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2019 IL App (3d) 170188-U

Order filed April 26, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-17-0188
)	Circuit No. 10-CF-500
DOMINICK M. SANDERS,)	Honorable
Defendant-Appellant.)	Kevin W. Lyons, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court did not abuse its discretion when it resentenced defendant to an aggregate term of 95 years' imprisonment.
- ¶ 2 Defendant, Dominick M. Sanders, appeals from the court's order that resentenced him to an aggregate term of 95 years' imprisonment. Defendant argues: (1) the court did not comply with article I, section 11 of the Illinois Constitution where it imposed a *de facto* natural life sentence, and (2) the court abused its discretion where it imposed the same sentences on remand. We affirm.

¶ 3

I. BACKGROUND

¶ 4

The State charged defendant with first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)), aggravated battery with a firearm (*id.* § 12-4.2(a)(1)), aggravated discharge of a firearm (*id.* § 24-1.2(a)(1)), aggravated unlawful use of a weapon (*id.* § 24-1.6(a)(1)), and unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)). The case proceeded to a jury trial.

¶ 5

The evidence at trial established that Joyce Renfro engaged in an argument with a woman named Patrice outside her apartment building in Peoria. Patrice called for defendant. Defendant exited a nearby apartment carrying an automatic firearm. Nick Renfro, Joyce’s son, pushed Joyce into her apartment. Defendant shot toward Nick and Joyce. The bullets traveled through the apartment door and struck Nick and Joyce. Nick died as a result of multiple gunshot wounds to his back. Joyce received one gunshot wound to her leg. The jury found defendant guilty of the charged offenses and that defendant had discharged a firearm that proximately caused the death of another.

¶ 6

Before pronouncing defendant’s sentence, the court said “defendant’s conduct did cause or threaten serious harm. It may be inherent in the actual fact that he committed a murder, but it did occur***.” The court further stated that it had “a hard time to find anything” in mitigation. The court sentenced defendant to 45 years’ imprisonment for first degree murder, plus a 25-year firearm enhancement, a consecutive term of 25 years’ imprisonment for aggravated battery with a firearm, and concurrent terms of 10 years’ imprisonment for aggravated discharge of a firearm, and 7 years’ imprisonment for aggravated unlawful use of a weapon. The court did not enter a sentence on the unlawful possession of a weapon by a felon charge.

¶ 7 On direct appeal, we reversed defendant's sentence and remanded for a new sentencing hearing because the court erroneously considered a factor inherent in the offense of first degree murder. *People v. Sanders*, 2016 IL App (3d) 130511.

¶ 8 On remand, the presentence investigation report (PSI) was updated. The updated PSI stated that defendant denied committing the present offenses and said that if he knew who had committed the offenses he would not provide that person's name to the authorities. The updated PSI included the following information from the original PSI. At the time of the charged offenses, defendant was on probation for a 2008 conviction for unlawful possession of a controlled substance. Defendant had multiple prior misdemeanor convictions and a prior felony conviction. Defendant had no history of employment and dropped out of school after completing the ninth grade. Before his arrest, defendant reported that he smoked marijuana regularly. While incarcerated between 2010 and 2013, defendant was involved in seven incidents. The report indicated that defendant was 22 years old when he committed the charged offenses.

¶ 9 At the resentencing hearing, the State did not present any new evidence in aggravation. Defendant called his mother, Helen Sanders, to testify in mitigation. Helen testified that she visited defendant regularly, but had to decrease her visits after defendant experienced issues with his heart. Helen said defendant had matured in the years since the incident. Defendant expressed to Helen that he was sorry for the incident and he was very remorseful. While incarcerated, defendant took classes to earn his general education diploma (GED) and worked in the prison. Defendant also spoke with his younger nieces and nephews about staying positive and staying in school.

¶ 10 The State argued in aggravation that the circumstances of the underlying offenses necessitated a lengthy prison sentence. In particular, defendant had shot a firearm

indiscriminately at an apartment where three children resided. Two of the children bore witness to the murder of their brother and injury of their mother and testified about the incident at trial. At the time of the shooting, defendant was on probation as a result of a 2008 conviction for unlawful possession of a controlled substance. The State argued for the court to impose the same aggregate 95-year sentence.

¶ 11 The defense argued that the incident did not occur in a vacuum and asked that the court look at the events that occurred in the five years since defendant's prior sentencing hearing. The defense contended that defendant "isn't the same person as he was when he was in his early 20s." Since the prior sentencing hearing, defendant worked toward earning his GED, worked in the prison, was learning to paint, talks to his family, and tries to encourage young people to stay positive and not get into trouble. Defense counsel asserted that defendant had learned from his mistakes and was using that knowledge to teach others. Counsel also noted defendant had not been the subject of any disciplinary actions while in prison or the county jail.

¶ 12 The court made the following ruling.

"I've considered the [PSI], the evidence, and the arguments of the lawyers. I've offered the defendant a statement of allocution, and he has respectfully declined, and that's all right. I've considered the statutory matters in aggravation and mitigation, all those that apply. I'm cognizant of the Appellate Court opinion, and I've consider the statute—pardon me. I've considered the character and history of the defendant, and I've tried to give due regard for the circumstances and nature of the offense.

I'll make a brief comment, with regard to the defense. The defendant, according to his mother, is a different person. He's older. He's more mature. He's

remorseful, she says, and sorrowful. She seems like a very nice lady, and she is emotional and she also wanted to—it's hard to do and seem genuine, but I think she was—was. She wanted to express to the mother of Nick Renfro that she is heartbroken for her too.

When I examined the last many years that the defendant has spent in prison, it seems to amount to this. First, he's been in custody for 2,052 days on this case. He, by his own admission, has reported that when he got to prison in 2014, that he attended some classes for GED, but he never got around to actually completing them or taking a GED, but thinks he might do that later. He reports, as [defense counsel] appropriately points out, that he worked as a painter and was in the laundry department at the prison. Is a painter, apparently from his report— [defendant's] report, for 6 months. And in the laundry department for 6 months.

Other facts will not change, nor can they. I don't know Joyce Renfro, other than in this case, and by testimony, and her description. Although I'm guessing the facts of it are seared in her mind and the child upstairs who didn't need a cellphone or videocamera. He recorded it all in his own little head, while he looked out the window and watched it happen. A man much bigger than him, armed with a gun that I don't think was ever found. Maybe, but—maybe collaterally later, but I don't think it really played into it here, except that it was big, and it was long, and it worked, and it was powerful, and it was meant to kill somebody. And the shooter holding it meant to kill people.

Jury found the defendant guilty on a number of things, and I concurred with it. But when you are crossing a courtyard and you're a sizeable person—

even if you're not—if you're 5-feet tall or you're 10-feet tall with a gun, and if you're carrying a weapon designed to kill people, and you're—and he's coming toward you, whether a person is your enemy, or your friend, or stranger, or family. When they get the look in their eyes and it's: My life on this planet may just about be over, most people do not play opossum. They don't lay down and pretend that they're gone. Although I've had cases where people have pretended to be shot because they knew that there were still guns in the—pardon me—bullets in the gun. But this wasn't 1 of them. The Renfros ran for their lives. Our lives—we hear that phrase: Run for your lives. And they did.

Nick Renfro may not be Son of the Year. I don't know. He's dead. Joyce Renfro may not be Mother of the Year, but she might be. But that day—that day, Joyce Renfro can know that Nick Renfro was Human of the Year. He was in a fight with his brother. I think even Joyce was in a fight with a lady earlier in the day. Everybody's going to get even with everybody. But at the time that this happened, Nick and Joyce were mom and son, outside their apartment. And somebody who—maybe in your mind, you connected all these dots together, [defendant]. But somebody who didn't have a single thing to do with any of this was going to settle a score. And across the courtyard you came, step-by-step-by-step-by-step. And Nick and Joyce ran for their lives. And while the domino chain may have started sometime earlier, and somebody honked off somebody, and somebody irritated somebody, when Nick Renfro pushed his mother through the door—or maybe they were struggling to get through it. But he pushed her in front of him, further away from the gun. He may not have been the mathematician that

we all wish we were, but aren't, to figure out velocity of the bullets, and speed, and light, and angle, and all that. But he knew that there were him and his mother, and in front of him, he pushed his mother.

Maybe in the year 2017 we don't say this anymore. But we've all heard the saying: Woman and children first. On the Titanic, 'Women and children first.' He didn't take a vote, he pushed his mother in front of him. He had gone through the door and he pushed her in front. My recollection is that he then—'Old West style,' I'll call it—backed up against the door. And although he slammed the door shut, he wanted to make sure that it would hold and wanted to make sure that there was more than a door between the bullets and his mother. And what became the thing that was between the bullets and his mother, besides the door, was him.

My recollection was there was a little conversation with him, paramedics, maybe his brother, at the very end. And people say what they say, something about: You're going to be okay. But Nick was talking, as I recall. He was saying something. But the bullets were too big, too massive. And [the State's attorney] is right on the money: He was struck by shrapnel. Not necessarily shrapnel of the bullets. The bullets come through the door, the metal screen door, and the wooden door, and other door—front door, and it explodes. And these things go into Nick. Everything that went into Nick would've gone into [Joyce]. So why wouldn't she have died? She would've, except for Nick. So that there's no mistake about it, Joyce Renfro sits in this audience because Nick Renfro is under the ground. Simple. Simple. Simple. Don't have to go to science class, but if your mom is here, and the shooter is here, and the person in the middle dies, the mom has been

saved. So I wouldn't spend much time in what caused the fights, what started it. But I've spent some time on the end. You can always be gratified, Ms. Renfro, that your son save your life.

The defendant was on felony probation as he was—when he did this. The nature and circumstances of the event, they are what they are. We're in the City of Peoria. This was what? Less than a mile from where I'm sitting. And the people here who are on different sides, I don't think they hate each other. I think they hate why they're here. And I'm sure there are people here today, [defendant], that love you and want you to get a low sentence. I am not one of them.

The defendant is 28 years old. He was somewhere around 21 at the time, I think. Not a child. Not a babe in the woods. There was no crowd around him, chanting him on. There was no evidence that anybody pushed him out the door and said, 'Go get 'em, pal.' He was a table of 1, no waiting, all by himself and a gun. I have said it before and I'll say it again, circulating more guns through a community does not make it safer. [Fifty-thousand], or a president, or a legislature can think that a bad idea is a good idea, but it's still a bad idea. And [defendant] with a gun was a real bad idea.

The Court hereby sentences the defendant, Dominick M. Sanders, to a term in the Illinois Department of Corrections for first degree murder, 45 years, plus a 25-year firearm enhancement added onto that, for a term of 70 years. The Court also sentences him to a consecutive term of 25 years in the Illinois Department of Corrections for aggravated battery with a firearm. That sentence shall run consecutive to and not current with the first degree murder charge,

making it a 95-year sentence. The court will also sentence the defendant to concurrent terms of 10 years in the Illinois Department of Corrections for judgment on the aggravated discharge of a firearm and imprisonment. And 7 years for imprisonment for aggravated unlawful use of a weapon. Those will be concurrent, 1 with the other, and not consecutive to each other. I will not enter a sentence on the verdict of unlawful possession of a weapon by a felon.”

Defendant appeals.

¶ 13

II. ANALYSIS

¶ 14

At the outset, we note defendant challenges his sentences on two grounds, and both arguments are subject to the same standard of review. The circuit court is vested with broad discretion in sentencing a criminal defendant. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The court’s sentencing discretion is not, however, unbounded, and it is subject to reversal when the court abuses its discretion. *Id.* at 209-10. The court abuses its discretion where the sentence imposed is manifestly disproportionate to the nature of the offense. *People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007). A sentence that is within the statutorily prescribed range carries a presumption of validity. *People v. Hauschild*, 226 Ill. 2d 64, 90 (2007); *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 12.

¶ 15

In this case, the court resentenced defendant to 45 years’ imprisonment for first degree murder, plus a 25-year firearm enhancement, and a consecutive term of 25 years’ imprisonment for aggravated battery with a firearm. Defendant’s 45-year sentence for first degree murder falls within the statutorily prescribed range of 20 to 60 years’ imprisonment. 730 ILCS 5/5-4.5-20(a)(1) (West 2010). Moreover, the 25-year firearm enhancement was the minimum enhancement required as a result of the jury’s finding that defendant had used a firearm in

committing the murder. *Id.* § 5-8-1(d)(iii). Additionally, defendant’s 25-year sentence for aggravated battery with a firearm fell within the statutory range of 12 to 45 years’ imprisonment. 720 ILCS 5/12-4.2-5(a)(1), (b) (West 2010). Consecutive sentencing was also mandated by section 5-8-4 of the Unified Code of Corrections. 730 ILCS 5/5-8-4(a)(i) (West 2010). Thus, defendant’s sentences are presumptively valid, and defendant bears the burden to affirmatively show that the court abused its discretion in imposing the sentences. See, e.g., *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38 (reviewing court presumes the circuit court considered mitigating evidence and defendant bears the burden to show that the court did not consider the relevant factors in mitigation).

¶ 16 *A. De facto Natural Life Sentence*

¶ 17 Defendant argues the court did not comply with article I, section 11 of the Illinois Constitution when it resentenced him to a total of 95 years’ imprisonment, a *de facto* life sentence, because defendant was 21 years old at the time of the offenses, had no violent criminal history, and no penological goals were advanced by any sentence other than the minimum. We find that, on resentencing, the court balanced both the seriousness of the offenses and the objective of restoring defendant to useful citizenship, and thus, complied with the Illinois Constitution.

¶ 18 Article I, section 11 of the Illinois Constitution requires 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. Specifically, the court must impose a sentence that furthers both retributive and rehabilitative ends. *People v. Weiser*, 2013 IL App (5th) 120055, ¶ 32. “This balance requires the court to take into account both the seriousness of the offense and the defendant’s potential for rehabilitation.” *Id.* “The seriousness of the offense is

one of the most important factors for the court to consider.” *Id.* The court is not required to give more weight to rehabilitative potential than it gives to the aggravating factors. *Id.*

¶ 19 The court’s sentence pronouncement established that it considered both defendant’s rehabilitative potential and the seriousness of the underlying offenses. The court began its ruling by noting that it had considered the factors in mitigation and aggravation. In mitigation, the court noted that defendant had pursued, but not yet completed, courses to obtain his GED and had held several jobs in the prison. The court also found the testimony of defendant’s mother, Helen, to be “genuine.” Helen stated defendant had changed since his incarceration, showed remorse for the incident, and spoke with his nieces and nephews about staying positive and staying in school. In aggravation, the court discussed, at length, the facts of the underlying cases and emphasized the seriousness of the offenses. Ultimately, the court indicated that the seriousness of the offenses heavily influenced its sentence determination, and it imposed lengthy, although not the maximum, sentences. The court’s ruling is consistent with our prior determination that the seriousness of the offense is the most important factor for the court to consider. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007); *People v. Alvarado-Aguilar*, 244 Ill. App. 3d 433, 435 (1993).

¶ 20 In addition to the court’s on-record consideration of defendant’s potential for rehabilitation and seriousness of the offenses, the updated PSI indicated defendant had minimal potential for rehabilitation. In particular, defendant had several prior criminal convictions and was on probation at the time of the instant offenses. Defendant had not completed high school, and despite being incarcerated for more than 2000 days, defendant had not completed the courses to obtain his GED. Furthermore, the updated PSI contradicts Helen’s testimony regarding defendant’s showing of remorse where it states that defendant continues to deny committing the

offenses. This evidence established that defendant possessed a very limited potential for rehabilitation.

¶ 21 Defendant further argues that the court gave insufficient weight to his young age where courts have increasingly recognized that natural-life sentences are rarely appropriate for juvenile or young adult offenders who possess a greater potential for rehabilitation. See *People v. House*, 2015 IL App (1st) 110580, ¶¶ 94-96 (recognizing that cognitive development research indicates that young adults are more similar to juveniles in their susceptibility to peer pressure and emotional volatility). However, since the filing of defendant's appellant brief, the supreme court vacated *House* and remanded the case with directions for the appellate court to reconsider its decision in light of *People v. Harris*, 2018 IL 121932. *People v. House*, No. 122134 (Ill. Nov. 28, 2018). The *Harris* court declined to extend the Supreme Court's prohibition of life sentences for juvenile offenders (*Miller v. Alabama*, 567 U.S. 460, 470 (2012)) to young adults between the ages of 18 and 21. Instead, the supreme court reaffirmed that despite new research findings, the line between childhood and adulthood remains at the age of 18. *Harris*, 2018 IL 121932, ¶ 61. Accordingly, we reject defendant's contention that his status as a young adult at the time of the shooting warranted the imposition of a minimum sentence.

¶ 22 B. Resentence

¶ 23 Defendant argues the court abused its discretion when it imposed the same sentences on remand that we had previously determined to be erroneous due to the court's consideration of a factor inherent in the offense and where the State presented no new factors in aggravation and the only new evidence was introduced in mitigation. We find that the court did not abuse its discretion where it imposed the same sentences on remand because the court's ruling established

that it had placed little to no weight on the aggravating factor we previously determined to be erroneous.

¶ 24 A reviewing court's order that reverses defendant's sentence and remands for a new sentencing hearing should not be construed as a mandate to impose a lesser sentence. *People v. Flanery*, 243 Ill. App. 3d 759, 761 (1993). "On remand for resentencing, the trial judge should simply reconsider the matter without relying upon the factor we initially found to be improper." *Id.* The court is free to reimpose the same sentence on remand where it placed no weight on factor that was found to be erroneous. *Id.*

¶ 25 From our review of the record, we find the court determined that the aggravating factors and the seriousness of the offenses rendered the new mitigating evidence insignificant. As we noted above, the record contradicts or diminishes the mitigating effect of much of defendant's new evidence. *Supra* ¶ 20. Moreover the court's ruling and its imposition of the same sentences on remand establishes that the court placed no weight on the erroneous aggravating factor. Therefore, we conclude that defendant's sentences were not manifestly disproportionate to the nature of the offenses and not the result of an abuse of discretion.

¶ 26 III. CONCLUSION

¶ 27 The judgment of the circuit court of Peoria County is affirmed.

¶ 28 Affirmed.