crime on Stauffer. As to the severity of the crime, the court stated this case fell on the far end of the spectrum of attempt murder because the facts were so egregious. According to the court:

> "[Defendant] is a man who planned and orchestrated and almost executed a murder. It was savage. He attacked a defenseless victim who was simply taking him in and helping him out and the fact that he's capable of doing so and the way he acted at that scene and everything that's followed and what I've heard today makes him a very real danger to the public.
>
> Having regard to the nature and circumstances of the offense and to the character, history and rehabilitative potential of the Defendant I find that the factors in aggravation far outweigh any arguable factors in mitigation and I agree with the State. There is simply no rehabilitative potential here. It's the Court's determination that the appropriate sentence is one of 30 years to the Illinois Department of Corrections. It will have to be served at 85 percent. It will be followed by three years of mandatory supervised release."

¶ 28 The trial court did not abuse its discretion in imposing a maximum sentence on defendant. Even if we agreed with defendant with regard to his rehabilitative potential, which we do not, we would still not find the trial court abused its discretion. "A defendant's rehabilitative potential *** is not entitled to greater weight than the seriousness of the offense." *People v. Coleman*, 166 Ill. 2d 247, 261, 652 N.E.2d 322, 329 (1995). This was a horrible crime and the maximum sentence was justified.

¶ 29 In addition, defendant's assertion the record does not show the trial court considered Moss's mitigating factors is without merit. The trial court noted it had considered the evidence and applicable factors in mitigation. Further, a sentencing court is not obligated to give less than a maximum sentence simply because mitigating factors are present. *People v. Pippen*, 324 Ill. App. 3d 649, 653, 756 N.E.2d 474, 477 (2001).

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm defendant's conviction and sentence in this case. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 32 Affirmed.