2019 IL App (2d) 170051-U
No. 2-17-0051
Order filed June 14, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DANIEL J. DION, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 15-CF-58 Honorable Daniel B. Shanes, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to a near-maximum 27 years' imprisonment for attempted first-degree murder: despite the evidence offered in mitigation, which the court considered, the sentence was justified by the extraordinary seriousness of the offense.

¶ 2 Defendant, Daniel J. Dion, appeals from his sentence of 27 years' imprisonment for attempted first-degree murder (720 ILCS 5/ 8-4(a), 9-1(a)(1) (West 2014)). He asserts that the court improperly discounted mitigating evidence, particularly defendant's "undisputed history" of mental illness. We disagree. Defendant does not persuade us that the court ignored relevant mitigating factors. We therefore affirm.

¶ 3 I. BACKGROUND

¶ 4 A grand jury indicted defendant on one count of the attempted first-degree murder of Katherine King. It also indicted him on three counts of aggravated battery, charges that are not relevant to this appeal. In his jury trial, defendant raised an insanity defense.

¶ 5 King testified that she was 26 years old at the time of trial and that defendant was 6 years younger. On January 8, 2015, both she and defendant worked at Quality Customer Service and Sales (QCSS), a telemarketing company. She slightly knew defendant before QCSS hired him, because his mother, like King, had worked at QCSS for years. Defendant started working at QCSS four months before the offense, and she and defendant often sat near and talked to each other at work. They had a short-term dating and sexual relationship; defendant told her that it was his first sexual relationship.

¶ 6 On Tuesday, January 6, 2015, defendant asked King to go out with him on a date that night. King told him—accurately—that she had plans for that night, but said, "[M]aybe another time." She did not see defendant at work on Thursday, January 8. However, when she left work, she saw him standing next to his car, which she "thought *** was strange because it was starting to snow and it was cold." (The supervisor had ended the shift early, at 7:30 p.m., because the weather was unusually cold and snowy.) King "didn't want [defendant] to be cold," so she asked him if he wanted to talk in her car:

> "We got in my car. We talked a little bit. Or I asked him, 'What are you doing? What are you doing here anyway? Are you here to take me on that date?' And he said, 'Sure, why not?'
>
> * * *

*** I asked him, 'Well, what should we even do for the date?' And then he's like, 'How about we go to the movies?' "

They agreed that they would go in King's car to a movie theater that was roughly a two-minute walk from the parking lot at QCSS.

¶ 7 Defendant got out of the car and appeared to take something from his car. They drove the short distance to the theater, but then stayed in the car to talk some more. King told defendant that, because she was interested in another man, she and defendant were not likely to have an ongoing dating relationship. She started to use her phone to text her mother, but defendant threw the phone to the ground and started kissing her "aggressively." She felt something that she first thought was defendant punching her with a water bottle, "like *** an explosion of liquid," but she saw her neck and realized that defendant had stabbed her. He continued to stab her as she struggled to break away. Defendant was silent and "smirk[ing]" throughout the attack, while King repeatedly asked, "why?" She got the car door open, and he grabbed her by her coat as she tried to run. She pulled free of her coat and ran toward the theater, where employees let her in through an exit door. When the police arrived, she told them that "Danny Dion" had done it. An ambulance took her from the theater to a hospital.

¶ 8 Barbara Sztabkowska, who was the manager at the movie theater in January 2015, but was a medical assistant at the time of trial, said that business was very slow at the theater on the night of January 8. At about 8 p.m., she heard someone—King—screaming "Emergency, emergency," in the theater lobby. "[King] was completely covered in blood from head to waist. She had open lacerations on her face, neck, and she was clearly bleeding from her chest." Sztabkowska noticed that King's cheek had been sliced nearly off and that she had "obvious puncture wounds in the back of her neck area." (Another witness said that her right ear was

sliced in half.) Sztabkowska called 911 and relayed the dispatcher's questions to King. Jeff Hallahan, a lieutenant with the Palatine Fire Department, arrived and immediately recognized, based on the amount of blood that he could see, that King had multiple serious injuries.

¶ 9 At the hospital, the trauma surgeon found multiple serious stab wounds. Two chest wounds penetrated King's chest cavity and were the probable cause of King's bilateral pneumothorax. She also had two deep stab wounds to the neck. She had lost 30 to 45% of her blood volume and required blood transfusions. He found between 20 and 30 stab wounds in total.

¶ 10 At about 8:45 p.m., Christina Karabetsos, the senior executive at the QCSS office, received a call from Nancy Dion, defendant's mother, telling Karabetsos that defendant was in the parking lot with his car and that his car needed a jump-start. Karabetsos said that she would help defendant. She went down from QCSS's second-floor premises and out into the parking lot. She found defendant in the driver's seat of his car, his head resting against the steering wheel. She asked defendant whether he had jumper cables; he said that he did. He got out of his car, and Karabetsos noticed that his hands seemed to be red. Karabetsos's phone rang; her mother was calling her. Defendant repeatedly asked who had called her, and she told him that it was her boyfriend. However, she went to get her car, cleared it of snow, and started positioning it to jump-start his car. Both she and defendant heard police sirens in the distance. Defendant asked her if she had called the police. Because the headlights of her car then pointed at defendant, she could see that he had blood on his hands, coat, and pants. She started stepping backward away from defendant. As she did so, defendant asked her to call the police. She got in her car and drove away.

¶ 11 Other evidence showed that defendant had walked back from the theater parking lot to his car in the lot at QCSS, but his car would not start. He surrendered to a Lake County sheriff's deputy, Francis Foy, when Foy arrived in that lot. As Foy approached defendant, defendant "started saying things like 'He made me do it.' " Defendant also asked Foy to shoot him. Foy placed defendant in the back seat of the squad car and rotated the dash camera to face the car interior; defendant was positioned so that he could have seen that he was being recorded. Defendant said that he was hurt, so Foy called for an ambulance. When one arrived, Foy went with defendant to the hospital and recorded him during the ambulance ride. The State played both recordings for the jury. When defendant arrived at the hospital, he asked another deputy where Katie was. The deputy asked him who "Katie" was, and he responded, " 'The girl I killed.' "

¶ 12 Nancy Dion testified that, on January 12, 2015, she found a note in defendant's bedroom. The note read:

> "Check for cameras outside of QCSS, backway [*sic*]. Make sure *NO* fingerprints are at the crime scene. Do not leave with her going to her car. Tell her you'll meet her at the car in 1 minute (you forgot something) and return walking through the *front* entrance. (Tell her this while walking down the stairs, *dont* [*sic*] let the camera in the basement see you.)
>
> *DONT* [*sic*] ask her to go to the movies in front of *ANYONE*. Make sure she doesn't call/text anyone about her where-a-bouts [*sic*]. If she attempts to, stop her and tell her, 'Stop, lets [sic] keep this our little secret.' *DONT* [*sic*] forget to bring a towel/cloth to wipe off fingerprints. Make sure you're the only two who leaves [*sic*].

> Nobody can be in the parking lot except the two of you. Make sure she came to Q by herself with her car (No mom or people who's driving her home)[.]"

¶ 13 Defendant also made a written statement to Lake County sheriff's detectives:

> "Today was the first time in my entire life I have told the truth about what I am and what I'm capable of. Something horrible is happening inside of me and I don't know why. After all of the stabbing and stitching done on me, I told the two detectives on [*sic*] what happened to both me, and my life's timeline."

¶ 14 Dr. Karen Chantry, a clinical psychologist, testified for the defense. She reviewed the sheriff's deputies' reports, the video recordings of defendant's arrest and the questioning by sheriff's deputies, audio recordings of calls that defendant made from jail, records of his psychiatric hospitalizations, records of his hospitalization for a closed head injury sustained in a skateboard accident when he was 11 years old, and school records. She also personally evaluated defendant, seeing him six times for a total of 15 hours before she completed her evaluation. That time included both clinical interviews and psychological testing.

¶ 15 Chantry found records of three psychiatric hospitalizations, all in 2009: defendant was 12 or 13 years old and was hospitalized for depression and aggressive behavior. That aggressive behavior included threatening family members with a knife. He was also cutting himself. He received diagnoses of depression, oppositional defiant disorder, and conduct disorder.

¶ 16 Defendant's school records included test results showing that defendant had an IQ of 79: "in the upper end of borderline intellectual functioning to *** the lower level of low average intellectual functioning." Chantry's own testing showed that defendant displayed mild cognitive impairment, specifically, "visual, spa[t]ial, and executive functioning issues." An "anger inventory" suggested that defendant indeed had "anger issues." The Standard Inventory of

Reported Symptoms suggested that defendant was not attempting to distort his symptoms and was not malingering. Chantry next administered the Minnesota Multiphasic Inventory. The aspects of the test designed to detect deliberate manipulation by the test recipient showed no such manipulation. The results suggested that defendant had paranoid-type schizophrenia, which she characterized as "somebody who's suffering delusions, suspicious and believe that people are out to hurt them or plotting against them. Somebody who believes that *** they need to do something to hurt themselves or others, typically based on voices they might be hearing. Hallucinations. Basically voices you might be hear [*sic*] telling you to do things. And you might not want to do it, but you feel compelled to do it." Further, that test result was "suggesting that he's suffering from, at the time, paranoid delusions and schizophrenia in terms of hallucinations and confused thinking and delusional thinking. And that's the big picture part of it." She conceded that some of the results suggested that defendant was exaggerating symptoms. Concerning his paranoia, she opined, "With his testing there was an indication of hugely significant persecutory ideation."

¶ 17 She deemed that behavior that defendant displayed in police videos taken when he was alone was consistent with her diagnosis; in particular, she mentioned defendant's "laughing inappropriately" and his banging or hitting himself in the head. The diagnosis was also consistent with records of reports from defendant's family members, including reports of threatening behavior with a knife.

¶ 18 Chantry noted that defendant told her during her interviews that he heard a voice speaking to him outside his head. He had started hearing "whispers" when he was 11 or 12 years old. When Chantry interviewed him, he heard a single voice to which he referred as "he" or "they." He told Chantry that the voice had ordered him to harm or kill King ahead of the

stabbing; such a hallucination is called a "command hallucination." Defendant said that he had followed such commands in the past and had done so on January 8, 2015.

¶ 19 Chantry noted one specific delusional belief that was present on January 8, 2015:

> "The belief was that after having had sex with her, and she was the first person he had sex with, that she took away his virginity, and the only way to get his virginity back would be to kill her."

¶ 20 Chantry took into account defendant's "sketchy" plan for killing King and that the evidence suggested that he did not follow at least some of its steps, such as avoiding fingerprints. She also considered the jail audio recordings in which defendant denied being "crazy." She deemed them consistent with her diagnosis in that most people with serious mental illness do not like others to think of them as "crazy." When Chantry discussed her diagnosis with defendant, he did not accept it.

¶ 21 In Chantry's final assessment, defendant's diagnoses were (1) schizophrenia with paranoid delusions and hallucinations and (2) aggressive acting out. Based on those diagnoses and the other evidence mentioned, Chantry opined that defendant was insane when he stabbed King.

¶ 22 In rebuttal, the State called Roni Seltzberg, a psychiatrist. Seltzberg relied on the same documents and recordings that Chantry did. She further relied on a single interview with defendant on March 16, 2015, and Chantry's testing. She gave the following opinion:

> "My opinion is that on January 8, 2015, while he may have had some prior symptoms consistent with a mood disorder and a history of a major depressive disorder in the past, there was no information to suggest that he was suffering from a major depressive disorder, and certainly not from any psychotic mental disorder or

symptomatology at the time of his alleged offense. But he did have a number of features of a personality disorder, in particular antisocial personality disorder, and some features of some others, such as borderline and narcissistic. But the main focus and the main reason or the main thing that was going on with him is a pattern that he has had for probably most of his life, and that is a personality disorder."

¶ 23 Seltzberg placed particular emphasis on findings from defendant's 2008 hospitalization:

"I specifically noted, and this is very important because it's consistent with the prior diagnosis and likely with subsequent diagnoses, that *** [a doctor] noted [that defendant] reports that he enjoys throwing things at people. For example, throwing rocks at kids' heads to watch the person feel pain. His sister had reported ***, and he admitted, he cut his wrists to enjoy her fearful reaction to that behavior. It was also written that he had threatened or been cruel to animals. So various episodes of violence and aggressive behaviors were noted in that hospitalization."

¶ 24 She opined that, in the recording from the squad car, where defendant "was laughing, was growling, spoke in a southern accent drawl for at least one sentence," he was acting like "someone trying to act crazy." She suggested that defendant was modeling his behavior on movie and television depictions of mental illness. She also deemed that defendant was more functional than would be expected of someone with the degree of psychosis he exhibited at times.

¶ 25 Asked about defendant's statement to police, " 'He made me do it,' " Seltzberg said that this was not an indication of psychosis:

"[T]o me, it means that he's externalizing blame. He's trying to say his angry self, which is what he explained to me being the other him inside of him is his anger. And that it

> wasn't merely actually a voice, although sometimes he said it was a voice, and other times it's just the angry other me. But it's still me in this one body, which he pointed out."

She suggested that defendant's claim that he tried to kill King because he wanted his virginity back was an attempt to find an explanation that negated his criminal responsibility.

¶ 26 Seltzberg relied on the psychological testing that Chantry performed, but she indicated that Chantry had erred by giving insufficient weight to results suggesting malingering.

¶ 27 The jury found defendant guilty of attempted first-degree murder.

¶ 28 Defendant had a third psychological evaluation as a part of the presentencing investigation, this one by a psychologist, Dr. Dena Traylor. In interviewing defendant, Traylor noted "paranoid ideation *** with occasional grandiose content." Defendant's score on the M-FAST, a "structured interview" designed to estimate the likelihood that a person is "malingering psychiatric illness," suggested that defendant was "not attempting to malinger his symptoms or over endorse symptoms [in a manner] that would be indicative of malingering mental illness." The results of another test, the "MCMI-IV," suggested that defendant had "a personality style that consists of primarily Narcissistic, Paranoid, Sadistic, and Antisocial features" and "an inflated sense of self-importance combined with an intense mistrust of others."

> "Clinical[ly] *** [defendant] appears to be experiencing a severe delusional disorder characterized by such symptoms as transient ideas of reference, irrational jealousy and feelings of grandiosity. These symptoms probably exist within the broad context of other problematic characteristics and personality pathologies. Fluctuating periods of disorganized and bizarre thinking are also evident, possibly [as] a phase in a more extended schizophrenic course."

Defendant thought that his insanity defense was appropriate because a " 'normal person doesn't do what [he] did,' " but he did not believe that he had a mental illness; he thought that he " 'just *** need[ed] to learn to master this.;' " When he stabbed King, he was "hearing the voice more than ever": " '[The voice] kept yelling at [him] that [King] was bad, over and over.' " Traylor concluded that, "based upon the clinical interview, results of the psychological assessment, and records of [defendant's] mental health treatment history that includes psychiatric hospitalizations, [defendant] meets criteria for Schizophrenia." However, because defendant distrusted the motives of those prescribing who had prescribed antipsychotic medication, defendant declined to take it.

¶ 29 At the sentencing hearing, the State presented evidence that defendant had, in violation of an order of protection, sent King a letter while he was being held at the Lake County jail. The letter was badly damaged in the mail, but enough of it survived that one can infer that defendant believed that King controlled whether the State would prosecute the case and he was urging King to decline to press charges.

¶ 30 Defendant's twin sister, Katie Dion, testified in mitigation. She said that Frank Pope, the twins' grandfather, died when the two were in fifth grade. Pope was the only person to whom defendant was close. Defendant did not handle the death well; he became withdrawn and "his sense of hygiene definitely deteriorated." This was approximately the same time that defendant suffered a concussion in a skateboard accident. From then on, "it only got worse." Starting when defendant was about 15 years old, he sometimes seemed to be talking to someone who was not there.

¶ 31 In announcing its sentencing decision, court focused above all on the heinous nature of the attack:

> "There are pages of our history that are blackened with stories of people who think they can commit a murder and get away with it. You tried. Why you tried the lawyers spent days talking about, but there is no doubt you tried.
>
> You planned a murder and an escape. But for the grace of God, it might have gone differently. What you did was cold, calculated, premeditated. You created a plan that you intended to end in Miss King's violent death."

The court sentenced defendant to 27 years' imprisonment and 3 years of mandatory supervised release.

¶ 32 Defendant moved for reconsideration of his sentence, noting, among other things, that his sentence was 90% of the maximum term and that significant mitigating factors existed:

> (1) Defendant had no prior history of arrests or convictions;
>
> (2) Defendant was 18 years old at the time of the offense;
>
> (3) Defendant surrendered as soon as a law enforcement officer approached him;
>
> (4) Defendant expressed remorse for his offense on several occasions.

¶ 33 The court denied the motion:

> "It is safe to say that of the hundreds if not thousands of felony cases that the Court has been involved in over the years, as the years go on, this will probably be one of the cases the Court recalls for some time.
>
> Careful consideration went into the sentencing. It's no exaggeration to say that the Defendant savagely stabbed the victim maybe a couple dozen times, so while the sentence as the motion points out is at the upper end of the sentencing range, the Court is satisfied weighing all of the factors in aggravation and mitigation that it was warranted

based upon the particular facts and circumstances of the case, perhaps for the reasons more clearly stated at the time of sentencing."

¶ 34 Defendant timely appealed.

¶ 35 II. ANALYSIS

¶ 36 On appeal, defendant asserts that the sentence was excessive given that he "had an undisputed history of serious mental illness, showed remorse, was only 18 year old, had significant employment history, and lacked a criminal background." He contends that, given the factors in mitigation, the sentence reflected a failure to properly consider his rehabilitative potential. Specifically, he asserts the following:

(1) The court improperly minimized defendant's history of mental illness when it noted only that he had " 'dealt with various emotional and psychological issues, as have lots of other people.' "

(2) "The court's sentence does not reflect that [defendant] was remorseful and took responsibility for his actions."

(3) Defendant's "youth alone serves as strong evidence of his rehabilitative potential" {WB 19}; in support of this, he cites *Miller v. Alabama*, 567 U.S. 460, 471-72 (2012), in which the Supreme Court recognized that brain development continues well into a person's mid-20s and that "a young person's criminal action 'is not as morally reprehensible as that of an adult.' "

(4) "[T]he trial court did not take into account [defendant's] significant rehabilitative potential demonstrated by his employment history and lack of a criminal background."

¶ 37 The State responds that the seriousness of the offense justified the severe sentence. Further, citing our supreme court's holding in *People v. Thompson*, 222 Ill. 2d 1, 42-43 (2006)), it points out that Illinois law is clear "that evidence of a defendant's mental or psychological impairments may not be inherently mitigating, or may not be mitigating enough to overcome the evidence in aggravation." Finally, it argues that *Miller* is "not particularly helpful here," in that it "addresses [only] mandatory natural life sentences for defendants who are 17 or younger."

¶ 38 Defendant has replied. He contends that his "extensive, well-documented history of mental illness mitigates his culpability for the instant offense and reduces the penological justifications for his extended incarceration." He therefore argues that the "court thus abused its discretion when it imposed a sentence that was close to the maximum for attempt murder, a sentence which will likely diminish [his] potential for rehabilitation by ensuring that his mental health continues to decline." He further argues that the court's "brief[] mention" of his "mental health issues" does not require us to conclude that the court gave proper weight to the issue. He asserts, "[T]here was extensive evidence in the record of [his] struggle with schizophrenia with auditory hallucinations, paranoid delusions, ideas of reference, and diminished emotional response."

¶ 39 We hold that the court did not abuse its discretion in sentencing defendant to a near-maximum sentence. We deem that defendant's argument is, at heart, that the court failed to balance sentencing factors properly. But we may not reweigh those factors. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20. Our review of sentences that fall within the statutory range permits us to reverse or modify such sentences only when they constitute an abuse of the trial court's discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). As a general matter, we may not reduce a sentence that is within the statutory range "unless it is greatly at variance with

the spirit and purpose of the law or manifestly disproportionate to the nature of the offense" (*People v. Horta*, 2016 IL App (2d) 140714, ¶ 40), with the "seriousness of the offense [being] the most important sentencing factor" (*People v. Watt*, 2013 IL App (2d) 120183, ¶ 50). To be sure, a sentence can constitute an abuse of discretion if the trial court ignored relevant mitigating factors or considered improper factors in aggravation. *People v. Roberts*, 338 Ill. App. 3d 245, 251 (2003). Here, however, defendant does not argue that the court considered improper aggravating factors, nor does he persuade us that the court ignored relevant mitigating factors. The general rule thus applies.

¶ 40 We do not agree that the court improperly discounted defendant's mental health problems. Initially, we disagree with defendant's implication that the court was required to consider his struggle with "schizophrenia with auditory hallucinations, paranoid delusions, ideas of reference, and diminished emotional response." The nature of defendant's mental health problems was highly contested. The court's comments at sentencing adequately indicate that the court rejected the schizophrenia diagnoses. The court made two relevant comments:

> (1) "There's a lot going on with you. *** How and why was really a very interesting discussion."
>
> (2) Defendant "certainly [had] challenges educationally, dealt with various emotional and psychological issues, as have lots of other people."

The second comment in particular leads us to conclude that the court may have rejected the two opinions that indicated that defendant suffered from schizophrenia—as it could properly do. "[T]he credibility and weight to be given psychiatric testimony are matters for the trier of fact, who is not obligated to accept the opinions of defendant's expert witnesses over those opinions presented by the State." *People v. Urdiales*, 225 Ill. 2d 354, 431 (2007). At sentencing, the

court resolves issues of fact concerning the defendant's mental or emotional state. See *People v. La Pointe*, 88 Ill. 2d 482, 494 (1981) (the court's findings concerning the defendant's mental or emotional state were not against the manifest weight of the evidence). Thus, given that defendant claimed symptoms of schizophrenia and acted conspicuously "crazy" when arrested, the necessary implication is that the court accepted Seltzberg's conclusion that defendant was malingering; that decision was within the court's power. Moreover, given the conflicting opinions, that decision was not manifestly incorrect. In short, in sentencing defendant, the court did not err in considering him as a person who planned a murder in advance and then feigned schizophrenia in an attempt to lessen his punishment.

¶ 41 To the extent that Seltzberg agreed that defendant had mental disorders—personality disorders—the law did not require the court to deem those diagnoses to be mitigating. *Thompson*, 222 Ill. 2d at 42-43 ("This court has repeatedly held that evidence of a defendant's mental or psychological impairments may not be inherently mitigating, or may not be mitigating enough to overcome the evidence in aggravation."). According to Seltzberg, defendant's primary diagnosis was antisocial personality disorder. Our supreme court has held that, because a diagnosis of antisocial personality disorder can indicate defendant's future dangerousness, a court may properly view it as aggravating. See *People v. Thomas*, 178 Ill. 2d 215, 244 (1997) (the court was entitled to treat evidence that the defendant had antisocial personality disorder as evidence in aggravation in a death-penalty case).

¶ 42 Defendant argues that the court gave insufficient weight to his remorse. As we stated, we do not reweigh factors in mitigation and aggravation. In any event, if, as Seltzberg implied, defendant is a person who tries to manipulate the legal system, his expressions of remorse are of limited value.

¶ 43 Defendant argues that the court gave insufficient weight to his youth, his employment history, and his lack of criminal history as part of its consideration of his rehabilitative potential. We do not agree. We do agree that *Miller* is persuasive authority for the proposition that, other things being equal, courts should treat youthful offenders as having more rehabilitative potential than older ones. Although the core holding in *Miller* concerns the propriety of imposing a life sentence on a juvenile, the Court's reasoning touches broadly on the social science and brain science of self-control. See *Miller*, 567 U.S. at 471-72. That said, defendant's argument is again merely that the court gave insufficient weight to these factors among many, most notably the extraordinary seriousness of the offense. Because we do not reweigh sentencing factors, a mere claim that the court gave insufficient weight to a factor is not reason for us to reduce a sentence.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm defendant's sentence. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 46 Affirmed.