NOTICE
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2019 IL App (4th) 190030-U

NO. 4-19-0030

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 6, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Ford County
RODOLFO A. CERRITOS,	)	No. 14CF6
Defendant-Appellant.	)	
	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Holder White and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not abuse its discretion in sentencing defendant to 25 years in prison for the offense of armed robbery.

¶ 2 In October 2014, defendant, Rodolfo A. Cerritos, pleaded guilty to single counts of armed robbery and kidnapping. The trial court sentenced him to concurrent terms of 25 years in prison for armed robbery and 5 years for kidnapping. Defendant filed a motion to reconsider his sentence and a *pro se* motion to withdraw his guilty plea, which the court denied. This court remanded for compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 3, 2015). On remand, defense counsel filed amended motions to withdraw the guilty plea and to reconsider the sentence, both of which the trial court denied.

¶ 3 On appeal, defendant argues his 25-year sentence was excessive. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2014, the State charged defendant by information with two counts of armed robbery (counts I and IV) (720 ILCS 5/18-2(a)(1), (a)(2) (West 2012)), two counts of kidnapping (counts II and V) (720 ILCS 5/10-1(a)(1), (a)(2) (West 2012)), and one count of aggravated battery (count III) (720 ILCS 5/12-3.05(f)(1) (West 2012)). In count I, the State alleged defendant committed the offense of armed robbery in that, while armed with a dangerous weapon, a baseball bat, he knowingly took the property of J. Hastings by the use of force. In count IV, the State alleged defendant committed armed robbery in that, while carrying a firearm on his person, he knowingly took Hastings's property by the use of force. In counts II and V, the State alleged defendant committed the offense of kidnapping when he (1) knowingly and secretly confined Hastings against his will (count II) and (2) knowingly, by force or threat of imminent force, carried Hastings from Paxton, Illinois, to rural Ford County, with the intent to secretly confine him against his will (count V). In count III, the State alleged defendant committed the offense of aggravated battery when, while using a deadly weapon, a pistol, other than by discharge of a firearm, he committed an act of battery when he knowingly struck Hastings with the gun.

¶ 6 In October 2014, defendant entered an open plea of guilty to one count of armed robbery (count I) and one count of kidnapping (count II). The State agreed to dismiss the other charges. Defendant indicated no one threatened or forced him to plead guilty and he understood the rights he was giving up by pleading guilty. The trial court stated the possible sentences ranged from 6 to 30 years in prison on count I and 3 to 7 years on count II, and defendant indicated he understood. In its factual basis, the State said the evidence would show defendant knowingly and secretly confined Hastings against his will and, while armed with a dangerous weapon, *i.e.*, a baseball bat, he knowingly took by force Hastings's property, including $300 in

United States currency, a cellular phone, profit-sharing checks, and two credit cards. The court found defendant's guilty pleas knowing and voluntary.

¶ 7 At the December 2014 sentencing hearing, the State presented evidence in aggravation. Paxton police officer Chad Johnson testified he received a phone call from Hastings on December 9, 2013, at approximately 8:40 p.m., and Hastings stated he had been kidnapped. Johnson went to Hastings's house and found him "a little bit hysterical and kind of in a panic mode." Hastings stated he was leaving work when he opened his car door and found a man in his backseat. Hastings backed up, and a male came up from behind him. The subjects forced him into the car, zip-tied his hands, and drove him around Ford and Iroquois Counties. Hastings was struck with a baseball bat and a gun. The individuals took cash, checks, credit cards, and his cellular phone, and they threatened his family. Hastings stated the men made calls to an individual they called "Boss" and asked if they should kill Hastings. They then made comments to him about getting $50,000 in cash or cocaine in the same amount. The subjects eventually released him. Thereafter, Hastings's family was taken into protective custody.

¶ 8 Special Agent Andrew Huckstadt of the Federal Bureau of Investigation testified the subjects had arranged a time for Hastings to drop $50,000 at an agreed-upon location. On January 15, 2014, a controlled money drop took place, and defendant arrived to retrieve the money. Following his arrest, defendant indicated he and/or other men attempted to kidnap Hastings three times prior to their successful kidnapping. In July 2013, three individuals, not including defendant, attempted to abduct Hastings at his house, but they "got spooked by his dogs and decided that they should wait on doing it another time." In November 2013, individuals attempted to abduct Hastings at his place of employment but did not because of others outside the business. On December 9, 2013, the day of the actual abduction, defendant

and Marcos were dropped off by Samano near Hastings's house, but they decided to wait to execute the abduction because they believed a neighbor had seen them. Defendant told Huckstadt the individuals conducted surveillance of Hastings's house and workplace and obtained an Internet video to determine what he looked like.

¶ 9 The trial court took into consideration four victim impact statements. Defendant did not present any evidence in mitigation. In his statement of allocution, defendant took responsibility for his actions and apologized. The State asked the court to sentence defendant to 22 years in prison. Defense counsel asked for a six-year sentence, arguing as factors in mitigation, *inter alia*, defendant's work history, his "substantially law[-]abiding life," hardship to his dependents, his cooperation with law enforcement, his remorse, and the support from his family.

¶ 10 The trial court stated defendant was 26 years old, "still a relatively young man" but "old enough to be able to conform his conduct to the requirements of the law." He also had a one-year-old child, had a good employment history, and showed "appropriate remorse." As aggravating factors, the court noted defendant caused "serious harm" to Hastings and he "minimized his role" in the offenses. The court stated defendant had a prior felony conviction for cannabis possession, along with convictions for driving under the influence (DUI) and driving on a suspended license. Stating the need "to deter others from taking part in such foolish" and nonsensical activity, the court sentenced defendant to 25 years in prison on count I and a concurrent term of 5 years on count II.

¶ 11 Defendant filed a motion to reconsider his sentence, arguing the trial court failed to give proper weight to mitigating evidence and gave too much weight to the State's evidence in aggravation. In May 2015, defendant filed a *pro se* motion to withdraw his guilty plea and to

vacate the sentence, contending he "had inadequate representation by counsel." In a letter to the court, defendant stated his attorney promised him a six-year sentence.

¶ 12 In July 2015, defense counsel filed a certificate of compliance pursuant to Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). The trial court also conducted a hearing on the pending motions. First, the court held a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), based on defendant's motion to withdraw his guilty plea. Defendant told the court his attorney promised him he would receive a six-year sentence if he "did everything [counsel] wanted." Defendant stated counsel never responded to his letters, did not provide him with discovery materials, and did not talk to him at the jail after he was sentenced. Defendant also mentioned an immunity agreement.

¶ 13 Defense counsel stated he drafted an immunity agreement and described its purpose to defendant. Counsel made "several visits to the jail." As to the promised six-year sentence alleged by defendant, counsel stated he does not promise clients "anything with respect to a sentence," although he would do his best to get the lowest sentence possible. While he felt an appropriate sentence would be eight or nine years and made arguments in support of his recommendation, counsel was "surprised" and "disappointed" with the trial court's ultimate sentence.

¶ 14 The trial court did not find defendant's allegations worthy of appointing independent counsel. The court noted defendant was admonished during the plea hearing that he could receive a maximum of 30 years in prison. The court denied defendant's motion to withdraw his guilty plea. Thereafter, the court also denied the motion to reconsider his sentence.

¶ 15 Defendant appealed, arguing defense counsel failed to strictly comply with the requirements of Illinois Supreme Court Rule 604(d) (eff. Dec. 3, 2015), his 25-year sentence was

excessive, and his case should be remanded for a new preliminary inquiry pursuant to *Krankel*. Due to counsel's failure to strictly comply with Rule 604(d), we vacated the trial court's judgment regarding Rule 604(d) compliance and remanded with directions. *People v. Cerritos*, 2017 IL App (4th) 150553-U.

¶ 16 In May 2018, defendant filed a *pro se* motion to withdraw his guilty plea and vacate the sentence, raising a claim of ineffective assistance of counsel. Defendant also filed a *pro se* motion to reduce his sentence, claiming his sentence was excessive and the trial court placed too much weight on the factors in aggravation. Defense counsel filed a Rule 604(d) certificate. Given defendant's complaints about counsel's representation, the court appointed Bryon Schneringer to represent him.

¶ 17 In October 2018, Schneringer filed a motion to withdraw defendant's guilty plea and to vacate the sentence, adopting defendant's preremand motions to reconsider the sentence and motion to withdraw his guilty plea. Schneringer later filed an amended motion to reconsider the sentence, adding the claim the trial court failed to consider or give proper weight to mitigating evidence at sentencing. He also filed an amended motion to withdraw the guilty plea and vacate the sentence.

¶ 18 At the hearings on the motions, the trial court denied the motion to withdraw the guilty plea. In regard to the sentence, the court noted it considered the appropriate factors at the sentencing hearing and concluded the aggravating factors outweighed the mitigating factors. The court "still believes that the sentence of 25 years is appropriate." Accordingly, the court denied the motion to reconsider the sentence. This appeal followed.

¶ 19 II. ANALYSIS

> "My hands were bound together with black plastic zip ties. I was hit multiple times with an aluminum bat against my head and side. I was periodically hit with a gun and bat in my left side and the left side of my head. I pleaded with them that I did not know what he was talking about and then click, the trigger was pulled . . . click the trigger was pulled again, while I was pleading no, please no, they were laughing[,] calling me names, threatening my family's lives as well. They told me if I did not give them what they wanted they would kill me and take my wife and two daughters to [M]exico and sell them or do other things to them."

¶ 20 So began the victim impact statement of the victim, J. Hastings, in this case. Hastings went on to chronicle the panic that ensued after defendant and his partner told him to pick which finger they were going to cut off to send to their "Boss" to prove they had him and the fear engendered by their calls to "Boss" to see whether they were to just kill him. This continued until he was eventually released in order to make the arrangements to get the $50,000 defendant and his cohort demanded—after they showed him pictures of his family, assuring him they knew where they lived, where his children attended school, and where they worked.

¶ 21 The trial court was provided three other victim impact statements, each outlining the stress, trauma, and anxiety multiple members of the family have had to learn to live with since this ordeal. They each explained how their lives have been completely changed by this experience, how they are all more fearful and withdrawn, and how this has continued since Hastings showed up at the house cold, wet, beaten, and confused on the night of his abduction and robbery.

¶ 22 Defendant argues his sentence is excessive because it is greatly at variance with the spirit and purpose of the law in light of the mitigating evidence demonstrating his rehabilitative potential. To say we disagree is putting it mildly.

¶ 23 The Illinois Constitution mandates "[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. " 'In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.' " *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)). However, "a defendant's rehabilitative potential and other mitigating factors are not entitled to greater weight than the seriousness of the offense." *People v. Shaw*, 351 Ill. App. 3d 1087, 1093-94, 815 N.E.2d 469, 474 (2004).

¶ 24 With excessive-sentence claims, this court has explained appellate review of a defendant's sentence as follows:

> "A trial court's sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Generally, the trial court is 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. [Citation.] Thus, the trial court is the proper forum for the

> determination of a defendant's sentence, and the trial court's decisions in regard to sentencing are entitled to great deference and weight. [Citation.] Absent an abuse of discretion by the trial court, a sentence may not be altered upon review." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341 (quoting *People v. Hensley*, 354 Ill. App. 3d 224, 234, 819 N.E.2d 1274, 1284 (2004), quoting *People v. Kennedy*, 336 Ill. App. 3d 425, 433, 782 N.E.2d 864, 871 (2002)).

Our supreme court has held "the excessiveness of a sentence may not be determined from a consideration of the sentences imposed on defendants in separate, unrelated cases." *People v. Fern*, 189 Ill. 2d 48, 51, 723 N.E.2d 207, 208 (1999).

¶ 25 When a sentence falls within the statutory range of sentences possible for a particular offense, it is presumed not to be arbitrary. *People v. Moore*, 41 Ill. App. 3d 3, 4, 353 N.E.2d 191, 192 (1976). An abuse of discretion will not be found unless the court's sentencing decision is "arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 26, 82 N.E.3d 693. Also, an abuse of discretion will be found "where the sentence is 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000)).

¶ 26 In the case *sub judice*, defendant pleaded guilty to the offense of armed robbery, a Class X felony (720 ILCS 5/18-2(b) (West 2012)), and kidnapping, a Class 2 felony (720 ILCS

5/10-1(c) (West 2012)). A person subject to Class X sentencing is subject to a range of 6 to 30 years in prison (730 ILCS 5/5-4.5-25(a) (West 2012)), and a person subject to sentencing as a Class 2 offender faces a range of 3 to 7 years in prison (730 ILCS 5/5-4.5-35 (West 2012)). The trial court ordered the armed robbery sentence to be served concurrently with the kidnapping sentence. As the court's sentence of 25 years in prison for the offense of armed robbery was within the relevant sentencing range, we will not disturb the sentence absent an abuse of discretion.

¶ 27 The presentence investigation report indicated defendant was a 26-year-old high school graduate who had worked in the fast-food industry since 2004. He had a single felony conviction for unlawful possession of cannabis (2009), a 2012 conviction for DUI, and a 2013 conviction for driving with a suspended license. He first started smoking marijuana at the age of 16 and had experimented with ecstasy and cocaine. He first used alcohol when he was 12 years old and "had a problem with alcohol at the age of 19 or 20 when [he] was consuming daily over the course of a year." However, he denied the usage of either drugs or alcohol contributed to his involvement in these offenses. He began treatment in 2013, and by the time of the offenses, had only completed 10 of 30 hours as part of his DUI sentence and still owed $2633 in that case. Defendant has one child under two years of age, and although he and the mother of the child acknowledged he provided consistent financial assistance for the child, he left the mother and child one week before his arrest and moved back in with his mother due to "communications problems" with his girlfriend. Also in the report, defendant said he had to "help out a lot" with one sibling who has "mental issues" and indicated the other sibling "sees [him] as a father figure." Even so, defendant had been living away from home with his girlfriend and child just before his arrest.

¶ 28 At the sentencing hearing, the trial court indicated it considered the presentence report, the testimony of Officer Johnson and Agent Huckstadt, defendant's statement in allocution, and the victim impact statements. Although defendant sought to minimize his involvement in the incidents described by Hastings, the author of the presentence report confronted him with contrary statements contained in the police reports. The author also noted "[p]olice reports indicated that this defendant was the individual who struck the victim in the head with the baseball bat." At the time of the plea, defendant stipulated through counsel that the State could produce witnesses who would testify, among other things, to the fact defendant had been armed with a baseball bat. At the sentencing hearing, his attorney acknowledged having provided defendant with a copy of the report, which contained the above information outlining what the police reports said about defendant's level of involvement. According to counsel, even though he specifically asked defendant to note any additions or corrections to the report, defendant had none. During his statement of allocution to the court, defendant made no mention of disagreeing or disputing reports that he had been the person wielding the baseball bat. During the presentence investigation, however, he did seek to portray himself as somewhat of a victim, contending his codefendant had threatened him and his family to get him to participate.

¶ 29 The trial court stated it considered the factors in aggravation and mitigation. In mitigation, the court noted defendant's young age, the hardships imprisonment would impose on his child, his education, his employment history, his family support, his remorse, and his cooperation with law enforcement. As factors in aggravation, the court found defendant's conduct caused serious harm, both physical and mental, to Hastings and his family. The court noted defendant had a "history of criminal activity," including a prior felony, and believed he

"minimized his role in this entire scheme." The court also found an appropriate sentence was necessary to deter others from committing "such a foolish act."

¶ 30 In his brief, defendant argues the trial court failed to consider his rehabilitative potential and failed to favorably consider his cooperation with law enforcement, his acceptance of responsibility for the offenses, his "relatively minor criminal history," his agreement to pay restitution, and the threats of violence used to induce his participation in the crimes.

¶ 31 "Where mitigating evidence has been presented, it is presumed that the trial court considered it." *People v. Lundy*, 2018 IL App (1st) 162304, ¶ 24, 118 N.E.3d 1246. However, "the existence of mitigating factors does not obligate the trial court to reduce a sentence from the maximum allowable." *People v. Williams*, 317 Ill. App. 3d 945, 955-56, 742 N.E.2d 774, 783 (2000). Moreover, "a defendant's rehabilitative potential and other mitigating factors are not entitled to greater weight than the seriousness of the offense." *Shaw*, 351 Ill. App. 3d at 1093-94, 815 N.E.2d at 474; see also *People v. Malin*, 359 Ill. App. 3d 257, 265, 833 N.E.2d 440, 447 (2005) (stating the sentencing court is not obligated to place greater weight on mitigating factors "than on the need to deter others from committing similar crimes").

¶ 32 Here, the trial court indicated it considered the mitigating factors defendant argues on appeal. However, those mitigating factors were not entitled to more weight than the seriousness of the offenses or other aggravating factors. While defendant contends his cooperation with police should have been given greater consideration, nothing indicates he ever considered cooperating with law enforcement authorities in an attempt to actually prevent the occurrence of the crimes. During the four months defendant and his cohorts were surveilling the victim, and the month after an earlier attempt, defendant did nothing to bring these crimes to the attention of the police. He participated in at least one previous attempt, as well as one aborted

earlier in the day of the eventual kidnapping. Moreover, defendant continued to participate in the criminal enterprise when over a month after the offenses were committed, he attempted to retrieve the money from the prearranged location, where he was apprehended. The court also found defendant minimized his role in the offenses, noting the threats defendant allegedly received from others to participate in the crimes were not substantial enough to raise as a defense.

¶ 33 In fashioning its sentence, the trial court rightly considered the need to deter others from committing such "foolish" and "terrible acts." The evidence indicated Hastings was kidnapped at gunpoint, bound and driven around multiple counties, and hit "multiple times" with an aluminum baseball bat. While laughing and calling him names, the abductors also hit him with a gun and placed it against his head and pulled the trigger. They threatened to cut off one of Hastings's fingers, kill his family, or take his wife and daughters to Mexico and "sell them or do other things to them." Not only did the assailants take his money, credit cards, checks, and his cellular phone, they also demanded more money and threatened him and his family with violent acts if he did not comply. Hastings stated the crimes have completely disrupted the lives of his family, caused them to suffer depression and anxiety, and adversely affected his ability to work and travel "due to the paralyzing fear at times of another attack."

¶ 34 While defendant makes repeated assertions of his rehabilitative potential, he is now a two-time convicted felon. He committed his first felony in 2009 and followed that offense with a misdemeanor DUI conviction in 2012 and a misdemeanor conviction for driving with a suspended license in 2013. Later in 2013, he participated in the violent kidnapping and armed robbery that terrorized Hastings and his family. Despite his claims of being a good father, consistently employed, and helpful to his family, these positive character traits did not lead him

to remove himself from the planning and execution of the thuggish crimes in this case. Given the serious nature of the offenses and the need to deter others, we find the sentence of 25 years in prison for the armed robbery offense was not " 'greatly at variance with the spirit and purpose of the law,' " nor was it " 'manifestly disproportionate to the nature of the offense.' " *Alexander*, 239 Ill. 2d at 215, 940 N.E.2d at 1067 (quoting *Stacey*, 193 Ill. 2d at 210, 737 N.E.2d at 629). Accordingly, we hold the trial court did not abuse its discretion.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 37 Affirmed.