

2019 IL App (1st) 142892-U

No. 1-14-2892

Order filed March 27, 2019

Modified upon denial of rehearing May 15, 2019

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF)	Appeal from the
ILLINOIS,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	No. 11 CR 20964
v.)	
)	
GREGORY COPPAGE,)	Honorable
)	Noreen V. Love,
Defendant-Appellant.)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.

Justices Howse and Ellis concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in sentencing defendant to 40 years' imprisonment. Defendant's sentence is not a *de facto* life sentence, the trial court did not consider a factor inherent in the offense as an aggravating sentencing factor, and the trial court properly considered the mitigating sentencing factors.
- ¶ 2 Following a two-day bench trial, Defendant-Appellant, Gregory Coppage was convicted of first degree murder (720 ILCS 9-1(a)(1)(West 2010)) and sentenced to 40 years' imprisonment. On appeal, defendant does not challenge his conviction for first degree

murder. Rather, defendant argues that his sentence should be reduced to 20 years, the minimum sentence under statutory guidelines or, in the alternative, remanded for resentencing. Defendant contends that the trial court improperly sentenced him to serve a *de facto* life sentence. Defendant also argues that the trial court improperly considered an aggravating factor inherent in the offense and failed to consider mitigating factors presented at the sentencing hearing. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3

I. BACKGROUND

¶ 4

On November 19, 2011, Defendant was arrested for using his Chevy Impala to run over Tyrone Carter, which resulted in his death. Subsequently, defendant was charged with two counts of first degree murder, under 720 ILCS 5/9-1(a)(1), for having “intentionally or knowingly” killed Carter with a motor vehicle, and 720 ILCS 5/9-1(a)(2), for having run over Carter “with a motor vehicle, knowing that such act created a strong probability of death or great bodily harm.” Defendant waived his right to a jury trial and on June 4, 2014, the case proceeded to a two-day bench trial.

¶ 5

A. Bench Trial

¶ 6

During the State’s case-in-chief, the State called Carter’s fiancé, Felicia McClain, to testify as the “life and death witness”; Martin Anderson, the Housekeeping Aid Section Chief at Hines Veterans Affairs Hospital (“Hines”), to testify that he was Carter’s supervisor and that defendant had previously been employed at Hines until he left his job in 2011; Joseph Haberkorn, owner of the Popeye’s restaurant in Maywood who testified about the surveillance equipment at the restaurant and verified the video recording entered into

evidence; and Dr. James Filkins, an Assistant Cook County Medical Examiner to testify about the autopsy he performed of Carter's body.

¶ 7 The State also called five eyewitnesses: Miriam Gonzales, Lauren Gonzales, Derek Pedersen, Joseph Toomer and Giovanni Roman. Additional witnesses on behalf of the State included: James Buonincontro, Officer Pierre Smith, and Patrick Julian. The relevant facts adduced at trial are as follows.

¶ 8 On November 19, 2011, Tyrone Carter drove to Hines in his white Cadillac Escalade. Carter worked at Hines as a housekeeping team leader and was assigned to work the 1:30-10:30 p.m. shift. Later that evening, Carter took a "lunch break" and drove his Escalade westbound on West Roosevelt towards a Popeye's Chicken location at 1019 West Roosevelt Road, in Maywood, Illinois.

¶ 9 Miriam Gonzales testified that around 6:15 p.m., she was also driving westbound on Roosevelt with her daughter, Lauren Gonzales in the passenger seat. Both Miriam and Lauren testified that a white Escalade was in front of them. The Escalade made a turn and drove towards the parking lot of Popeye's to the drive-through lane. Miriam put on her right turn signal to follow behind. As Miriam was about to turn, a gray Chevy Impala in the left lane traveling westbound "cut [her] off" and went into Popeye's. Both Miriam and Lauren saw the Impala drive towards the drive-through lane and park behind the Escalade.

¶ 10 Lauren saw the defendant, the driver of the Impala, exit his car while leaving his driver's side door open and head towards the driver's side of Carter's Escalade. Lauren could not tell if defendant was saying anything or making any types of motions or gestures. Unlike Lauren, Miriam did not see the defendant exit his vehicle but did notice him walking back from the Escalade to his car. Miriam testified that she then saw Carter get out of his car and stand

between his car and the Impala. Miriam saw the two men “making gestures like they were arguing.” The defendant then drove his car forward towards Carter but stopped short, leaving a space of 4 or 5 feet between the two cars. The defendant backed up his car a little and drove forward towards Carter again.

¶ 11 Carter returned to his car and pulled out a wooden stick from the back passenger seat. Carter took his wooden stick, went to the driver’s side of defendant’s car, and tried to hit defendant with it. Defendant rolled up his window and Carter continued hitting the car. Carter then started backing away from defendant’s car when defendant drove forward and this time hit Carter. Miriam saw Carter’s body fly up on top of the hood of defendant’s Impala. The defendant then drove westbound on the sidewalk with Carter still on the hood of the car.

¶ 12 Derek Pedersen testified that he was also in the area of 1019 West Roosevelt that evening. He was driving eastbound with his girlfriend when their car stopped directly in front of Popeye’s. Pedersen saw Carter hitting defendant’s car with a stick, the stick shattering into pieces, and Carter heading back towards Popeye’s. Pedersen then saw defendant accelerate, go through some bushes and onto the sidewalk and hit Carter. Pedersen testified that he saw Carter on the hood of the defendant’s car. Defendant continued driving and then slowed down, after which Carter fell off the car and landed on the sidewalk. After rolling off the car’s hood and onto the sidewalk, defendant drove over Carter and proceeded to drive away. Pederson saw the defendant make a “U-turn about a block down and [come] back again at a higher rate of speed in oncoming traffic” and hit Carter again. Pederson testified that Carter was motionless the first time he was hit by the car and remained motionless the second time he was hit. At that point, Pedersen called 9-1-1.

¶ 13 Joseph Toomer and his co-worker Giovanni Roman were also near the Popeye's location that evening. Toomer also consistently testified that Carter was hitting defendant's car with a stick and the window of defendant's car was rolled up. Toomer also testified that defendant struck Carter with his car, Carter landed on the car's hood, and defendant drove approximately five or six feet until he stopped near a sidewalk and Carter rolled off the hood. Toomer then saw defendant run over Carter, drive away, make a U-turn, and drive back to hit Carter again.

¶ 14 Around 6:19 p.m., James Buonincontro, a Maywood Fire Department Emergency Medical Technician, received a dispatch call to the 1019 West Roosevelt location. Buonincontro testified that when he arrived at the location, he saw Carter lying on his back with his arms out. Carter was unresponsive, had no vital signs and was not breathing. Buonincontro transferred Carter to an ambulance and administered CPR on the way to the hospital, but Carter's condition did not change. At 6:37 p.m, Carter was pronounced dead at Loyola Hospital.

¶ 15 At 8:09 p.m., Patrick Julian, an evidence technician, examined the scene to collect evidence. Julian observed what appeared to be "fresh tire marks" and blood stains by the parkway and sidewalk. Julian also saw two sections of a broken wood stick. One section of the stick was 28 inches long, ½ inches in diameter, and weighed approximately ¾ of a pound.

¶ 16 Meanwhile, defendant called 9-1-1 to report that he had been a victim of a battery perpetrated by Carter. Defendant then drove to the Broadview Police Station to give his statement. At 6:50 p.m. in the parking lot of Broadview Police Station, defendant met Officer Pierre Smith. Officer Smith testified that defendant wanted to make a police report and told

him that he was a victim of a battery that took place when he pulled up behind an Escalade in a Popeye's drive-through at 1019 West Roosevelt.

¶ 17 Defendant stated that the "driver of the Escalade thought that [defendant] got too close to his vehicle" and that the driver got out of "the Escalade with a 2 by 4 and began to batter" him in the face. Defendant lifted his upper lip to show Officer Smith a cut on the inside of his mouth. Officer Smith noticed blood on defendant's lips. Officer Smith informed defendant that the Popeye's was in Maywood's jurisdiction and that he would need to file his report with the Maywood Police Department. Officer Smith contacted Maywood Police and notified them that he had an alleged victim who needed to file a report at their station. Around 7 p.m., Maywood Police Sergeant Welch arrived at the Broadview Station and took defendant into custody.

¶ 18 At trial, defendant testified in his own defense. He testified that he was 56 years old at the time of trial, lived in Broadview at the time of his arrest, and previously worked at Hines. He further testified about his encounter with Carter on November 19, 2011. Defendant stated that Carter was hitting him with a stick and hit him on his head and across his face, causing his lip to bleed and his dentures to hang from his mouth. Defendant stated that he drove on the sidewalk to try and get away because he was nervous, feared for his life, and was having an asthma attack. On cross examination, defendant testified that although he knew Carter from working at Hines, he had "no problems" with him. Defendant conceded that he had "cut off" traffic to drive into the Popeye's lot, knew he had hit someone with his car when the person was on the hood of his car, and drove over him when he fell off of his car.

¶ 19 Following closing arguments, on June 5, 2014, the trial court found defendant guilty of first degree murder under both counts.

¶ 20 B. Motion for New Trial and Sentencing

¶ 21 On August 18, 2014, the trial court denied defendant's motion for new trial. Defense counsel argued that defendant had raised a valid claim of self-defense based on his testimony that Carter had attacked him with a stick and that Carter was the "initial aggressor." The court rejected defendant's argument and proceeded to hear aggravating and mitigating factors.

¶ 22 In aggravation, the State presented victim impact statements from Felicia McClain and Ashley Hanson, Carter's daughter. The State also noted that defendant had three prior felony convictions for possession of a controlled substance.

¶ 23 In mitigation, defense counsel argued that defendant's actions on November 19, 2011 did not reflect his true character. Defense counsel then presented letters on defendant's behalf from Mattie Coppage, defendant's older sister; Angela Coppage, his niece; Lilian Dixon, a friend of the family; Katreesha Gordon, his daughter; and Alberta Coppage, his mother. All of whom described defendant as a kind, church-going man. Counsel also stressed that defendant was discharged from the army, after he was injured. Defense counsel then asked the trial court to consider defendant's age, bad health, and family, including his elderly mother and children. Additionally, defendant spoke on his own behalf, expressing sadness and asking for forgiveness from Carter's family.

¶ 24 During sentencing, the court referred to defendant's self-defense argument as raised in his motion for a new trial. The court found defendant's argument "to be contradictive in saying [defendant] couldn't control himself," which was another argument raised by the defendant. The court further stated that it found defendant guilty of murder because he had the intent to kill contrary to defendant's assertion that he did not intend to hurt or kill anyone.

In determining whether there was intent, the court found it significant that the evidence showed that defendant not only hit Carter with his car once but also went “down the block, to turn around, to drive eastbound in the westbound lane, to get to where [Carter] is lying on the sidewalk, to take [his] car and then drive it onto the sidewalk and run over [Carter’s] body again.” The court then mentioned the letter by Lilan Dixon that was read into the record. Although the court acknowledged this letter and stated “I hear all this he grew up, he grew up in a good family as many, many people do, you know, don’t judge him by one day because that’s not the person he is,” the court further stated “[t]here are people who commit murder who have absolutely no background. It doesn’t mean that they necessarily deserve the minimum.” The court provided John Wayne Gacy as an example, stating that “[j]ust because people see you one way doesn’t mean that’s the person you are. People saw Gacy as a great guy. It wasn’t the person he really was.” The court then reiterated that defendant tried to hit Carter when he was out of his car twice when “[h]e got a stick to defend himself against a car.” The court stated “That sir, does not tell me that you deserve 20 years, which is the minimum. I appreciate that you are 56 years old. I appreciate—and—God bless you that your mom is still living. But this was a horrendous act *** it’s overkill as I told you before.” The trial court found defendant guilty of first degree murder, with Count II merging into Count I and sentenced defendant to 40 years in the Illinois Department of Corrections.

¶ 25 On September 3, 2014, defendant filed a written motion to vacate or reduce sentence, arguing, *inter alia*, that the trial court considered aggravating factors implicit in the offense and defendant’s sentence is excessive in light of his background and nature of his participation in the offense. The trial court denied the motion. This appeal followed.

¶ 26

II. ANALYSIS

¶ 27 On appeal, defendant contends that the trial court erred in sentencing him to a *de facto* life sentence of 40 years by: (1) improperly considering a factor inherent in the crime itself as a factor in aggravation; (2) making comments regarding John Wayne Gacy in response to a mitigating factor of defendant’s good character; and (3) failing to consider other mitigating factors. Defendant argues that these errors warrant a minimum sentence of 20 years or, in the alternative, a remand for resentencing.

¶ 28 First, we briefly note that defendant’s arguments for reversal of his sentence as a “*de facto*” life sentence is flawed. Case law addressing claims of an unfair *de facto* life sentence has mainly involved juveniles. The record shows that defendant was born on January 15, 1958, which means that he was 53 years old at the time of the murder on November 19, 2011. Defendant is clearly an adult and not a juvenile. Although we are mindful of defendant’s advanced age and recognize that his sentence is lengthy, we decline reversal as an excessive *de facto* life sentence. See *People v. Thomas*, 2017 IL App (1st) 142557, ¶¶ 25-28 (finding 18 year-old defendant, sentenced to 80 years imprisonment, was an adult and rejecting reliance on cases where juvenile offenders received *de facto* life sentences).

¶ 29 A. Factors in Aggravation

¶ 30 Defendant further claims that the trial court improperly considered his intent as an aggravating factor which is reflected in the court’s sentencing decision above the minimum. He thus contends that he is entitled to a new sentencing hearing or a reduction in his 40-year sentence. We disagree.

¶ 31 The trial court has “broad discretionary powers” when it imposes a sentence. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). This broad discretion means that we cannot substitute our own judgment simply because we weigh the sentencing factors differently. *People v.*

Alexander, 239 Ill. 2d 205, 212-13 (2010). We give great deference to the trial court's determination as it is in the best position to determine the appropriate sentence. *People v. Reed*, 376 Ill. App. 3d 121, 127 (2007). When a defendant's sentence is within the statutory guidelines, it is "presumed proper." *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12. Here, defendant was found guilty of first degree murder and subject to a sentencing range of 20 to 60 years. 730 ILCS 5/5-4.5-20(a)(West 2014). Defendant's 40-year sentence for first degree murder falls within this permissible range, and therefore, it is presumed proper.

¶ 32 Although defendant's sentence is presumed proper, defendant argues that the trial court improperly considered a factor inherent in first degree murder, intent to kill, as a factor to aggravate his sentence. See 720 ILCS 5/9-1(a)(1). The question of whether the trial court relied on an improper factor in sentencing is a question of law, subject to *de novo* review. *People v. Chaney*, 379 Ill. App. 3d 524, 527 (2008). It is well-established that a court may not consider a factor inherent in the offense as an aggravating factor in sentencing. *People v. Milka*, 211 Ill. 2d 150, 184 (2004) (providing that "a factor implicit in the offense for which a defendant has been convicted cannot be used as an aggravating factor in sentencing for that offense, absent a clear legislative intent to allow such use of the factor"). The prohibition is "against the use of a single factor both as an element of a defendant's crime and as an aggravating factor justifying the imposition of a harsher sentence than might otherwise have been imposed." *People v. Gonzalez*, 151 Ill. 2d 79, 83-84 (1992).

¶ 33 When a trial court considers an improper factor in aggravation, a defendant may be entitled to a new sentencing hearing. *People v. Walker*, 2012 IL App (1st) 083655, ¶ 30. Remand for resentencing is only necessary if the court's consideration of an improper factor resulted in a greater sentence. *Id.* Mere mention or consideration of a factor inherent in the

offense during sentencing, however, is not reversible error. A “sentencing court need not unrealistically avoid any mention of such inherent factors, treating them as if they did not exist.” *People v. O’Toole*, 226 Ill. App. 3d 974, 992 (1992). In determining whether the trial court based the sentence on proper factors, we will “consider the record as a whole, rather than focusing on a few words or statements by the trial court.” *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009). It is the defendant’s burden “to affirmatively establish that the sentence was based on improper considerations.” *Id.*

¶ 34 Contrary to defendant’s argument that the trial court improperly considered a factor inherent in the offense as aggravation, it appears that the court’s comments regarding defendant’s intent were made in reference to its ultimate finding that defendant was guilty of first degree murder. In its ruling, the court first addressed intent with respect to “things coming from [defendant’s] attorney initially in the motion for a new trial about self-defense issues to an argument” which the court found contradicted defendant’s other argument that “he couldn’t control himself.” Therefore, the trial court noted that it did not know “what the argument is for defense because one minute it’s well, no it wasn’t intentional, and the other minute it’s well, he couldn’t control himself.” The court found that defendant’s actions were intentional and disagreed with the defendant’s assertion that he acted in self-defense.

¶ 35 The trial court did not explicitly state or provide other statements, indicating that intent was a factor it considered in aggravation. In his brief, defendant emphasizes language from the court’s ruling, in which the court later stated that the facts indicate “overkill as I told you before” and when defendant ran over Carter the second time, he “wanted to make sure that Mr. Carter was dead.” In other words, the trial court found that intent was shown when defendant drove over defendant more than once and went out of his way to hit him the

second time. However, the trial court did not explicitly state that it considered this to be a factor in aggravation. At most, we find that the court's discussion of intent ultimately supports its finding that defendant was guilty of murder. Therefore, we find that defendant has failed to establish that the court specifically considered intent to aggravate his sentence. We further note that even if the court improperly addressed or reiterated its finding of intent, a mere mention of an element of a crime during sentencing does not constitute reversible error.

¶ 36

B. Mitigation Factors

¶ 37

We now turn to defendant's argument that his sentence should be reduced because of the abundance of mitigating factors presented at sentencing. Defendant argues that the trial court erred by only considering his age and the fact that his mother "is still living" as mitigation factors. Defendant contends that the trial court should have considered other mitigating factors, such as his remorse for his conduct, strong family ties, financial cost of incarceration, and his previous service in the United States' Army for two years before he was discharged. Additionally, defendant argues that the trial court improperly ignored evidence of his character as shown by the court's comparison of defendant to John Wayne Gacy.

¶ 38

The Illinois Constitution requires that penalties be determined according to both the seriousness of the offense and the likelihood of restoring the offender to useful citizenship. Ill. Const. 1970 art I. § 11; *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). The trial court is required to consider all factors in aggravation and mitigation including, *inter alia*, defendant's credibility, demeanor, general moral character, mentality, social environments, habits, and age, as well as the nature and circumstances of the crime. *Id.* The trial court is not

expressly required to find that defendant lacked rehabilitative potential nor must it detail its process in determining the penalty such as its consideration of mitigating factors. *Id.*

¶ 39 Defendant presented mitigating evidence in the form of his good character. Defendant alleges that the court improperly ignored this evidence as shown by the court's comparison of defendant to John Wayne Gacy. However, we find that the court did not specifically compare defendant to a serial killer but rather, made a point that other's perception of character is not much of a mitigating factor and does not mean defendant was a better member of society. We find that the court looked instead to the seriousness of the offense. Specifically, the trial court noted that "[Carter] got a stick to defend himself against a car. [Defendant] then in the street tried to hit him each time he tried to get back in his car. And then [defendant was] successful that third time... and [defendant] just plowed him. That, sir does not tell me that you deserve 20 years, which is the minimum." The seriousness of the offense, and not mitigating evidence, is the most important sentencing factor. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. Although defendant presented mitigating evidence, the court properly found that such evidence did not outweigh the seriousness of the offense, especially where Carter was hit or run over by defendant multiple times when he was retreating.

¶ 40 Given the seriousness of the offense, the 40-year sentence does not indicate that the trial court acted arbitrarily in determining defendant's sentence. Moreover, we find no evidence that the trial court improperly weighed any sentencing factors. Thus, we cannot find that the trial court erred in sentencing defendant to 40 years for first degree murder.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.