

2019 IL App (1st) 171152-U
No. 1-17-1152
Order filed December 10, 2019

Second 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 ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 3904
)	
ORLANDO RAMIREZ,)	Honorable
)	William H. Hooks,
Defendant-Appellant.)	Judge, presiding.

JUSTICE COGHLAN delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's 28-year sentence for attempted first degree murder is not excessive or an abuse of the trial court's discretion.
- ¶ 2 Following a jury trial, defendant Orlando Ramirez was convicted of attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2014)) and aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2014)) for stabbing his girlfriend. The trial court sentenced defendant to prison terms of 28 years for the attempted murder and 7 years for aggravated domestic battery, then

merged the battery offense into the attempted murder conviction. On appeal, defendant does not challenge the guilty findings, but contends that the trial court abused its discretion by imposing an excessive sentence two years below the maximum term where his criminal history consists of only misdemeanor offenses, and the court failed to give adequate consideration to his steady work history and expression of remorse. We affirm.

¶ 3 Defendant was tried on one count each of attempted first degree murder and aggravated domestic battery. Prior to trial, the State filed a motion to allow evidence of other crimes committed by defendant against two other women to show his propensity to commit domestic violence, motive, intent, absence of mistake, and to explain a continuing narrative. Following a hearing, the trial court granted the State's motion and allowed the other crimes evidence.

¶ 4 At trial, Tashia Hernandez testified that she was defendant's former girlfriend, and they had lived together for a couple of months in 2010. When their relationship ended, Hernandez moved out of state. She returned to Chicago on January 27, 2014, to rekindle their relationship. Defendant picked her up from the bus station and brought her back to his studio apartment where they again lived together. About 10 days later, on February 7, 2014, defendant was very upset. He left the apartment around 10 a.m. to cash his check. While defendant was out, Hernandez texted her friend Joaquin because she wished to purchase two single cigarettes from the liquor store where he worked. Hernandez denied that she was ever romantically involved with Joaquin.

¶ 5 About 2 p.m. defendant returned home intoxicated. He drank from a half-empty pint bottle of vodka he held in his hand, and he had two four-packs of beer in his book bag. Defendant began making "smart remarks" about Hernandez's text messages. Hernandez grew tired of defendant's remarks and threw her phone on the floor. Defendant picked up her phone and told Hernandez to

do it the right way. He threw her phone to the floor breaking it. Defendant told Hernandez to get out of the apartment. Hernandez initially replied that she had nowhere to go. She then told defendant that she was leaving and began packing her belongings.

¶ 6 Defendant locked the apartment door and grabbed Hernandez by the top of her hair near her forehead. He threw Hernandez onto the bed on her back. Defendant held her down between his legs with his right leg on the side of her on the bed, and balanced himself on his left leg, which was on the floor. Hernandez was unable to move. Defendant reached his right hand behind him and pulled out a kitchen knife. Defendant stated “I’m going to show you a real motherf***ing killer.” Defendant brought the knife down to stab Hernandez. As she tried to block it with her hand, the outside of her left wrist was “sliced” open. Hernandez pleaded for defendant to stop and told him everything would be okay. Defendant scratched at Hernandez’s neck with the knife, trying to cut her. Defendant said he was going to cut off her head and save it. Defendant also cut her forehead and the bridge of her nose. Defendant brought down the knife again to stab Hernandez and “sliced” open the top portion of her left wrist.

¶ 7 Defendant looked at himself in the mirror that hung on the wall next to the bed and began growling. He then looked at Hernandez and growled at her. Defendant brought the knife down and stabbed Hernandez in the left side of her abdomen. Hernandez was bleeding “all over the bed.” Defendant lost his balance and slipped. Hernandez pushed defendant off, causing him to fall backwards. She crawled to the apartment door and ran upstairs to a neighbor’s apartment. Hernandez ran into the neighbor’s door with her shoulder, knocking it off its hinge. She asked the elderly woman who lived there to call the police. Hernandez’s blood was dripping all over the woman’s floor. Defendant entered the woman’s apartment and told her that everything was fine

and not to call the police. He asked the woman if he could use her mop. The woman pointed to her mop, and defendant began mopping up Hernandez's blood from the floor. Hernandez stood in the apartment bleeding and crying. Defendant begged Hernandez to come home and went downstairs to their apartment. Hernandez remained upstairs and leaned over the banister to check that defendant had gone all the way down the stairs. As Hernandez was about to descend the stairs, she observed the knife lying on one of the top stairs. Hernandez picked up the knife and tried to give it to the elderly woman, but she would not take it. Hernandez tossed the knife behind a board that was outside the woman's apartment door. Hernandez again looked down the stairs to ensure defendant was not there. She heard defendant say he was "getting the f*** out of here," and he slammed his apartment door closed.

¶ 8 Hernandez went down the stairs and ran out the front door of the building. It was cold and snowy outside, and she was wearing only leggings and a tank top with no shoes. A neighbor dialed 911 and handed Hernandez his phone. He also gave her slippers and a sweatshirt to wear. While Hernandez was on the phone with 911, defendant walked past her with his book bag. He walked towards the homes of his sister and mother, who lived next to each other down the street, three and four houses away from the apartment building.

¶ 9 The police arrived at the scene and she told them what happened, where defendant went, and where she left the knife. Hernandez was transported to Christ Hospital in an ambulance. She received 12 stitches for the cut on the outside of her wrist and 10 stitches for the cut on top of her wrist. The doctors cleaned and bandaged her abdominal wound which had to heal from the inside out because it was so deep. Hernandez has a scar on the bridge of her nose, a one-inch scar on her

abdomen, a two-inch scar on top of her wrist, and a three-inch scar on the outside of her left hand.

Hernandez identified photographs of her stab wounds taken in the hospital.

¶ 10 Chicago police officer Brian Glim testified that he responded to a dispatch call regarding a person who had been stabbed. Upon arriving at the scene, Glim saw Hernandez standing outside covered in blood and shaking. Hernandez appeared traumatized and was very upset. She told police that defendant had stabbed her and where the weapon was located. Glim recovered the knife outside the door of the upstairs apartment. It was a long, serrated bread knife covered in suspect blood. Defendant was not found in the residence.

¶ 11 Chicago police officer John Medina testified that he and his partner, Officer Marshall,¹ also responded to the call about a person who had been stabbed. At the scene, Medina observed Hernandez with her head, arms and hands covered in blood. He further observed lacerations to her face, arms, and the left side of her stomach above her waist. Hernandez said that her boyfriend, defendant, had stabbed her with a large knife. She gave police a description of defendant and his mother's address. Medina and Marshall conducted surveillance near the scene. Marshall entered the alley near defendant's mother's house and called for Medina to quickly come to his location. Medina did so and found defendant standing in the alley with Marshall.

¶ 12 During a field interview, defendant told the officers "I stabbed my girlfriend because I walked in our apartment and she was cheating on me." The officers arrested defendant and transported him to the police station. After being advised of his *Miranda* rights, defendant stated "I stabbed my girlfriend because I walked in our apartment and she was with the guy from the store on 64th and Kedzie and she was cheating on me." During processing, Medina observed

¹ Officer Marshall's first name does not appear in the record.

defendant laying on the floor in the bullpen, and he was transported to the hospital. In the emergency room, defendant repeated the statement he had made at the police station. Each time defendant stated that he had stabbed his girlfriend, he was calm and had a smile or smirk on his face. Defendant was not upset, nor did he appear to be under the influence of alcohol.

¶ 13 Paramedic Nicolas Minghettino testified that he treated Hernandez at the scene and in the ambulance. Due to her injuries, paramedics determined that Hernandez should be brought to a trauma hospital rather than the closest hospital. Consequently, Hernandez was transported on a “trauma bypass” to Christ Hospital because it was the closest appropriate facility.

¶ 14 Dr. Jane Lee, a trauma surgeon and critical care physician at Advocate Christ Medical Center, testified that Hernandez sustained a half-centimeter laceration to the bridge of her nose, and two lacerations to the back of her left hand which required stitches. Hernandez also sustained a two-centimeter stab wound to the left side of her torso that was at least seven or eight centimeters deep, which is considered a deep wound. Given the location, the stab wound was potentially life-threatening because it was close to many important organs.

¶ 15 Nicole Butler testified that she dated defendant from early 2000 to April 3, 2003. On April 3, Butler and defendant were living together. About 7 p.m., defendant came home from work and accused Butler of cheating on him. She could tell he had been drinking because she could “smell it all over him.” Defendant was “enraged” and threw four full bottles of beer at her, one of which struck her. All four bottles shattered. Defendant threatened Butler, telling her that she would not leave him, and if she did, she would not leave alive. Defendant called Butler a “slut” and said “that he would make sure my body disappeared and nobody ever found me after he drowned me.”

¶ 16 The altercation continued into the bedroom where defendant forced Butler to the floor. Butler laid on her back and defendant sat straddled on top of her. Defendant had a long necklace made of a soft silky material that held keys. Defendant pushed the strap of the necklace against Butler's neck, "pushing it tighter and tighter to the floor." Butler began feeling dizzy, light-headed, and short of breath like she was going to faint. Defendant repeatedly told Butler that she would be killed before anyone would find her. Butler broke free from defendant. Defendant told Butler that she was "no good and he would make sure I would not make it out of the apartment alive." With no other way out, Butler jumped out the bedroom window, which was on the third floor of the apartment building. She landed on her aunt's truck below, then went to a gas station and called 911.

¶ 17 Following deliberations, the jury found defendant guilty of attempted first degree murder and aggravated domestic battery. The trial court denied defendant's posttrial motion for judgment notwithstanding the verdict or alternatively a new trial.

¶ 18 At sentencing, the parties reviewed the presentence investigation report (PSI). The PSI indicated that defendant had four prior misdemeanor convictions: (1) a 2008 conviction for driving on a suspended license for which he was sentenced to 160 days in jail, (2) a 2003 conviction for domestic battery causing bodily harm for which he was sentenced to 28 days in jail, (3) a 2003 conviction for driving under the influence of alcohol for which he was sentenced to 50 days in jail, and (4) a 1998 conviction for unlawful use of a weapon for which he was sentenced to two years' probation that was terminated unsatisfactory. Defendant reported that he had a "rough" childhood because his mother was emotionally and physically abusive. He did not graduate from high school due to "problems at home," but earned his GED. Defendant reported that he was employed with a

temp agency in January and February 2014, and from 2011 through 2013 worked for Chicago Meat Authority as a line supervisor. Defendant reported that he was taking psychotropic medication for anxiety and depression, and had attempted suicide twice. Defendant stated that he began drinking when he was 13 years old and drank every day. Defendant used marijuana once when he was 15 or 16 years old, then resumed using twice a month from the age of 34 to 37. Prior to being incarcerated, he never received treatment for alcohol or substance abuse.

¶ 19 In aggravation, the State argued that defendant viciously attacked his innocent and unsuspecting girlfriend due to a jealous rage. The State reviewed the facts of the case, including Hernandez's injuries, and noted that her abdominal stab wound was potentially life-threatening. The State argued that defendant caused and threatened serious harm to Hernandez physically, psychologically, and emotionally. The State pointed out that defendant's 2003 domestic battery conviction was for the incident where he strangled Butler in a jealous rage and threatened to kill her and dispose of her body. Noting the other convictions listed in the PSI, the State argued that defendant had a clear pattern of domestic violence that was fueled by anger management problems and alcohol abuse. The State asserted that defendant was a danger to society and that his sentence should be at the higher end of the 6 to 30-year range to deter others and keep society, specifically the women he dates, safe from his violent tirades.

¶ 20 In mitigation, defense counsel noted that defendant was 42 years old and had three children, the youngest of whom, a daughter, was deceased. He maintained regular contact with his two remaining children by telephone. At the time of his arrest, defendant was employed at Chicago Meat Authority where he coordinated the line workers and was in training for a supervisor's position. Prior to that, he was employed as a door-to-door salesman for ADT for two and a half

years. He was previously employed at the Brach's candy factory where he was captain of the safety team and orientation, and created solutions for safety hazards in the factory. Counsel acknowledged that defendant suffers from alcohol abuse. While in custody, defendant received drug and alcohol treatment through classes, attended anger management and stress management classes, and participated in mental health programs. Counsel noted that defendant was taking medication for anxiety and depression, which was triggered by the accidental death of his daughter who suffered an asthma episode and choked while drinking milk from her bottle. Following her death, defendant attempted suicide by tying a rope around his neck and jumping off a bridge. Counsel argued that defendant's criminal history was limited to misdemeanor charges and requested that defendant receive the minimum sentence of six years' imprisonment. The parties agreed that the aggravated domestic battery conviction should merge with the attempted murder conviction.

¶ 21 In allocution, defendant stated that he was very sorry "for what happened to Tashia." The court asked defendant what happened to her, and he replied "[t]hat she got hurt." Defendant further stated:

"I'm sorry that she got hurt and I'm sorry for her family. I'm sorry for my family for putting both of our families through this and I just want to say that if I could change time and go back and do things differently, I would have taken different – you know, I would have done things differently, your Honor."

¶ 22 The trial court stated that the purpose of sentencing is multi-faceted. The court stated:

"first of all, I need to look at the fact that the Defendant needs to – I have to assess his potential for rehabilitation and for being reintegrated into society. I've got to take into

account the gravity of the offense before this Court. I've got to take into account how the crimes that the Defendant committed impacted upon the particularized victim in this case, Miss Hernandez, but also how that particular – those particular crimes affect the whole of the community. I've got to take into account a need for others to look at the situation and decide whether they need to follow that same path. I need to particularize it based upon this Defendant's background, any issues he may have concerning alcohol and his ability to relate to others; anger issues that are – that came about with respect to how those matters surfaced with respect to the testimony of another witness on other crimes evidence in the proceedings, but then I've got to look at how this fits into the schematic of all others that are similarly situated and weigh an appropriate sentence.

I give weight to the Pre-Sentence Investigation Report. I give weight to good arguments made by both the State and defense. I give some weight to the comments made by the Defendant in terms of – at this date and time indicating that he was sorry for the pain that he's caused the victim. I don't know if he really admitted that, but indirectly, he said if [he] could go back, he would do things, apparently, differently and he also reflected upon how this may have impacted upon his family. But I think the Defendant is most interested in how this is going to affect him for the rest of his life and that's for good reason. *** [T]he stab in this case, while the testimony was it did not hit a critical organ, it was not for – does not incur to the benefit of the Defendant.

The Defendant on the day in question did not – on February 7th, 2014, did not make a decision to only insert the knife so far into the victim's body, he did not calculate, let me avoid these organs. It was the – a higher situation that avoided this lady from actually being

killed. It's the Court's assessment as I made my findings that he attempted to commit first degree murder.”

¶ 23 The trial court noted that Hernandez had to run from her apartment to the unit upstairs “with blood dripping off of her.” The court stated that in addition to weighing the physical injury to Hernandez, it also had to consider the psychological injury. The court further stated:

“My obligation, in addition to tail[or]ing something for this particular Defendant and his potential rehabilitation, I've got to take into *** account his sincerity regarding a desire to be better. When I heard the Defendant's comments, which he had no obligation to make during the sentencing phase just a moment ago, this Court did not assess his comments to be sincere. His comments seem to be self-serving. I have not – I did not pick up any sincerity whatsoever concerning his comments that he made, that he didn't have to make, but I'm also looking at the totality of the offenses before this Court. *** I do believe the Defendant has some possibility of rehabilitation. I think that possibility of rehabilitation will come along with – after Defendant serves significant time in the Illinois Department of Correction.”

¶ 24 The court sentenced defendant to 28 years' imprisonment for attempted first degree murder and 7 years' imprisonment for aggravated domestic battery, then merged the aggravated domestic battery conviction into the attempted murder conviction. Defendant immediately filed a motion to reconsider the sentence, which the trial court denied.

¶ 25 On appeal, defendant contends that the trial court abused its discretion by imposing an excessive sentence two years below the maximum term where his criminal history consists of only misdemeanor offenses, and the court failed to give adequate consideration to his steady work

history and expression of remorse. Defendant argues that his lack of a significant criminal background is a serious mitigating factor, as is his employment history and the fact that he obtained his GED. Defendant claims that there was no reason for the court to reject his expression of remorse where nothing in the record indicated that his remorse was insincere. Defendant argues that the sentence demonstrates that the court focused almost exclusively on retribution and failed to give sufficient weight to his potential for rehabilitation. Defendant asks this court to reduce his sentence or vacate the sentence and remand for resentencing.

¶ 26 The State responds that defendant's 28-year sentence is proper since it is within the statutory range and the record shows that the trial court considered the appropriate sentencing factors in aggravation and mitigation. The State argues that the court's comments show that it carefully weighed defendant's potential for rehabilitation against the seriousness of the offense. It further argues that the court's comment that it needed to particularize the sentence "based upon this Defendant's background" shows that the court considered that his criminal history was all misdemeanors. In addition, the State asserts that defendant's comments that he was sorry "for what happened" to Hernandez and that "she got hurt" shows that defendant did not admit to the substance of the offense or accept responsibility for his actions, which shows he was insincere.

¶ 27 Attempted first degree murder is sentenced as a Class X felony with a statutory sentencing range of 6 to 30 years' imprisonment. 720 ILCS 5/8-4(c)(1) (West 2014); 730 ILCS 5/5-4.5-25(a) (West 2014). The trial court has broad discretion in imposing an appropriate sentence, and where, as here, that sentence falls within the statutory range, it will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists

where a sentence is at great variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 28 The Illinois Constitution mandates that criminal penalties be determined according to the seriousness of the offense, and with the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. Ligon*, 2016 IL 118023, ¶ 10. In light of these objectives, “[t]he trial court is charged with fashioning a sentence based upon the particular circumstances of the individual case, including the nature of the offense and the character of the defendant.” *People v. Fern*, 189 Ill. 2d 48, 55 (1999). The court’s sentencing decision is entitled to great deference because, having observed the defendant and the proceedings, it had the opportunity to weigh defendant’s demeanor, credibility, general moral character, mentality, habits, social environment and age. *Alexander*, 239 Ill. 2d at 213. “The sentencing judge is to consider ‘all matters reflecting upon the defendant’s personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding.’ ” *Fern*, 189 Ill. 2d at 55, quoting *People v. Barrow*, 133 Ill. 2d 226, 281 (1989). The trial court need not give defendant’s potential for rehabilitation greater weight than the seriousness of the offense. *People v. Anderson*, 325 Ill. App. 3d 624, 637 (2001).

¶ 29 Here, we find no abuse of discretion by the trial court in sentencing defendant to a term of 28 years’ imprisonment, which falls within the statutory guidelines. The record shows that the trial court considered the required statutory factors in aggravation and mitigation, expressly acknowledging that it needed to assess defendant’s potential for rehabilitation. The court also considered the information contained in the PSI and the arguments made by counsel. In addition, the court considered defendant’s statement in allocution, which it found to be self-serving and

insincere. Consequently, the court concluded that although defendant had “some possibility of rehabilitation,” it would only occur after defendant served “significant time” in prison. The record therefore shows that, based on its consideration of all of these factors, the trial court determined that defendant’s potential for rehabilitation was greatly outweighed by the nature and seriousness of the offense, and that the 28-year sentence was appropriate and necessary to rehabilitate defendant and restore him to useful citizenship. *Ligon*, 2016 IL 118023, ¶ 10.

¶ 30 Defendant’s claim that the trial court failed to give adequate consideration to the fact that his criminal history consists of only misdemeanor offenses is belied by the record. Defendant’s criminal background was presented during the sentencing hearing and the trial court stated that it needed to particularize the sentence “based upon this Defendant’s background” and his issues with anger management and alcohol that affected his ability to relate to others. The record thereby shows that the trial court was well aware of defendant’s criminal history, which although misdemeanors included violence and alcohol abuse, and gave significant consideration to that history when it determined that the 28-year sentence was proper.

¶ 31 Defendant’s claim that the trial court failed to give adequate consideration to his employment history and expression of remorse is similarly unpersuasive. Defense counsel provided the court with great detail of defendant’s employment history, which was also noted in the PSI. The trial court considered the information in the PSI as well as counsel’s argument when determining defendant’s sentence. Furthermore, as noted above, the court found defendant’s expression of remorse insincere and self-serving. The trial court had the opportunity to observe defendant during the proceedings and to weigh his demeanor, credibility, and general moral

character. *Alexander*, 239 Ill. 2d at 213. Consequently, we give great deference to the trial court's assessment of defendant's sincerity.

¶ 32 This court will not reweigh the sentencing factors or substitute our judgment for that of the trial court. *Alexander*, 239 Ill. 2d at 213. Based on the record before us, we cannot say that the sentence imposed by the court is excessive, manifestly disproportionate to the nature of the offense, or that it departs significantly from the intent and purpose of the law. *Fern*, 189 Ill. 2d at 56. Accordingly, we find no basis to disturb the trial court's judgment.

¶ 33 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.