

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
April 25, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 180403-U

NO. 4-18-0403

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
WILLIAM J. BRUNO,)	No. 14CF138
Defendant-Appellant.)	
)	Honorable
)	Thomas E. Griffith,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices DeArmond and Harris 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 This appeal comes to us on a motion from the Office of the State Appellate Defender (OSAD) to withdraw as appellate counsel on the ground no meritorious issue could be raised on appeal. We grant OSAD’s motion and affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2014, the State charged defendant, William J. Bruno, by information with aggravated domestic battery (720 ILCS 5/12-3.3(a), (b) (West 2012)), a Class 2 felony.

¶ 5 In March 2014, defendant indicated he wished to enter an open plea of guilty. The

trial court admonished defendant as to his rights, the charge against him, and the possible penalties for the offense, all of which defendant indicated he understood. As to the possible penalties, the court specifically advised defendant (1) he was subject to an extended-term sentence between 3 and 14 years' imprisonment because of his 2009 Class 2 felony burglary conviction and (2) any sentence imposed would be followed by 4 years' mandatory supervised release (MSR). As a factual basis for the plea, the State indicated the evidence would show, on January 27, 2014, police officers responded to the victim's basement apartment and found her unconscious with lacerations to her face and bleeding from the head. Defendant, who was the victim's boyfriend, told the police that he jerked the victim off the bed, shoved her against a dresser, and kicked her in the head while she was lying on the floor. The victim was hospitalized in critical condition. The court accepted the guilty plea, finding it to be knowingly and voluntarily made and supported by a factual basis, and entered judgment of conviction.

¶ 6 In April 2014, the trial court held a sentencing hearing. The court received a presentence investigation report (PSI) and victim impact statements from the victim's mother, father, and stepfather. The PSI showed, in part, defendant had a January 2007 Class A misdemeanor "Domestic Battery/Physical Contact" conviction, an August 2007 Class 4 felony domestic battery conviction, and a January 2009 Class 2 felony burglary conviction. The PSI also detailed defendant's account of a difficult childhood, which included physical abuse, the absence of a significant parent-child relationship, and mental health concerns.

¶ 7 In aggravation, the State presented testimony from Detective Frank Hubbard. Detective Hubbard testified about the facts of the incident, noting defendant first said the victim had tripped and fallen but later admitted he pulled the victim off a bed, pushed her into a dresser,

and then kicked her in the head while she was on the ground. Detective Hubbard also testified about the extent of the victim's injuries, noting she was on life support after the incident and needed a craniotomy. Detective Hubbard identified photographs of the victim's injuries, which were admitted into evidence.

¶ 8 In mitigation, the defense presented testimony from defendant. Defendant testified he had been up for a couple of days when he and the victim began arguing. After the incident, he ran upstairs and asked for someone to call 911. He then ran back downstairs and tried to help the victim. Defendant admitted he took the time to grab his PlayStation video game console and put it in his backpack when he went upstairs, which was a "selfish mistake." He also indicated he initially told the police that it was an accident because he was in "shock." Defendant admitted he had prior felony and misdemeanor domestic battery convictions involving the mother of his children. He asserted the felony domestic battery conviction resulted from a physical altercation but the misdemeanor domestic battery conviction resulted from a "verbal thing."

¶ 9 Defendant gave a statement in allocution, expressing remorse for his actions and his desire for the victim to forgive him.

¶ 10 The State recommended the maximum 14-year prison sentence, while the defense recommended a 3-year prison sentence.

¶ 11 The trial court indicated it considered the testimony, the exhibits, the PSI, the statement in allocution, and the statutory factors in aggravation and mitigation. The court observed defendant's misdemeanor domestic battery conviction involved physical contact. The court acknowledged defendant had a difficult childhood and took responsibility for his actions. It

believed defendant was “truly sorry.” The court found the incident involved a “violent, violent act.” The court noted the victim could have died from her injuries and she now had to live with the physical and emotional scars for the rest of her life. The court stated it would not impose the maximum sentence but that it would impose an extended term. The court sentenced defendant to 12 years’ imprisonment, followed by 4 years’ MSR. Defendant was ordered to serve 85% of his sentence.

¶ 12 In May 2014, defendant filed a motion to reduce his sentence, which was later amended. In his amended motion, defendant argued his sentence was excessive. Defendant’s counsel did not file a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). Following a hearing later that month, the trial court denied defendant’s motion. In doing so, the court noted it had found the severity of the beating warranted the maximum sentence but it had given defendant credit for taking responsibility for his actions and therefore only sentenced him to 12 years’ imprisonment. Defendant appealed.

¶ 13 In October 2014, this court granted defendant’s agreed motion for summary remand for compliance with Rule 604(d). *People v. Bruno*, No. 4-14-0454.

¶ 14 In November 2014, defendant, on remand, filed a motion to reduce his sentence, again arguing his sentence was excessive. Defendant’s counsel filed a Rule 604(d) certificate. At a hearing on the motion, the trial court allowed defendant to make an additional statement in allocution. Defendant stated he was sorry and wanted his sentence reduced. He also asserted he had been up for three days smoking cannabis and doing drugs at the time of the incident. The court found the sentence was not unduly harsh given the severity of the beating. It stated defendant was fortunate the victim had not died. The court again stated it had found the severity

of the beating called for the maximum sentence but indicated it had not given such a sentence because defendant accepted responsibility for his actions. The court denied defendant's motion. No appeal was filed.

¶ 15 In July 2016, defendant filed a *pro se* postconviction petition. In his petition, defendant alleged, in part, (1) his counsel failed to explain the need to file an appeal after the proceedings on remand concluded and (2) the Rule 604(d) certificate filed on remand was deficient. In October 2016, defendant, through appointed counsel, filed an amended postconviction petition. In his petition, defendant argued, in part, his counsel provided ineffective assistance by failing to file both a proper Rule 604(d) certificate and a notice of appeal from the denial of his motion to reduce his sentence. Defendant requested he be granted leave to file a late notice of appeal. In February 2017, the trial court awarded defendant the requested relief.

¶ 16 In January 2018, this court again remanded the matter for compliance with Rule 604(d). *People v. Bruno*, 2017 IL App (4th) 170116-U.

¶ 17 In May 2018, on remand, defendant filed a motion to reconsider his sentence. Defendant asserted, in part, his sentence was excessive in light of him taking responsibility for his actions and his remorse. Defendant also asserted his sentence was excessive because he was experiencing mental issues at the time of the incident and those mental issues stemmed from his treatment as a child. Defendant's counsel later filed a compliant Rule 604(d) certificate.

¶ 18 In June 2018, the trial court, with the same judge presiding who originally sentenced defendant, held a hearing on defendant's motion to reconsider his sentence. The court allowed the defense to present additional testimony in mitigation. Defendant testified he only

wanted the court to reconsider his sentence and not to withdraw his guilty plea. Defendant admitted he committed the act and said he had a “wave of rage” and could not stop what he was doing because he was being “belittled and picked on.” He asserted he did not, however, blame the victim for what occurred. He opined the victim survived because he immediately called for help. Defendant also described an incident when he was 12 years old where he was hit by a car, which he believed affected his mental health. Defendant testified he did not believe 12 years’ imprisonment was too much but asserted he wanted to enroll in classes and could not because he still had too much time left to serve. The court also allowed defendant to give another statement in allocution. Defendant stated he came from a broken home without a support system but believed he could be a good person.

¶ 19 The trial court stated defendant’s sentence was “harsh” but necessary given the “violent, violent act.” The court again noted the victim was almost killed. It also noted defendant’s criminal history. It found defendant was remorseful and believed that defendant probably suffered some brain trauma as a child. The court noted it had considered the evidence presented, the statement in allocution, and the statutory factors in aggravation and mitigation in reaching its sentencing decision and defendant failed to show his sentence, even with the additional evidence presented, was excessive. The court denied defendant’s motion. Defendant appealed, and OSAD was appointed to represent him.

¶ 20 In September 2018, OSAD filed a motion for leave to withdraw as counsel, asserting no meritorious claim could be raised on appeal. This court allowed defendant leave to file a response to OSAD’s motion by April 23, 2019. Defendant has not done so.

¶ 21

II. ANALYSIS

¶ 22 OSAD asserts the only apparent claim it could raise on appeal would concern defendant's sentence but no reasonable argument could be made to suggest the sentence was improper.

¶ 23 A trial court's sentencing decision is entitled to great deference as that 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. As such, we review a trial court's sentencing decision for an abuse of discretion. *Id.* "[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.

¶ 24 Defendant was convicted of a Class 2 felony (720 ILCS 5/12-3.3(a), (b) (West 2012)). Because he had a 2009 Class 2 felony burglary conviction, he was subject to an extended-term sentencing range between 3 and 14 years' imprisonment. 730 ILCS 5/5-4.5-35(a) (West 2012); 730 ILCS 5/5-5-3.2(b)(1) (West 2012); 730 ILCS 5/5-8-2(a) (West 2012). Defendant was also required to serve a four-year term of MSR (730 ILCS 5/5-8-1(d)(6) (West 2012)) and could receive no more than 4.5 days of sentencing credit for each month of his term of imprisonment (730 ILCS 5/3-6-3(a)(2)(vii) (West 2012)).

¶ 25 The trial court sentenced defendant to 12 years' imprisonment, a sentence within the applicable statutory range. In reaching its sentencing decision, the court considered the evidence presented, the statement in allocution, and the statutory factors in aggravation and mitigation. The record makes clear the court weighed the nature of the beating and defendant's

criminal history against defendant's remorse, admission of guilt, and difficult childhood. We agree with OSAD and find no reasonable argument could be made to suggest the sentence rendered resulted from an abuse of discretion. Additionally, the court also properly ordered defendant to serve 85% of the sentence and four years' MSR. We agree with OSAD and find no reasonable argument could be made to suggest the sentence rendered was improper.

¶ 26

III. CONCLUSION

¶ 27

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

¶ 28

Affirmed.