2019 IL App (1st) 162689-U

No. 1-16-2689

Order filed March 1, 2019

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 17006
	)	
WUILZON CRUZ,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 36-year sentence for aggravated criminal sexual assault, aggravated kidnaping, robbery, and aggravated battery is affirmed where the trial court did not inadequately weigh the mitigating factors in light of the seriousness of the offenses.

¶ 2 Following a bench trial, defendant Wuilzon Cruz was found guilty of eight counts of aggravated criminal sexual assault, two counts of aggravated kidnaping, one count of robbery, and one count of aggravated battery, and sentenced to 36 years' imprisonment. On appeal,

defendant argues the trial court imposed an excessive sentence because it failed to properly weigh mitigating evidence. We affirm.[1]

¶ 3 Defendant was charged by information with 10 counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2)-(4) (West 2014)), 3 counts of aggravated kidnaping (720 ILCS 5/10-2(a)(3) (West 2014)), 1 count of robbery (720 ILCS 5/18-1(a) (West 2014)), and 1 count of aggravated battery (720 ILCS 5/12-3.05(a)(5) (West 2014)), arising from an incident in Chicago on August 28, 2014.

¶ 4 At trial, D.H. testified that at about 5 p.m. on August 28, 2014, she was getting off a bus when defendant passed her on a bicycle, slapped her buttocks, and left. D.H. proceeded to her apartment but was unable to enter her unit because she had locked her keys inside and her roommate was not home. She went to a liquor store and purchased vodka and soda, putting the change in her bra. As she walked through an alley, defendant approached her from behind, punched her in the back of the head with his fist, and knocked her down. He took the money in her bra and left.

¶ 5 D.H. walked to a park that her roommate frequently visited, back to her apartment, and then to her boyfriend's house, but she was unable to find her roommate or boyfriend. While leaving her boyfriend's house, she noticed defendant following her on a bicycle. She stopped in a bar and, once she thought the "coast was clear," she returned to the park and her apartment but still could not find her roommate. On the way back to her boyfriend's house, D.H. saw defendant following her again, this time on foot and about half a block behind her. When she reached her boyfriend's house, she found her boyfriend and stayed with him for a short time before leaving

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

for her apartment again at around 9:30 or 10 p.m. While heading toward her apartment, she saw defendant following her on foot again, about one block behind her. She stopped by a pizza restaurant to ask for assistance and stayed there for a while, speaking with an employee she knew.

¶ 6 Later that night, D.H. returned to her apartment and confirmed that her roommate was still not home. At about 11:30 or 11:45 p.m., she headed back to the entrance of the apartment, which featured two glass doors. The first door led from the apartment units to a "[r]eal small" vestibule containing mailboxes, and the second door led from the vestibule to the outside of the building. Neither door had a functioning lock.

¶ 7 D.H. entered the vestibule and saw defendant standing in the corner. Defendant choked her with his whole hand around her throat as he hit her head with his fist. Once D.H. was on the floor and backed into a corner, he ripped her clothes off and continued to choke and hit her. D.H. testified that she screamed "as loud as I could," and defendant told her to "shut up." At one point, defendant unscrewed the light bulb in the vestibule, turning off the light. D.H. could hear his belt unbuckle as he took his pants off. Once she was naked, defendant touched her vagina with his hands, putting his fingers in her vagina about three times. He then put his penis in her vagina for about "20 minutes straight" as he continued to choke and punch her, and she stated that she tried to "scratch him, bite him, anything I could." D.H. also testified that defendant bit her left shoulder at one point. During her attack, as D.H. was screaming, she saw a man peek out from a first floor apartment.

¶ 8 Eventually, police cars arrived, defendant walked out of the vestibule, and the police arrested him. An ambulance arrived and took D.H. to the hospital, where she was diagnosed with

a concussion and a sexual assault kit was performed. Photographs entered into evidence depicted her injuries, including choke marks on her throat, and split skin on her head and left eyebrow that required stitches. D.H. still had scarring on her forehead and left eyebrow at the time of trial. The State also entered into evidence a video recording recovered from a nearby building, which depicted the assault and defendant's arrest. Defendant's DNA sample matched with DNA recovered from a swab of D.H.'s neck.

¶ 9 The trial court found defendant guilty of eight counts of aggravated criminal sexual assault, two counts of aggravated kidnaping, one count of robbery, and one count of aggravated battery. The trial court denied defendant's motion for new trial, and the cause proceeded to a sentencing hearing.

¶ 10 The State read D.H.'s victim impact statement, in which D.H. described the assault's impact on her as "devastating, profound and far reaching." She stated she moved from her apartment within days of the assault and locked herself in her home for several months. She lost her career because she was "in no state of mind to work" and was unable to "carry on the duties of my job." D.H. also lost a long-time relationship, and she was unable to "talk to a man, walk near a man or look a man in the eyes." According to her statement, D.H. continues to experience flashbacks of the assault, and "[a]nytime I am in a small room or space I have a difficult time breathing and begin to feel sick." D.H.'s statement concluded, "My faith in both myself and in the world has been decimated. I am not the person I was before the assault and I will never be the same as a result of what has been done to me."

¶ 11 The presentence investigation report (PSI) presented to the trial court reflected that defendant had no prior criminal history. In the report, defendant stated that he obtained a sixth-

grade education in Honduras and that he would like to learn English, obtain a GED, and become certified as an auto mechanic. According to the PSI, defendant sent his mother in Honduras $100 a month. He denied belonging to a gang. Defendant did not report any physical or mental health issues. He also stated he "normally consumed a six pack of beer once or twice a month" and smoked marijuana "three to four times per month." Defendant reported in the PSI that he "has pro-social relationships with his non-criminal family and friends." He additionally reported having "a positive attitude" towards "the criminal justice system," and feeling "good about people who get an education, are employed and obey the law."

¶ 12 The State requested that the trial court "take into account *** the impact that this brutal, savage, senseless attack had on [D.H.] and her life and the strength of the evidence against this particular defendant." Given defendant's stable upbringing and steady employment, the State argued there was no explanation as to why defendant committed the assault "other than the inescapable conclusion that he just made the choice to commit these acts." The State asserted that "the factors in mitigation further do not provide any sort of justification for anything other than a significant sentence for this defendant," who "has earned every minute by this brutal and vicious, savage, unprovoked attack on [D.H.]." The State recommended a maximum sentence "for the protection of society from this defendant."

¶ 13 In response, defense counsel argued that defendant had no prior criminal history, was 27 years old at the time of sentencing, and has "always been a law-abiding, hard-working young man." According to defense counsel, defendant left Honduras "to find better employment opportunities" and "to avoid being recruited into a gang." Defense counsel also argued that defendant had been working since he was in the United States, and that he had a good attitude

toward the criminal justice system. Based on these factors, defense counsel requested the minimum sentence so defendant "may return to being the hard-working, productive member of society that he was before his arrest." In allocution, defendant stated he was innocent of the charges.

¶ 14 The trial court stated that "[t]here is no question that the defendant was the person who committed these brutal, heinous acts on the victim," and that "[h]e's about as close to red-handed as you can be caught." The trial court recounted defendant's conduct, adding that after robbing D.H., defendant went back "to get her pride, her dignity, her safety, her mind," and "savagely rape[d] her in that vestibule." Before imposing sentence, the trial court explained it had considered:

> "the evidence at trial; the gravity of the offense; the presentence investigation report; the financial impact on incarceration; all evidence, information and testimony in aggravation and mitigation; any substance abuse issues and treatment; the potential for rehabilitation; the possibility of sentencing alternatives; the statement of the defendant; the victim impact statement; and all hearsay presented and relevant and reliable."

¶ 15 After merging certain counts, the trial court sentenced defendant to consecutive terms of 18 years' imprisonment on two counts of aggravated criminal sexual assault and a concurrent term of 5 years' imprisonment on one count of robbery. The trial court stated it was imposing these sentences "[d]ue to the need to protect the public from such unprovoked, vicious, senseless attacks." The court denied defendant's motion to reconsider sentence.

¶ 16 On appeal, defendant argues the trial court imposed an excessive sentence because it failed to consider the mitigating evidence, including his steady employment, lack of criminal

history, lack of substance abuse or mental health issues, and desire to be a productive member of society. In response, the State argues the trial court properly exercised its discretion in imposing a sentence within the statutory range, particularly in light of the serious harm defendant inflicted.

¶ 17 When sentencing a defendant, a trial court must balance "the seriousness of the offense" and "the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11; *People v. Wilson*, 2012 IL App (1st) 101038, ¶ 61. "[T]he trial court has broad discretionary powers in imposing a sentence." *People v. Stacey,* 193 Ill. 2d 203, 209 (2000). Substantial deference is given to the trial court because "the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36.

¶ 18 When a sentence falls within statutory guidelines, it is presumed proper (*People v. Knox*, 2014 IL App (1st) 120349, ¶ 46) and will be disturbed "only if the trial court abused its discretion in the sentence it imposed" (*People v. Jones*, 168 Ill. 2d 367, 373-74 (1995)). A sentence is deemed an abuse of discretion where it is " 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *People v. Alexander,* 239 Ill. 2d 205, 212 (2010) (quoting *Stacey*, 193 Ill. 2d at 210). When considering a sentence's propriety, "the reviewing court *** must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently." *People v. Fern*, 189 Ill. 2d 48, 53 (1999).

¶ 19 The trial court is presumed to have " 'properly considered all mitigating factors and rehabilitative potential before it; and the burden is on the defendant to affirmatively show the

contrary.' " *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010) (quoting *People v. Garcia*, 406 Ill. App. 3d 768, 781 (1998)). A defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense. *People v. Calahan*, 272 Ill. App. 3d 293, 297 (1995). Rather, "[t]he seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors such as the lack of a prior record." *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). The absence of aggravating factors does not require the minimum sentence be imposed. *Id.* Likewise, "the presence of mitigating factors neither requires a minimum sentence nor precludes a maximum sentence." *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55.

¶ 20 Defendant was sentenced to terms of 18 years on two counts of aggravated criminal sexual assault. Both convictions were properly categorized as Class X felonies with a sentencing range of 6 to 30 years. 720 ILCS 5/11-1.30(d)(1) (West 2014) (aggravated criminal sexual assault is a Class X felony); 730 ILCS 5/5-4.5-25(a) (West 2014) (Class X felony sentencing range). As criminal sexual assault convictions, they were mandated to run consecutively, allowing a total sentencing range of 12 to 60 years. 730 ILCS 5/5-8-4(d)(2) (West 2014). Defendant's conviction for robbery, a Class 2 felony, resulted in a concurrent five-year sentence, which was within the Class 2 sentencing range of 3 to 7 years. 720 ILCS 5/18-1(c) (West 2014) (robbery is a Class 2 felony); 730 ILCS 5/5-4.5-35(a) (West 2014) (Class 2 felony sentencing range); 730 ILCS 5/5-8-4(a) (West 2014) (concurrent sentencing). Thus, defendant was sentenced to a total of 36 years' imprisonment. Because defendant's sentence falls within these statutory guidelines, we must presume it is proper. *Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 21 Testimony at trial showed defendant robbed D.H. when she left a liquor store and followed her throughout the evening, as D.H. attempted to find her roommate and boyfriend. When he sexually assaulted D.H. in the small vestibule later that night, he choked and hit her, giving her a concussion and injuries on her eyebrow and head that required stitches. At the sentencing hearing, the trial court stated it considered "the gravity of the offense," which is the most important factor in determining an appropriate sentence. *Quintana*, 332 Ill. App. 3d at 109. The court recounted that after robbing D.H., defendant went back "to get her pride, her dignity, her safety, her mind" when he "savagely rape[d] her in that vestibule." The court described defendant's conduct as "brutal" and "heinous," and stated it reviewed the victim impact statement, which detailed the trauma and hardship D.H. experienced as a result of defendant's crimes. *People v. Burgess*, 2015 IL App (1st) 130657, ¶ 227 ("[T]he trial court may consider the psychological impact of a sexual assault on the victim in determining an appropriate sentence." (Internal quotation marks omitted.)). The trial court explained that it imposed a 36-year sentence "[d]ue to the need to protect the public from such unprovoked, vicious, senseless attacks." *People v. Castillo*, 372 Ill. App. 3d 11, 22 (2007) (stating the need to protect society and need for deterrence are proper considerations when determining an appropriate sentence).

¶ 22 Notwithstanding, defendant claims the record fails to show the trial court adequately considered any of the mitigating factors. He asserts that the trial court's "summary sentencing rationale" was insufficient, and that the trial court only "passingly mentioned" his rehabilitative potential. The trial court, however, "is not required to specify on the record the reasons for the sentence imposed [citation] nor is it required to recite and assign value to each factor presented at the sentencing hearing [citation]." *People v. Barnes*, 2017 IL App (1st) 143902, ¶ 95. Here, the

trial court expressly stated it had reviewed the PSI, which reflected defendant's career and education goals; his steady employment; his lack of a criminal history; his lack of substance abuse or mental health issues; the financial support he provided to his mother in Honduras; and his "pro-social relationships" and "positive attitude towards the criminal justice system." Defense counsel reiterated many of these factors at the sentencing hearing. We must presume the trial court properly considered the mitigating factors before it, as it expressly stated it had done, and defendant has not met his burden in defeating this presumption. *Brazziel*, 406 Ill. App. 3d at 434.

¶ 23 Moreover, defendant's lack of a criminal history did not require the trial court to impose a lower sentence, as defendant suggests. See *Quintana*, 332 Ill. App. 3d at 109-10 (where the offender was convicted of aggravated criminal sexual assault and aggravated kidnaping, the trial court was not required to reduce the offender's sentence based on his lack of a criminal background). Defendant's history of steady employment, lack of substance abuse or psychological issues, and positive attitude toward the criminal justice system likewise did not necessitate a lower sentence. *People v. Jackson*, 2014 IL App (1st) 123258, ¶¶ 52-53 (finding the trial court did not impose an excessive sentence where the offender raised his "strong history of employment," "solid educational background," and "strong family ties" as mitigating factors). The seriousness of defendant's crimes was the most important factor for the trial court to consider, not the presence of any mitigating evidence. *Quintana*, 332 Ill. App. 3d at 109. Defendant's rehabilitative potential also was not entitled to greater weight than the gravity of defendant's convictions. *Calahan*, 272 Ill. App. 3d at 296-97 (where defendant was convicted of

aggravated criminal sexual assault, he was not entitled to a lower sentence based on mitigating factors including his lack of criminal background and rehabilitative potential).

¶ 24 As the reviewing court, we cannot substitute our judgment for that of the trial court and reweigh the factors, as defendant essentially requests on appeal. *Fern*, 189 Ill. 2d at 53. In view of the serious nature of defendant's crimes and the impact they had on D.H., we find the trial court's sentence is not " 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Alexander*, 239 Ill. 2d at 212 (quoting *Stacey*, 193 Ill. 2d at 210). The trial court did not err in lending less weight to the mitigating factors than to the gravity of defendant's offenses, and therefore, did not abuse its discretion in imposing a 36-year sentence.

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 26 Affirmed.