

2019 IL App (1st) 171784-U
No. 1-17-1784
Order filed September 3, 2019

Second Division

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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. 12 CR 23133
)	
JAMES COURTNEY,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge, presiding.

JUSTICE COGHLAN delivered the judgment of the court.
Presiding Justice Lavin and Justice Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 15 years' imprisonment.
- ¶ 2 Following a jury trial, defendant, James Courtney, was found guilty of aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2012)), and sentenced to 15 years' imprisonment. On appeal, defendant argues the trial court abused its discretion when it sentenced him to 15 years' imprisonment. We affirm.

¶ 3 The State charged defendant by information with, *inter alia*, attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012)) and aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2012)) based on his shooting of Kevin Winters with a firearm. The evidence at trial established the following.

¶ 4 Defendant and Winters met and became friends while incarcerated in the Illinois Department of Corrections. When Winters was released from prison, he and defendant reconnected and the two played basketball, went to the park, and drank together.

¶ 5 In November of 2012, defendant invited Winters, Lela Walker, and Brittany Brown to dinner at Applebee's restaurant. Defendant paid for the party's meal, which was approximately \$126.

¶ 6 At approximately 10:30 or 11 p.m. on November 18, 2012, Kevin Winters was inside his home on South Edbrooke Avenue in Chicago, where he lived with his mother, sister, and nieces. Defendant came to the door, and Winters stepped outside to speak with him. While on the porch, defendant told Winters that Winters owed him money for the meal defendant had paid for at Applebee's. Winters told defendant he never offered to pay and he never asked to go to Applebee's; rather, defendant asked him, Walker, and Brown to go with him.

¶ 7 After defendant and Winters exchanged words, defendant reached into his right pocket, pulled out a small black handgun, and threatened to shoot Winters. Winters told defendant not to shoot him. Defendant put the gun back into his pocket.

¶ 8 Defendant and Winters continued to discuss payment for the meal, and defendant again brandished the gun. Defendant told Winters he owed defendant money and again threatened to shoot him. After defendant threatened to shoot Winters for the second time, Winters opened the

door and retreated into his home. Winters closed the door behind him and immediately turned to lock it. As Winters was locking the door, defendant fired the gun, through the closed door, hitting Winters in the stomach.

¶ 9 Winters' mother, sister, and nieces came downstairs and Winters told his sister defendant had shot him. Winters' mother called 9-1-1, and Winters was transported by ambulance to Christ Hospital. Winters remained in the hospital for five days, during which he had surgery to remove a portion of his intestines. The bullet was lodged in Winters' right hip and could not be removed.

¶ 10 While he was recovering, Winters informed detectives that defendant was the person who shot him. Winters identified defendant in both a photographic and physical lineup. Defendant was arrested and, after he was read his *Miranda* rights, defendant told the arresting officers the gun which was used in the shooting was hanging in his closet. Based on defendant's statement, the police recovered the gun.

¶ 11 The jury found defendant guilty of aggravated battery and not guilty of attempt (first degree murder). The court entered judgment on the verdicts and ordered a presentence investigation report (PSI) be prepared for defendant.

¶ 12 Defendant filed a motion for new trial, which the trial court denied.

¶ 13 The matter proceeded to a sentencing hearing. The trial court indicated it had read the PSI and the parties confirmed it was accurate. The PSI reflected defendant's extensive criminal history including two convictions for armed robbery in 1991, for which he was sentenced to concurrent terms of seven years' imprisonment; a conviction for possession of a controlled substance in 1997, for which he was sentenced to two years' imprisonment; a conviction for possession of a stolen vehicle in 2000, for which he was sentenced to three years' imprisonment;

a conviction for aggravated unlawful use of a weapon in 2003, for which he was sentenced to six years' imprisonment; a conviction for domestic battery in 2007, for which he was sentenced to 18 months' probation and which was terminated unsatisfactorily; and a conviction for unlawful use of a weapon by a felon in 2007, for which he was sentenced to six years' imprisonment.

¶ 14 Although defendant did not have a relationship with his father, who died of a stroke when defendant was 19 years old, he had good relationships with his mother, whom he described as his "best friend," stepfather, and sisters. He described his childhood as "fair" and reported he had grown up in a neighborhood which had crime, violence, and drugs.

¶ 15 Defendant attended high school until the 11th grade, "when [he] went to jail." He received average grades before he left high school and received special instruction because he had attention deficit hyperactivity disorder. He was suspended once or twice for fighting. Defendant hoped to finish school.

¶ 16 Defendant was not employed when he was arrested for the instant offense. His most recent employment was at the Grand Hotel in Chicago, where he worked for one year in 2001.

¶ 17 The PSI also indicated defendant was married in 2002 but separated from his wife in 2003. He has a nine-year-old daughter from a different relationship, whom he last saw "before [he] got locked up."

¶ 18 Defendant reported he had lived with his mother on South Wabash Avenue his entire life and, at the time of the offense, he lived with his mother, sister, and stepfather. He noted there was "a lot of crime, gang activity, [and] drug dealing in his neighborhood," but he felt safe living there. Defendant admitted he had joined the Black P-Stones street gang when he was 13 years old but left when he was 35 years old.

¶ 19 With respect to his health, defendant reported he suffered from high blood pressure and was diagnosed with diabetes when he was 13 years old. He also noted he had suffered a gunshot wound to his back in 1996, which affected his functioning at times. He was diagnosed with depression when he was 33 years old while in the Cook County Department of Corrections. He related that psychotropic medication helps his mental health.

¶ 20 The State noted the applicable sentencing range was a term of 6 to 30 years' imprisonment and argued "a sentence towards the higher" end was appropriate based on defendant's criminal history and the fact "that defendant has not changed his ways, [and] has not learned from his mistakes in the past." The State also noted the significant injuries inflicted upon Winters. The State argued a significantly higher sentence was necessary to deter "future conduct that could cause further harm to the citizens of this county."

¶ 21 Defense counsel argued that a seven- to eight-year sentence was appropriate for the following reasons: defendant was 43 years old, he lived with and had strong ties to his mother and sister, and was a life-long resident of Chicago. Counsel also argued that defendant's father passed when defendant was young, and he grew up in an area that was "not necessarily conducive towards potentially having other kinds of lives than the life [defendant] has had up to this point." He also argued that defendant had a child whom he supported when he was not incarcerated and that he was a "model" client and inmate.

¶ 22 Letters from defendant's mother and sister requesting sentencing leniency were submitted in mitigation. Defendant's mother told the court she was in ill health and defendant cared for her. Defendant's sister told the court she, like defendant's mother, was in ill health, and defendant's

mother needed his help around the house. His sister also noted that defendant helped care for his grandfather prior to his death.

¶ 23 In allocution, defendant stated, "I just want to get home to my mother, Judge. My mother is sick. She in the hospital, you know. I appreciate whatever you do."

¶ 24 The trial court found defendant eligible for a 6- to 30-year prison term and sentenced him to 15 years' imprisonment. In considering defendant's extensive criminal history, the court noted that: "He has been sentenced to a total of 24 years prison in the course of his life. He served about 12 calendars inside."

¶ 25 The court also acknowledged the seriousness of the offense, as follows:

"You talk about a senseless shooting. The victim gets, arranges to get a couple of ladies. They go out to celebrate . . . and they go to Applebee's . . . and then argue about the [\$126] tab. *** Argument about who should have paid for some of it, who should pay for all of it, whatever, went back and forth about that. [Defendant] ups with a gun and he shoots through the door . . . seriously injuring the victim."

Finally, the court stated that defendant had been "nice" and "respectful" in court but "wasn't nice in this case." Prior to imposing its sentence, the court acknowledged having read the letters from defendant's mother and sister and that neither was in good health.

¶ 26 Defendant filed a motion to reconsider sentence, which the trial court denied. This appeal followed.

¶ 27 On appeal, defendant contends the trial court abused its discretion in sentencing him to 15 years' imprisonment. Defendant asks this court to reduce his sentence to 12 years pursuant to

Illinois Supreme Court Rule 615(b)(4) (Ill. S. Ct. R. 615(b)(4)) or, in the alternative, vacate his sentence and remand for a new sentencing hearing.

¶ 28 The Illinois Constitution states “[a]ll penalties shall 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. To achieve the constitutionally mandated balance between the retributive and rehabilitative purposes of punishment, the trial court must carefully consider all aggravating and mitigating factors, including: “the defendant’s age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education, as well as the nature and circumstances of the crime and of defendant’s conduct in the commission of it.” *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002).

¶ 29 The trial court, not the reviewing court, is in the best position to assess these factors because it has observed the defendant and the proceedings. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). Accordingly, “[t]he trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference.” *Id.* at 212. It is not our function to reweigh the evidence in aggravation and mitigation and substitute our judgment for that of the trial court because we would have weighed these factors differently. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). We will overturn a sentence only where the court has abused its discretion. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19. An abuse of discretion occurs when the court's sentence “is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.” *People v. Charleston*, 2018 IL App (1st) 161323, ¶ 16.

¶ 30 We conclude the trial court did not abuse its discretion when it sentenced defendant to 15 years' imprisonment. Aggravated battery with a firearm is a Class X felony punishable by 6 to 30 years' imprisonment. 720 ILCS 5/12-3.05(e)(1), (h) (West 2012); 730 ILCS 5/5-4.5-25(a) (West 2012). The sentence imposed is within the applicable sentencing range and presumptively proper. *Charleston*, 2018 IL App (1st) 161323, ¶ 16. This presumption will be rebutted only if defendant makes an affirmative showing the sentence greatly departs from the spirit and purpose of the law or the constitutional guidelines. *People v. Bocclair*, 225 Ill. App. 3d 331, 335 (1992). Defendant has failed to make such a showing.

¶ 31 Defendant argues the trial court ignored his social background when it sentenced him. Absent some affirmative indication in the record to the contrary, other than the sentence itself, we must presume the court considered all mitigating factors. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. The record shows defendant's social background was included in the PSI, argued by defendant's counsel, and considered by the court prior to imposing the sentence.

¶ 32 Defendant also contends defendant's criminal history did not warrant a 15-year sentence because he had no violent felony convictions since his 1991 armed robbery conviction. Defendant concedes a sentence longer than the sentences for his past crimes was warranted but argues the 15-year sentence, of which he must serve 85 percent, is too great an increase from the previous 6- and 7-year terms he had received, all of which he served 50 percent. See 730 ILCS 5/3-6-3 (West 2012). We disagree.

¶ 33 Defendant's criminal history reflects multiple convictions involving either weapons or violence, the most recent of which occurred less than six years prior to the offense at issue. The more lenient sentences defendant received in the past did not deter him from committing the

instant offense, demonstrating his lack of rehabilitative potential. See *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 13.

¶ 34 The most important factor in fashioning a sentence is the serious nature of the offense. *People v. Gutierrez*, 402 Ill. App. 3d 866, 902 (2010). As the trial court correctly noted, the dispute between defendant and Winters over a \$126 dinner bill was "senseless." Shooting and seriously injuring an unarmed man in his own home constitutes serious and egregious conduct.

¶ 35 Defendant essentially invites this court to reweigh the evidence in aggravation and mitigation and substitute our judgment for that of the trial court. We decline to do so. *Stacey*, 193 Ill. 2d at 209. The record shows the court considered the evidence in aggravation and mitigation, and fashioned an appropriate sentence which balanced the seriousness of the offense and defendant's criminal history with defendant's social background and other mitigating evidence. Based on the record before us, we do not find defendant's sentence was at variance with the spirit and purpose of the law or manifestly disproportionate to the seriousness of the offense. See *Charleston*, 2018 IL App (1st) 161323, ¶ 16. Accordingly, we conclude the court did not abuse its discretion in sentencing defendant to 15 years' imprisonment.

¶ 36 For the reasons stated, we affirm the trial court's judgment.

¶ 37 Affirmed.