

No. 1-17-0747

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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. 16 CR 4899
)
 NICHOLAS BOYKIN,) Honorable
) Nicholas Ford,
 Defendant-Appellant.) Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant’s five-year sentence for aggravated battery was not manifestly disproportionate to his offense.
- ¶ 2 Following a bench trial, defendant Nicholas Boykin was found guilty on one count of aggravated battery, and sentenced to five years in prison. He appeals, arguing that his sentence was excessive in light of the nature of his offense. We affirm.

¶ 3 Defendant was charged by indictment with one count of aggravated battery (720 ILCS 5/12-3.05(c) (West Supp. 2015)) and one count of unlawful restraint (720 ILCS 5/10-3(a) (West 2016)), arising from an incident in which he was alleged to have grabbed S.C.'s buttocks on a public way in Chicago. He was also indicted with one count of criminal sexual abuse (720 ILCS 5/11-1.50(a)(1) (West 2016)) predicated on his accountability for an unidentified accomplice's alleged grabbing of S.C.'s breast during the same incident. Because defendant does not challenge the sufficiency of the evidence to sustain his conviction, we recount the facts only to the extent necessary to resolve the issue on appeal.

¶ 4 Prior to trial, defendant underwent a psychological evaluation and was deemed fit to be tried. At trial, S.C. testified that at approximately 6:45 a.m. on March 8, 2016, she left her apartment to walk to work. She was listening to music through headphones when she observed three men get off a bus and walk ahead of her in the same direction. As S.C. caught up to the men, they began gesturing towards her. At this time, two of the men were ahead of her and one, whom she identified in court as defendant, was behind her. She described the men in front as "one Caucasian, one African-American, both taller than me," and defendant as "[t]aller than me, dark hair, dark clothing, a hat that had some red on it." S.C. removed her headphones and asked them if they needed help. Defendant and the other men starting "catcalling" her, making comments such as "hey, sexy," "nice ass," and "you don't need to go anywhere." She started to walk faster, but the men "formed a triangle" around her. One of the men grabbed her breast over her jacket, which "terrified" her. S.C. stopped walking and yelled, "You don't have permission to touch me. Don't touch me." As she was yelling, defendant grabbed her "butt" from behind. She felt "scared" and "violated." S.C. continued to scream, but none of the passersby intervened.

The men walked away once S.C. told them she was calling the police. She took photographs with her cell phone as she spoke with the police operator. S.C. followed the men, who “split up” once they reached an athletic club. She waited inside the club until the police arrived “a minute or two” later. She spoke to the officers, and they apprehended defendant soon thereafter.

¶ 5 On cross-examination, S.C. testified that defendant “was African-American.” She also testified that, as she followed the men, they stated “let’s cut this bitch. We need to get away.” She did not sustain any bruises during the incident, and refused medical treatment.

¶ 6 The parties stipulated that Chicago police officer Kizziah¹ would testify that, at around 6:50 a.m. on March 8, 2016, he responded to a call of “inappropriate touching” and apprehended defendant near the athletic club.

¶ 7 The State rested, and defendant moved for a directed finding on all three counts. The court granted defendant’s motion with respect to the counts of criminal sexual abuse and unlawful restraint, but denied the motion as to the aggravated battery count. The defense then rested without presenting evidence. After closing arguments, the court found defendant guilty of aggravated battery.

¶ 8 The case proceeded to a sentencing hearing, during which the State corrected the presentence investigation (PSI) report to reflect that defendant had two aggravated robbery convictions and two robbery convictions, all from 2008. Defense counsel did not object to the correction, but noted that the sentences on these offenses ran concurrently and that defendant “thinks of it as one case, but it’s four different case numbers.” The court stated that it would consider them as four separate convictions. Additionally, the PSI reflected that defendant’s

¹ The transcript does not contain Kizziah’s first name.

criminal history included juvenile dispositions for aggravated criminal sexual assault and possession of a controlled substance, as well as adult convictions for criminal property damage, property theft, resisting a peace officer, theft of services, cannabis possession, and attempt robbery.

¶ 9 The PSI report stated that defendant was placed in the DCFS system at age four after his mother, “who was having substance abuse problems,” left him and his siblings home alone. He remained in foster and group homes until his emancipation. He stated that he had contact with his father, with whom he had a “great” relationship, while he was in the foster system. Defendant reported a “good” relationship with his mother, with whom he planned to live upon release from custody, and a “close” relationship with all three of his siblings.

¶ 10 According to the PSI report, defendant stated that physical abuse from his foster mother caused him “to start hearing voices” in his head at the age of seven. He had been diagnosed with bipolar disorder and schizophrenia, for which he took medication. He reported three suicide attempts at ages 19, 25, and 30, respectively. Defendant considered himself a “good student,” graduated high school in 2003, and completed one semester of college. His employment history consisted of a two-month stint as an usher at a movie theater and a period of four years where he worked various temporary assignments “on a sporadic basis.” Defendant stated that he is “skilled in industry and assembly labor,” and that his goal is to enroll in a culinary arts program to become a chef.

¶ 11 In aggravation, the State emphasized defendant’s “long history” of criminal conduct, both as a juvenile and an adult. The State also argued that “defendant took advantage” of S.C.’s

“innocent nature,” and that defendant “had opportunities,” but “chose a different path in life” toward criminal conduct.

¶ 12 In mitigation, defense counsel argued that defendant was “abandoned” by his mother, and that he has “suffered mental health consequences all his life” as a result of sexual and physical abuse. He was beaten by his foster parents and had been to nine mental health hospitals. Defense counsel acknowledged that defendant had a criminal history of “taking things that don’t belong to him, sometimes quite forcibly,” but argued that it “speaks more of his inability to conform with social norms.” Defense counsel conceded that defendant “acted inappropriately” toward S.C., but stated that “one might argue he knows no better.”

¶ 13 In allocution, defendant apologized to “the victim.” He stated that he was humbled by his time in presentence custody, and has “grown inside in ways [he] previously could not imagine.”

¶ 14 Following arguments, the court stated that it would consider the trial evidence, the PSI report, the evidence presented in aggravation and mitigation, defendant’s allocution, the statutory factors, and the financial burden of incarceration in imposing a sentence. The court also stated that it was “worth noting” that defendant’s criminal history spans “several incidences,” including the 2008 felonies for which he was sentenced to seven years’ imprisonment. The court further stated that it was “cognizant of the factors in mitigation asserted by the defense,” and that the present offense was “noteworthy because it happened in broad daylight on the streets in the city of Chicago and obviously put the victim in a really terrified circumstance.” The court noted that defendant was eligible for an extended term sentence of up to 10 years, but instead imposed a 5-year sentence. Defense counsel filed *instanter* a motion to reconsider sentence, which the court denied.

¶ 15 Defendant now appeals, arguing that we should reduce his sentence to the two-year statutory minimum because his sentence was “grossly disproportionate” to the offense. In response, the State maintains that the sentence was appropriate because the trial court considered all the relevant factors and imposed a sentence within the statutory range.

¶ 16 The Illinois Constitution requires that all sentences “be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I § 11. A trial court possesses broad discretion when imposing a sentence, and its sentencing decisions are entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). As the trial court is in the best position to evaluate such factors as the defendant’s credibility, mentality, demeanor, age, and moral character, a reviewing court may not reweigh these factors or substitute its own judgment merely because it would have weighed the factors differently. *Id.* at 213.

¶ 17 When a sentence falls within the statutory range, it is presumed proper and will not be reduced unless the trial court abused its discretion. *People v. Charleston*, 2018 IL App (1st) 161323, ¶ 16. An abuse of discretion occurs when a trial court imposes a sentence “greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.” *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 18 Turning to the present case, defendant was found guilty on one count of aggravated battery, a Class 3 felony punishable by up to five years’ imprisonment. 720 ILCS 5/12-3.05(h) (West Supp. 2015) (felony classification); 730 ILCS 5/5-4.5-40(a) (West 2016) (sentencing range). However, based on his criminal history, defendant was eligible for an extended term of up to 10 years’ imprisonment. 730 ILCS 5/5-4.5-40(a) (West 2016); see also 730 ILCS 5/5-5-

3.2(b)(1) (West Supp. 2015) (recidivist provision); 730 ILCS 5/5-8-2 (West 2016) (criteria for extended-term sentencing). Thus, defendant's five-year sentence was well within the statutory range, and is presumed proper absent an abuse of discretion. *Charleston*, 2018 IL App (1st) 161323, ¶ 16.

¶ 19 We find no abuse of discretion in this case. It is clear from the record that the trial court considered the appropriate factors in aggravation and mitigation. The court stated that it would consider the trial evidence, the PSI report, the evidence presented in aggravation and mitigation, defendant's allocution, the statutory factors, and the financial burden of incarceration. Defendant makes no showing that the court did not consider these factors or that it considered them improperly. Although a trial court need not explain precisely how it weighed the aggravating and mitigating factors, the court specifically noted defendant's extensive criminal history, the impact on the victim, and the public, daytime nature of the offense as aggravating factors. The court also acknowledged the existence of mitigating factors argued by the defense, which included defendant's mental health issues, but was not required to assign them more weight than the severity of the offense. See *People v. Ramsey*, 239 Ill. 2d 342, 426 (2010) (diagnosis of mental illness is not necessarily mitigating); *People v. Decatur*, 2015 IL App (1st) 130231, ¶ 12 (seriousness of the crime is the most important sentencing factor).

¶ 20 Despite defendant's attempt to minimize his conduct as "a misdemeanor battery" and "a single touch," we do not agree that his sentence was manifestly disproportionate to his offense. His argument on appeal is essentially that the "true nature" of his offense was a harmless, "momentary touch," which only constituted aggravated battery because it occurred on a public street. However, it was proper for the trial court to consider the broader context of the offense,

including defendant's character and criminal history. See *Fern*, 189 Ill. 2d at 55 (trial court is charged with fashioning a sentence within a statutory range based upon the particulars of the individual case). Thus, we cannot say that the trial court abused its discretion when it considered all factors relevant to this particular aggravated battery and ultimately fashioned a sentence only half of the statutory maximum term.

¶ 21 To support his argument, defendant cites three cases—*People v. Stacey*, 193 Ill. 2d 203 (2000); *People v. Allen*, 2017 IL App (1st) 151540; and *People v. Busse*, 2016 IL App (1st) 142941—in which a defendant's sentence was reduced for being disproportionate to the nature of the crime. To the extent that defendant is asking us to compare his sentence to those cases, we decline to do so “as our supreme court has rejected an approach that compares sentences between defendants in unrelated cases.” *People v. Brown*, 2017 IL App (1st) 142877, ¶ 65 (citing *Fern*, 189 Ill. 2d at 56). In any event, defendant's conduct was qualitatively distinct from that in any of those cases, which involved theft (*Allen*, 2017 IL App (1st) 151540, ¶ 2; *Busse*, 2016 IL App (1st) 142941, ¶ 6) or a single offender groping a victim (*Stacey*, 193 Ill. 2d at 210). Here, the trial court's sentence properly reflected the facts of this case, where defendant approached S.C. on a public street in concert with two other men and committed aggravated battery by grabbing her buttocks.

¶ 22 As a final matter, we acknowledge that defendant's briefs on appeal repeatedly mention his and S.C.'s respective races, and posit that the State “over-charg[ed]” him in this case because he, a black man, touched a white woman inappropriately. At the same time, he recognizes that he “cannot directly challenge in this appeal the injustice of the charges,” as he “does not have proof of *explicit* racial bias in how he was charged.” (Emphasis in original.) Thus, neither the propriety

of the State's charging decisions nor the process by which defendant was convicted of aggravated battery, rather than some lesser crime, is before this court. Instead, the sole issue on appeal is whether defendant's sentence is appropriate under the law. There is no indication whatsoever that the trial court relied on racial considerations in fashioning defendant's sentence. Indeed, S.C.'s trial testimony describing defendant and his companions were the only references to race in the transcript. Thus, defendant's contention that race played any role in this case is nothing more than speculation, and has no bearing on our decision.

¶ 23 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 24 Affirmed.