

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).

FILED
June 5, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 170820-U

NO. 4-17-0820

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
BRIAN D. MAGGIO,)	No. 10CF1252
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Holder White and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted the Office of the State Appellate Defender’s motion to withdraw as appellate counsel and affirmed as no meritorious issue could be raised on appeal.

¶ 2 Defendant, Brian D. Maggio, appeals from the trial court’s sentencing decision following our remand. On appeal, the Office of the State Appellate Defender (OSAD) moves to withdraw as appellate counsel on the ground no meritorious issue can be raised. Defendant has not filed a response to OSAD’s motion. We grant OSAD’s motion and affirm.

¶ 3 I. BACKGROUND

¶ 4 Following a January 2015 jury trial, defendant was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)) for the shooting and killing of his brother and

sentenced to 65 years' imprisonment. Defendant appealed from his conviction and sentence, arguing, in part, the trial court erred in using his refusal to participate in the presentence investigation in aggravation at sentencing. *People v. Maggio*, 2017 IL App (4th) 150287, ¶¶ 46-50, 80 N.E.3d 72. We affirmed defendant's conviction but vacated his sentence and remanded for a new sentencing hearing where the trial court would not consider defendant's refusal to participate in the presentence investigation in aggravation. *Id.* ¶¶ 50, 57.

¶ 5 On remand, the trial court conducted a new sentencing hearing. The court received a new presentence investigation report, which was prepared with defendant's cooperation. At the State's request and over no objection, the court took judicial notice of the evidence presented at trial and during the original sentencing hearing. Defendant moved to admit several letters in mitigation, which the court granted over no objection. Defendant testified in mitigation and made a statement in allocution. The State recommended defendant be sentenced to a total of 65 years' imprisonment, while the defense recommended defendant be sentenced to a total of 45 years' imprisonment.

¶ 6 In the oral pronouncement of its decision, the trial court stated it followed this court's mandate and did not consider defendant's prior refusal to participate in the presentence investigation in aggravation. The court considered the evidence presented, defendant's statement in allocution, the statutory factors in aggravation and mitigation, and the sentencing recommendations. The court found the factors in "mitigation [are] obscured by the overwhelming factors in aggravation, and the sheer callousness and indifference of the defendant's actions and the danger he presents." The court sentenced defendant to 39 years' imprisonment for first degree murder and 25 years' imprisonment for personally discharging a

firearm, for a total of 64 years' imprisonment. Defendant filed a motion to reconsider his sentence, which the court denied.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, OSAD asserts no colorable argument can be made to suggest the trial court either failed to follow this court's mandate or imposed an excessive sentence.

¶ 10 This court remanded for a new sentencing hearing where the trial court would not consider defendant's refusal to participate in the presentence investigation in aggravation. *Id.* ¶¶ 50, 57. On remand, the trial court conducted a new sentencing hearing and made clear it did not consider defendant's prior refusal to participate in the presentence investigation in aggravation. We agree no colorable argument can be made to suggest the trial court failed to follow this court's mandate.

¶ 11 Defendant faced a possible sentence between 20 and 60 years for first degree murder (730 ILCS 5/5-4.5-20(a) (West 2010)), along with a sentencing enhancement between 25 years and life for personally discharging a firearm resulting in the victim's death (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010)). "[A] sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *People v. Little*, 2011 IL App (4th) 090787, ¶ 22, 957 N.E.2d 102. A trial court's sentencing decision is reviewed for an abuse of discretion as the trial court is generally in a "better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th)

100311, ¶ 36, 958 N.E.2d 341. The court sentenced defendant to a term well within the sentencing range and, in doing so, made clear it carefully considered the evidence presented, the statement in allocution, the statutory factors in aggravation and mitigation, and the sentencing recommendations. We agree no colorable argument can be made to suggest the trial court imposed an excessive sentence.

¶ 12

III. CONCLUSION

¶ 13

We grant OSAD's motion to withdraw as counsel and affirm.

¶ 14

Affirmed.