2018 IL App (5th) 170185-U

NO. 5-17-0185

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Perry County.
	)	
v.	)	No. 14-CF-118
	)	
WILLIAM H. FARNSWORTH,	)	Honorable
	)	Eugene E. Gross,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Moore and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's sentence is affirmed where the trial court did not abuse its discretion when it issued a sentence reduced by two years at his sentencing hearing.

¶ 2 The defendant, William H. Farnsworth, appeals from the judgment imposed at his resentencing hearing, which was conducted upon remand from *People v. Farnsworth*, 2016 IL App (5th) 150421-U. This case originated as a stipulated bench trial in the circuit court of Perry County, wherein the defendant was charged with second degree murder for the death of Jeffrey Harris (Harris). The trial court found the defendant guilty and sentenced him to 12 years' incarceration. The defendant appealed, and this court

affirmed the trial court's verdict for the second degree murder charge but vacated the defendant's sentence and remanded it for resentencing. In accordance with this directive, the trial court resentenced the defendant to 10 years' incarceration. The defendant thereafter filed a motion to reconsider the sentence, arguing that the sentence remained excessive. The trial court denied the motion to reconsider, and the defendant appeals. For the following reasons, we affirm the trial court's judgment.

¶ 3 We briefly revisit the facts of this case. The defendant met Harris in June 2014, when he paid Harris to do some home improvements on his property. After Harris obtained his phone number, he began to call frequently. In late September 2014, the defendant changed his cell phone number to avoid Harris's phone calls.

¶ 4 On the morning of November 7, 2014, the defendant visited the Coulterville Veterans of Foreign Wars (VFW) building, and Harris entered the bar 30 minutes later. The pair got into an argument approximately an hour later, and the argument escalated to the defendant's grabbing Harris by the arm. A bartender asked them to separate, and the defendant went to sit at another area of the bar. Harris exited the bar shortly thereafter and was seen leaning over to say something to the defendant. The defendant testified that Harris told him that he was going to "whip his ass."

¶ 5 The defendant went outside, where the two continued their altercation. He testified that he gave Harris, who was "hurting for money," a $100 bill. Harris took the money and left the parking lot at a high rate of speed. Soon after, the defendant also left the parking lot. Harris followed him out of town.

¶ 6 The defendant pulled into his driveway, and Harris pulled in behind him. The defendant exited his truck, went into his house, and grabbed a double barrel shotgun. He came outside and waved the gun at Harris, who turned off his vehicle. The defendant then walked down the steps to Harris's vehicle and stood by the driver's side door. Harris opened the driver's door and leaned over to grab something with his right hand. The defendant then shot Harris from a nearly point-blank range, killing him.

¶ 7 Deputy Larry Galbraith of the Perry County sheriff's department responded to the 9-1-1 call placed by the defendant's wife. He found the defendant on his front porch and Harris's body in his vehicle. Galbraith had the defendant show him where the gun was located, and a 12-gauge shotgun and spent shell were recovered from the porch. While being handcuffed, the defendant stated, "that S-O-B isn't going to follow me home, this is my house and I took care of him, don't care what happens."

¶ 8 In an interview with police, the defendant stated that Harris threatened to "kick his ass" and that he responded that he would "shoot Harris's F*** ass." He also stated that he "snapped a cap in his ass" and "I done it. Throw me in prison, I don't give a F***." In a later interview with the police, he acknowledged that his actions were wrong but stated that he was just protecting himself. When he was informed that the object that Harris was reaching for was a box, he responded, "Well, I didn't know, I didn't know." The State's experts would have testified that the defendant's blood alcohol content was between .239 and .249 when he drove home from the VFW and at the time of the shooting. The defense's experts would have testified that Harris's blood alcohol content

at the time he followed the defendant home was .24 and that Harris would test positive for cannabis.

¶ 9 The defendant submitted that Harris was stalking the defendant; that Harris was a drug dealer and had a violent past; and that he was protecting himself and his property, as he had reason to believe that Harris was armed. Following the stipulated bench trial, the trial court found the defendant guilty of second degree murder, stating that "[the defendant's] belief that he was acting in self defense was unreasonable and doesn't exonerate him."

¶ 10 A sentencing hearing was held on June 5, 2015. The defendant presented eight factors in mitigation pursuant to the statute (730 ILCS 5/5-5-3.1 (West 2014)): he did not contemplate that his criminal conduct would cause or threaten serious physical harm to another; he acted under a strong provocation; there were substantial grounds tending to excuse or justify his criminal conduct, though failing to establish a defense; he had no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime; his criminal conduct was the result of circumstances unlikely to recur; his character and attitude indicate that he is unlikely to commit another crime; he was particularly likely to comply with probation; and his imprisonment would entail excessive hardship to his dependents. The State then noted the relevant aggravating factors. It argued that though the court could not use Harris's death as an aggravating factor, the defendant's conduct caused or threatened serious harm. It also stated that, although "second degree murder is not a deterrence crime in terms of deterrence for this man," the sentence was necessary to deter

others from committing the same crime. The State requested a 12-year sentence, and the defendant requested probation.

¶ 11 The trial court stated that it needed to consider all the mitigating and aggravating factors, and that many of the factors in mitigation may apply. In regard to the defendant's history of criminality, it noted the defendant's two previous misdemeanor convictions for driving under the influence (DUI's), from 1978 and 1993, constituted "a history of criminality which is relevant in this case because of the alcohol" and because of this, his history of otherwise being law-abiding "cuts both ways." It found that this incident was unlikely to reoccur and "other than the drinking [the defendant] has led a fairly decent life." In addressing the aggravating factors, it stated:

> "Concerning the factors in aggravation, other than the obvious that is inherent in the offense itself of the harm caused, concerning the deterrence factor, it's a thin line, and I'm not basing my decision on what I do today on whether or not this is a deterrence case. It's—I'm basing my decision on the fact that what happened here, the drinking and the guns and the loss of human life, is a very serious offense and it would seriously deprecate the conduct if he wasn't sent to the Department of Corrections. And the fact I can consider that he had two prior DUI's."

The court went on to note that it could give the defendant the maximum 20 years, as "it's a serious thing to take a man's life, probably the most serious thing." The court found that the State's recommendation, 12 years' incarceration to be served at 50%, was a fair and just sentence under the circumstances.

¶ 12 On July 2, 2015, the defendant filed a motion to reconsider sentence, challenging the trial court's consideration of deterrence as an aggravating factor and asserting that the

court failed to give proper consideration to all of the mitigating factors. After a hearing on September 22, 2015, the court denied the motion.

¶ 13 The defendant appealed, and this court affirmed the conviction but vacated the 12-year sentence. *People v. Farnsworth*, 2016 IL App (5th) 150421-U. Observing that the trial court appeared to give great weight to Harris's death in deciding his sentence, we noted that Harris's death cannot be properly considered as an aggravating factor pursuant to the Illinois Supreme Court's opinion in *People v. Saldivar*, 113 Ill. 2d 256, 272 (1986). We concluded that the 12-year sentence, based on the remaining aggravating factors of deterrence and the defendant's attenuated criminal history, was excessive. Rather than modifying the defendant's sentence pursuant to Illinois Supreme Court Rule 615(b)(1), we remanded the case for resentencing at the trial court's discretion.

¶ 14 On remand, a sentencing hearing was held on February 28, 2017. The defendant submitted evidence that he suffers from a bilateral hemorrhagic retina condition and that he has been a model prisoner since sentencing. The parties stipulated that besides that evidence, the same evidence and arguments presented at the previous sentencing hearing would again be considered.

¶ 15 The victim advocate read a new victim impact statement to the trial court. Thereafter, the State asked the court to consider the statutory aggravating factor of the defendant's conduct causing serious harm to the victim. It noted that, as stated in *Saldivar*, the court could not consider the end result of the victim's death, but could consider "the force employed and the physical manner in which the victim's death was brought about." It also asked the court to consider the statutory aggravating factor of

deterrence, as the defendant had multiple opportunities to remove himself from the escalating situation with Harris, and he brought a gun into what was previously a mostly verbal altercation. It pointed out that deterrence is a necessary factor to keep people from taking the law into their own hands.

¶ 16 In response to the State's argument, the defendant asserted that the use of force discussed in *Saldivar* was more excessive force than present in this case, stating, "Being shot once I submit is a lot less intrusive than being stabbed twice." The defendant asserted that the only statutory aggravating factor present was deterrence. The defendant argued that the court should reduce his sentence to four years, the same sentence received by the *Saldivar* defendant.

¶ 17 In discussing this court's order, the trial court disputed that, at the previous sentencing hearing, it put great weight on the fact that there was a death as an aggravating factor and noted that it had stated that the victim's death is inherent in the offense. It clarified that its focus was on the fact that the victim was shot at nearly point-blank range and that such an act was an extremely violent way to die. The court focused on evidence of the defendant's lack of remorse, noting that the defendant's first comment after shooting Harris was, "That S-O-B isn't going to follow me home. This is my house and I took care of him. I don't care what happens," and, in his first interview with police, said, "Snapped a cap in his ass. I done it. Throw me in prison. I don't give an F." The court stated that it was "not considering the harm as a factor in aggravation, simply what happened that day and the mechanism and the violence that was caused [*sic*] on Mr. Harris." The court found that imprisonment was necessary for the protection of the

public and that probation would deprecate the seriousness of the conduct and would be inconsistent with the ends of justice.

¶ 18 The trial court disputed that it found all of the mitigating factors cited by the defendant as being applicable. It explicitly rejected the following mitigating statutory factors pursuant to section 5-5-3.1 of the Unified Code of Corrections (730 ILCS 5/5-5-3.1 (West 2016)) due to the factual circumstances and the nature of the crime: (1) that the defendant's criminal conduct neither caused nor threatened serious physical harm to another; (2) that he did not contemplate his criminal conduct would cause or threaten serious harm; (3) that he acted under strong provocation; (4) that there were substantial grounds tending to excuse or justify the criminal conduct while failing to establish a defense; (5) that his criminal conduct was induced or facilitated by someone other than the defendant; and (6) that he has compensated or will compensate the victim of his criminal conduct the damage or injury he sustained.

¶ 19 The court clarified its opinion on (7), that the defendant has no history of prior delinquency or criminal activity, noting that while the defendant did not have "no history" due to his prior DUI's, the defendant had led a law-abiding life for a substantial period of time prior to the murder. As for (8), that the defendant's criminal conduct was a result of circumstances unlikely to recur, it stated that factor was "probably present" but that the defendant "handled the situation horribly, it escalated too far, he was intoxicated." It agreed with (9), that the defendant's character and attitude indicated that he is unlikely to commit another crime. In all, it determined that three mitigating factors

and one aggravating factor, deterrence, were present in this case. The court sentenced the defendant to 10 years' incarceration.

¶ 20 On March 24, 2017, the defendant filed a motion to reconsider sentence, asserting that in his first appeal, this court found seven of the eight mitigating factors were present, and that the trial court was bound by this determination in his resentencing. He also argued that this court found *Saldivar* instructive and that we suggested it be used as a guide in resentencing. He asserted that his sentence remained excessive and that "*Saldivar* [made] clear that [he] should have been resentenced to the minimum of four years."

¶ 21 On May 5, 2017, the trial court held a hearing on the motion. The court stated that it made an appropriate determination at the sentencing hearing, and found that *Saldivar* was distinguishable from the present case. The motion was denied, and the defendant appeals.

¶ 22 The sole issue on appeal is whether the trial court abused its discretion in sentencing the defendant to 10 years' imprisonment. We consider the court's sentencing decision under the abuse of discretion standard of review. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). "A sentence will be deeemd an abuse of discretion 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 *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)). However, the trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. *Id.*

¶ 23 The defendant, relying on our discussion of *Saldivar* in his first appeal, argues that his case is analogous to *Saldivar*, and as such, four years is the maximum sentence he should have received on resentencing. We revisit *Saldivar*'s facts and reasoning.

¶ 24 In *Saldivar*, defendant stated that the victim made unwanted sexual advances on him, and after a struggle ensued, he stabbed the victim twice. *Saldivar*, 113 Ill. 2d at 261. He was convicted of voluntary manslaughter and sentenced to seven years' imprisonment. *Id*. at 261, 264. At his sentencing hearing, he presented evidence in mitigation, including that he acted under strong provocation, the conduct was unlikely to reoccur, he was unlikely to commit another crime, and he was likely to comply with probation. *Id*. at 261. The trial court found as the primary statutory aggravating factor " 'the terrible harm that was caused to the victim' " and noted that defendant's conduct caused the death and that a human life was taken. *Id*. at 264. The appellate court affirmed the sentence. *Id*. On appeal to our supreme court, defendant contended that his sentence was excessive because a material element of the offense was the primary aggravating factor on which the circuit court relied in imposing the sentence. *Id*. at 265. The court overruled the trial and appellate courts to impose the statutory minimum sentence of four years. *Id*. at 272. The court found that, while it is appropriate to consider the force employed and the physical manner in which the victim's death was brought about, it is not appropriate to consider the end result of defendant's conduct, *i.e*., the death of the victim, as a factor in aggravation, "a factor which is implicit in the offense of voluntary manslaughter." *Id*.

¶ 25 In the defendant's previous appeal, we found *Saldivar* instructive because it appeared at the sentencing hearing that the trial court placed great weight on Harris's

death in cultivating his sentence, yet *Saldivar* informs us that it is error to consider a fact inherent in the offense as an aggravating factor. However, on remand, the trial court clarified that it was considering not Harris's death but rather the circumstances under which his death was brought about—that is, being shot by a shotgun at point-blank range was a particularly violent way to die and that the defendant showed little remorse for his actions. The trial court did not consider Harris's death as a primary aggravating factor, and in fact, made clear that the primary aggravating factor was deterrence. Moreover, the court found that imprisonment was necessary for the protection of the public and that probation would deprecate the seriousness of the conduct and would be inconsistent with the ends of justice. We note that the most important sentencing consideration is the seriousness of the offense. *People v. Flores*, 404 Ill. App. 3d 155, 159 (2010). Therefore, the trial court used appropriate sentencing considerations when determining the defendant's 10-year sentence.

¶ 26 The defendant argues that there are substantial similarities between *Saldivar* and his circumstances. He also asserts that in our first review of this case, we found seven of eight mitigating factors, which is binding upon us on this review. See *People v. Colter*, 237 Ill. App. 3d 486 (1992). Finally, he argues that a sentence of four years, the sentence received by the *Saldivar* defendant, should have been the maximum sentence warranted in his case.

¶ 27 To the first argument, we note that the facts in *Saldivar* are not as analogous as the defendant claims. In *Saldivar*, defendant and the victim engaged in a struggle before defendant grabbed a knife and stabbed the victim twice. *Saldivar*, 113 Ill. 2d at 261.

Here, the defendant introduced a loaded firearm into what had previously been a verbal altercation and appeared unremorseful immediately following the shooting. Thus, we disagree with the defendant that "the facts [here] are more prone to leniency than *Saldivar*."

¶ 28 The defendant also asserts that we found seven of eight mitigating factors and this is binding upon us on review. See *Colter*, 237 Ill. App. 3d at 486. However, this assertion mischaracterizes our opinion in our first review of this case. We did not find seven of the eight mitigating factors were present but rather observed that the defendant offered many of the same mitigating factors as were offered by the *Saldivar* defendant. The trial court in this case considered the mitigating factors and clarified the three mitigating factors that it believed applied in this case. Its determinations at the resentencing hearing regarding the applicable factors in mitigation and aggravation were appropriate and consistent with conferring a 10-year sentence.

¶ 29 Finally, we did not intend to imply in our previous order that the sentence the *Saldivar* defendant received was the ideal sentence for the defendant in this case. While we may consider the sentencing decisions of other courts for guidance, we certainly were not requiring the trial court to impose the same four-year sentence. We remind the defendant that if that were the case, we have the ability to impose a sentence that we deem fit pursuant to Illinois Supreme Court Rule 615(b)(4).

¶ 30 On remand, the trial court appropriately addressed and found applicable factors in mitigation and aggravation. We find that a sentence of 10 years' imprisonment was not

an abuse of discretion under the circumstances of this case. We affirm the circuit court's judgment upon resentencing.

¶ 31 Affirmed.