2020 IL App (4th) 180051-U

NO. 4-18-0051

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 17, 2020
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
WILLIAM E. LAMB,	)	No. 14CF639
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffrey S. Geisler,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices DeArmond and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part and vacated in part, concluding defendant (1) forfeited any claim of error asserting an improper sentencing consideration and (2) failed to demonstrate plain error, but the court vacated the period of mandatory supervised release ordered on counts II and III.

¶ 2 In June 2014, the State charged defendant, William E. Lamb, with predatory criminal sexual assault of a child, alleging commission of an act of sexual penetration on T.A. (born Dec. 1, 1999), who was under the age of 13 at the time (count I) (720 ILCS 5/5/12-14.1(a)(1) (West 2008)). Additionally, the State charged defendant with two counts of aggravated criminal sexual assault (counts II and III) (720 ILCS 5/12-16(c)(1)(i) (West 2008)).

¶ 3 Following a September 2017 bench trial, defendant was found guilty on all three charges. Ultimately, the trial court thereafter sentenced defendant to an aggregate term of 14 years' imprisonment.

¶ 4 Defendant appeals, asserting the trial court improperly (1) considered harm to the victim as an aggravating factor at sentencing and (2) imposed a four-year period of mandatory supervised release (MSR) on counts II and III. For the following reasons, we affirm in part and vacate in part.

¶ 5 I. BACKGROUND

¶ 6 A. Charges

¶ 7 In June 2014, the State charged defendant by information with predatory criminal sexual assault of a child, alleging that between December 1, 2008, and February 28, 2009, defendant, who was 17 years of age or older, knowingly committed an act of sexual penetration with T.A., who was under the age of 13 (count I) (720 ILCS 5/5/12-14.1(a)(1) (West 2008)). In May 2015, the State filed an amended information adding counts II and III, both alleging that between December 1, 2008, and February 28, 2009, defendant committed aggravated criminal sexual abuse by committing acts of sexual conduct with T.A. (720 ILCS 5/12-16(c)(1)(i) (West 2008)). Defendant waived his right to a jury trial on all three counts.

¶ 8 B. Kansas Proceedings

¶ 9 On the eve of defendant's bench trial, allegations allegedly occurring in Kansas were made against defendant. The court granted defendant's motion to continue due to the Kansas allegations.

¶ 10 Eventually, the State of Kansas commenced prosecution of defendant, convicting him of aggravated indecent liberties with a child less than 14 years of age. Prior to the bench trial

in the matter now before us, Kansas sentenced defendant to 77 months' incarceration in the Kansas Department of Corrections.

¶ 11 C. Bench Trial

¶ 12 During defendant's September 2017 bench trial, the State presented the following evidence.

¶ 13 1. *Hannah Clark*

¶ 14 Hannah Clark, the mother of T.A., testified she had known defendant since 2005. Clark married defendant on November 3, 2007, and they resided together. In February 2009, Clark became aware something had occurred between T.A. and defendant, and the incidents occurred over an approximately three-month period in 2008. Clark testified she was contacted by a detective and was told not to talk to T.A. about the incidents but was not informed of any penetration. In 2014, T.A. made a statement that Clark testified "did not fit" and caused Clark to contact the Child Advocacy Center and a detective.

¶ 15 2. *T.A.*

¶ 16 T.A., age 17, testified she was six or seven years old when defendant started a relationship with her mother. In 2008 to 2009, T.A. was in third grade and was eight years old, turning nine years old. T.A. recalled one incident when, while she was taking a bath, defendant entered the bathroom to do his hair or clean his ears. T.A. asked defendant " 'Why are you coming in here?' " and defendant responded " 'Because I like to see you naked.' " In another incident, T.A. recalled lying on the couch on top of defendant when defendant stuck his hand around her leg and put his hand up the leg of her shorts. According to T.A., defendant touched her vagina under her clothing, then put his fingers inside her vagina. T.A. recalled a third incident during which, while they were both lying on opposite sides of the couch, defendant

moved her shorts to the side and rubbed the outside of her vagina with his hand. On another occasion, T.A. testified defendant placed her hand on the crotch of his pants. Finally, T.A. recounted, while sitting on the couch, defendant approached her and grabbed her hands. T.A. testified defendant began "dry humping" her in a circular motion.

¶ 17 T.A. explained the differences between her disclosures in 2009 and her disclosures in 2014, stating she did not enjoy talking to the detective in 2009 and, because of her young age, she was scared she was going to be in trouble. T.A. stated she still did not want to be interviewed in 2014 but gave more details because she had a better understanding of what happened to her.

¶ 18 3. *Cara Hall*

¶ 19 Cara Hall testified she had known defendant for 20 years and they were in a relationship between 2000 and 2004 in Kansas. Hall is the mother of W.D., born June 9, 1995. Hall testified that in 2006, W.D. disclosed she had been inappropriately touched by defendant. In 2012, W.D. experienced a herpes outbreak. Hall became aware defendant had herpes in 2001 when he admitted he had given Hall herpes after she tested positive at a prenatal appointment.

¶ 20 4. *W.D.*

¶ 21 W.D., 22 years of age at the time of the trial, testified she was six years old when her mother began a relationship with defendant. W.D. recalled an occasion while defendant resided with her mother when defendant walked into her room naked while she was lying in bed. W.D. was scared and pretended to be asleep, then felt defendant's penis on her butt. Defendant moved W.D.'s underwear so that there was skin contact. Defendant quickly left when W.D. rolled over. W.D. recounted defendant would come into her bedroom at night and rub and touch her. Defendant would begin by touching her over her clothes, then would pull the blankets down

so he could rub her vagina with his hand. W.D. testified to another incident in which she was home from school with a broken arm. While W.D.'s mother was at work, defendant offered to help W.D. shower. In the shower, W.D. felt defendant's penis on her vagina and was penetrated.

¶ 22 5. *Lou Ann Hollon*

¶ 23 Sergeant Lou Ann Hollon testified she was formerly a detective with the McLean County Sheriff's Office. In 2009, she was assigned to investigate a case involving T.A. being sexually abused by defendant. On February 3, 2009, Hollon interviewed T.A., and the interview was recorded. The trial court admitted and considered the recording. In the interview, T.A. described an occasion where defendant touched her butt with his hand.

¶ 24 Defendant moved for a directed verdict at the close of the State's evidence, which was denied. The defense presented no evidence, and the trial court found defendant guilty on all three counts.

¶ 25 D. Sentencing Hearing

¶ 26 On October 19, 2017, the trial court held defendant's sentencing hearing. The State presented as evidence in aggravation two victim impact statements. Clark's statement was read into the record. At the request of T.A., the court read silently her victim impact statement. T.A.'s victim impact statement is not included in the record on appeal.

¶ 27 Evidence admitted in mitigation included letters from defendant's father and defendant's cousin. Defendant's mother testified defendant was employed in Kansas as an ASE-certified mechanic and had a steady employment history. She testified defendant had a close, normal relationship with his children and was actively involved in church. She also testified defendant was himself a victim of child sexual abuse. Defendant gave a statement in allocution.

¶ 28 The trial court stated it had "listened to the evidence that has been presented; ha[d] looked at the victim impact statements; ha[d] considered factors of aggravation and mitigation; the arguments of counsel ***; and statement of allocution that has been made." In mitigation, the court noted defendant had a support system in place and had consistent employment. In aggravation, the court noted, the "incident did cause harm to the child[,]" defendant's criminal history, and defendant's position of trust over the victim.

¶ 29 On count I, the trial court sentenced defendant to 10 years' imprisonment to be served at 85%, with an MSR period of 3 years to natural life. The court sentenced defendant on counts II and III to two concurrent terms of four years' imprisonment, to be served consecutively to count I, and with an MSR period of four years on each count, the first two of which were to be spent on electronic monitoring due to defendant's conviction in Kansas.

¶ 30 Defense counsel filed a motion to reconsider, alleging the trial court (1) "did not properly consider the prejudicial effect of other crimes evidence as set forth in *People v. Rosado*, 2017 IL App (1st) 143741[,]" (2) did not properly consider its denial of defendant's directed verdict motion, and (3) imposed an excessive sentence. After a hearing, the motion to reconsider was denied.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 On appeal, defendant argues the trial court erred by (1) considering harm to the victim as an aggravating factor at sentencing and (2) imposing a four-year period of MSR on count II and count III. We address each of these arguments in turn.

¶ 34 A. Impermissible Aggravating Factor

¶ 35 Defendant contends the trial court improperly considered the harm to the victim where harm was implicit in the offenses of predatory criminal sexual assault and aggravated criminal sexual abuse. The State contends defendant has procedurally defaulted this issue by failing to raise it before the trial court. In response, defendant asks this court to review the matter using plain-error analysis.

¶ 36 The threshold question in plain-error analysis is whether there was error at all. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007).

> "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear and obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *Id.* at 565.

Well established is the notion "that a factor inherent in the offense should not be considered as a factor in aggravation at sentencing." *People v. Dowding*, 388 Ill. App. 3d 936, 942, 904 N.E.2d 1022, 1028 (2009). However, in determining an appropriate sentence, the trial court may consider the seriousness, nature, and circumstances of the offense, including the nature and extent of the elements of the offense. *People v. Saldivar*, 113 Ill. 2d 256, 271-72, 497 N.E.2d 1138, 1144 (1986).

¶ 37 Relying on *People v. Calva*, 256 Ill. App. 3d 865, 628 N.E.2d 856 (1993), defendant argues psychological harm to a child is implicit in sex offenses and cannot be considered as a factor in aggravation. In *Calva*, sexual acts were committed against A.G., a six-

year-old girl. *Id.* at 867. At sentencing, the trial court remarked the defendant had "psychologically injured and scarred A.G. for life." *Id.* at 869. The reviewing court observed, "As for psychological harm, cases have held that it can be inferred that a child who is the victim of sexual assault has sustained psychological damage." *Id.* at 875. Because no evidence was offered to show any psychological harm to A.G., the court stated, "[I]t would seem that the degree of any psychological harm used in aggravation would be minimal, as it would be limited to the degree of harm inherent in any aggravated sexual assault of a child." *Id.* The court further stated that "it would seem that psychological harm *** cannot be considered in aggravation" without evidence the victim suffered beyond what is implicit in "any" sexual assault against a child. *Id.* at 877.

¶ 38 In this case, the trial court did not specify whether the harm it was considering was psychological or physical. However, the trial court received victim impact statements from the victim as well as her mother. The mother's statement outlined the harm the victim suffered as a direct result of defendant's acts. The victim's statement was not read into the record and is not included in the record on appeal. However, the court did read the statement and mention its consideration of the statement. We note, "there is a strong presumption that the trial court based its sentencing determination on proper legal reasoning." *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8, 973 N.E.2d 459. Here, the minimal consideration given to this factor stemmed from the severity and degree of harm caused. Moreover, when considering the court's comments as a whole, the record makes plain that the driving force behind the sentence imposed was defendant's prior history, including the offense for which defendant was in prison at the time of sentencing in this matter, the need for deterrence, and the position of trust defendant held over

the victim, Accordingly, we find no error and decline to subject defendant's claim to plain-error analysis.

¶ 39 B. Mandatory Supervised Release

¶ 40 Defendant next asserts the MSR periods imposed by the trial court on counts II and III were erroneous. The State concedes this issue and we accept the State's concession. Because the court's imposition of a four-year MSR period was based on statutory interpretation, our review is *de novo*. See *People v. Rinehart*, 2012 IL 111719, ¶ 23, 962 N.E.2d 444.

¶ 41 Defendant was convicted of two counts of aggravated criminal sexual abuse, which constitute Class 2 felonies. 720 ILCS 5/12-16(c)(1)(I) (West 2008). Normally, a Class 2 felony carries with it a two-year MSR period. 730 ILCS 5/5-8-1(d)(2) (West 2008). However, where a defendant commits a second or subsequent offense of aggravated criminal sexual abuse or felony criminal sexual abuse to a victim under the age of 18, the defendant must receive an MSR period of four years, with at least the first two of those years served under electronic detention. 730 ILCS 5/5-8-1(d)(5) (West 2008).

¶ 42 Although defendant was convicted of aggravated indecent liberties with a child less than 14 years of age in the State of Kansas, and the conduct at issue occurred prior to the offenses in the instant case, defendant was not convicted of the Kansas offense until October 27, 2016. See *People v. Anderson*, 402 Ill. App. 3d 186, 192-93, 931 N.E.2d 773, 778 (2010) (analyzing section 5-8-1(d)(5) and stating an offense does not qualify as a "second or subsequent offense," triggering an enhanced term of MSR, unless the defendant committed that offense sometime after conviction was entered on the first offense).

¶ 43 Accordingly, we vacate the trial court's imposition of a four-year MSR period on counts II and III. Under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), this court may

modify the judgment or order from which the appeal is taken. We direct the trial court to amend the sentencing judgment to reflect a two-year MSR period on counts II and III.

¶ 44 III. CONCLUSION

¶ 45 For the foregoing reasons, we (1) affirm the trial court's judgment in part and (2) vacate the imposition of the four-year MSR period on count II and count III and direct the court to amend the written sentencing judgment to reflect a two-year period of MSR.

¶ 46 Affirmed in part and vacated in part; cause remanded with directions.