2024 IL App (1st) 220326-U

No. 1-22-0326

Order filed March 19, 2024

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 16711
	)	
JAUAN O'NEAL,	)	Honorable
	)	Kenneth Wadas,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Howse and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Trial court did not abuse its discretion in resentencing defendant to maximum sentence of 20 years in prison.

¶ 2 A jury convicted defendant Jauan O'Neal of felony murder, the predicate offense of aggravated discharge of a firearm, and second degree murder based on unreasonable self-defense. The trial court sentenced defendant to 40 years in prison for felony murder and imposed a 30-year statutory firearm enhancement, totaling 70 years in prison. On direct appeal, this court reversed

the felony-murder conviction, finding that aggravated discharge of a firearm was not a proper predicate offense for the charge, and remanded for resentencing. *People v. O'Neal*, 2016 IL App (1st) 132284.

¶ 3 On remand, the trial court imposed sentences of 20 years in prison for second-degree murder and 15 years for aggravated discharge of a firearm. It initially imposed concurrent sentences but, on the State's motion, ordered the sentences to run consecutively. On appeal, this court affirmed the convictions, reversed the sentences, and remanded for resentencing. *People v. O'Neal*, 2021 IL App (1st) 172569-U. We held that the trial court improperly granted the State's motion to order the sentences to run consecutively and considered defendant's void conviction for aggravated unlawful use of a weapon (AUUW), which was subsequently vacated. *Id.*

¶ 4 On remand, the trial court imposed the same maximum sentences of 20 years for second degree murder and 15 years for aggravated discharge of a firearm, to run concurrently. In this appeal, defendant argues that the trial court abused its discretion in reimposing the maximum sentences given the elimination of the vacated prior AUUW conviction as an aggravating factor, lack of aggravating evidence, and new evidence of his rehabilitative potential. We affirm.

¶ 5 The facts underlying defendant's offenses are set forth in detail in this court's opinion on direct appeal. We therefore set forth only the background relevant to our analysis of the resentencing issue before us.

¶ 6 In the early hours of May 30, 2010, defendant was among a number of people gathered at a street party. Defendant told partygoers he was "on security" and showed them a firearm in his waistband. Defendant was a member of the Black P. Stone gang, and the party was near a rival gang's territory. At around 12:28 a.m., a van drove down the street in the wrong direction toward

the group gathered at the party. People at the party began to shout and throw bottles at the van. Defendant fired at least five gunshots at the van, believing it was driven by rival gang members and that he was acting in self-defense. An errant bullet struck and killed an unintended victim, defendant's cousin, Darius Murphy, who was sitting in a nearby vehicle.

¶ 7 On remand for the 2022 resentencing hearing now at issue, a new presentencing investigative report (PSI) reflected that defendant was 33 years old. He had three juvenile adjudications: possession of a controlled substance (2004), burglary (2005), and possession of a stolen motor vehicle (2005). Defendant had no adult convictions; the PSI reflected that his "[p]revious 2007 conviction listed on previous Investigation (2017) has since been vacated (2018)."[1]

¶ 8 According to the PSI, defendant had a great relationship with his mother and had come back into contact with his father in the last three or four years. Defendant reported that he grew up in a neighborhood where crime was high, and he felt unsafe in the area. He attended an alternative high school for about 18 months and then withdrew as he "grew 'tired' of school." Defendant believed he had been placed in special education classes because of a "behavioral issue." He attended GED classes while incarcerated, and had a career goal to be a motivational speaker.

¶ 9 The PSI noted that defendant had been a member of the Black P. Stone gang from the age of 16 until his arrest in this case and had terminated his gang affiliations. He drank alcohol and smoked marijuana from the age of 16 until his incarceration at age 21 and was under the influence of marijuana at the time of the offenses. Defendant had been previously diagnosed with a learning

[1] Compared to PSIs presented at the first two sentencing hearings, this PSI changed a 2004 juvenile adjudication from possession of cannabis to possession of a controlled substance and added the two 2006 juvenile adjudications for burglary and possession of a stolen motor vehicle.

and behavioral disorder, and was prescribed medication for ADHD. In 2019, he was diagnosed with schizophrenia and major depression; he received regular treatment both through prescribed psychiatric medication and mental health counseling in prison. Defendant did not take pride in any criminal behavior and reported he had no concern for other people's problems. He stated he was in custody and had no control over the events in his life.

¶ 10 At the resentencing hearing, defense counsel recited this court's remand directing that, at resentencing, the trial court should not consider defendant's vacated AUUW conviction that had been considered at the previous sentencings. The court confirmed its understanding. The State added that defendant now had no adult criminal history based on the vacated AUUW. The State declined to argue in aggravation. It requested only that defendant be resentenced to the same 20 years for second degree murder and 15 years for aggravated discharge, but with the sentences to run concurrently. The court stated it remembered "the facts pretty well" and requested mitigation argument.

¶ 11 In mitigation, defense counsel argued that defendant had shown rehabilitative potential, as demonstrated through his improved behavior in prison, the lack of any new "tickets" in the prior two years of his incarceration, and his "promotion" to a lower security level, which permitted him to work while in prison. Defendant started working in yard maintenance and became certified as a food handler.

¶ 12 Counsel argued that defendant believed he was acting in self-defense, and the jury believed him, although it found his belief unreasonable. The "tragedy" in shooting his cousin and close friend weighed on defendant for the 12 years he has spent in prison. Counsel noted defendant's

history of mental health problems as reflected in the PSI, and the court responded it was "aware of that also."

¶ 13 Counsel argued that defendant was a "very different person" from when the court sentenced him in 2013 and resentenced him in 2017. When released from prison, defendant planned to leave his old neighborhood, live with his aunt, and find a job. He "insisted" that he wanted to teach younger individuals about his mistakes and how he had suffered from their consequences. Counsel requested a 12 year sentence on the second degree murder count, which would allow defendant, who was "no threat to society anymore," to be released to parole. In allocution, defendant apologized to the victim's family and asked for mercy from the court.

¶ 14 In resentencing defendant, the court stated that it "reanalyzed all the factors in aggravation and mitigation that apply" and "pretty much underst[oo]d the facts of the case." It noted that the victim was defendant's cousin and close personal friend. The court "[n]evertheless *** fe[lt] that the sentence for second-degree murder should stay the same," 20 years served at 50%, and the sentence for aggravated discharge of a firearm "should still be 15 years," served at 85%. The court sentenced defendant to 20 years in prison for second-degree murder and 15 years in prison for aggravated discharge of a firearm, to run concurrently.

¶ 15 Defendant moved for reconsideration, which the court denied.

¶ 16 On appeal, defendant claims the trial court abused its discretion in reimposing the maximum concurrent sentences of 20 years for second-degree murder and 15 years for aggravated discharge of a firearm, for a total maximum sentence of 20 years in prison. He argues that the maximum sentence was vastly disproportionate to the seriousness of the offenses, failed to reflect

the vacatur of his AUUW conviction which had previously been used in aggravation, the lack of other aggravating evidence, and the new evidence of his capacity for rehabilitation.

¶ 17 Initially, defendant acknowledges that he was released from prison in March 2023 but claims that this appeal challenging the length of his sentence is not moot, as he is still serving a portion of his sentence as mandatory supervised release (MSR) that will extend through March 2025, according to the IDOC website that we may judicially notice. See *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 66 (taking judicial notice of information on IDOC website).

¶ 18 We agree that this appeal is not moot for that reason. See *People v. Montalvo*, 2016 IL App (2d) 140905, ¶ 14 (challenge to length of prison term is not moot when defendant has been released from prison but remains on MSR, as reduced sentence could affect MSR term).

¶ 19 The Illinois Constitution provides that a trial court shall impose a sentence balancing "the seriousness of the offense" and "the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. It must balance the retributive and rehabilitative purposes of punishment and carefully consider all factors in aggravation and mitigation. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). These factors include the defendant's mentality, credibility, criminal history, social environment, and education, as well as the nature and circumstances of the crime and defendant's conduct in committing it. *Id.* "The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors such as the lack of a prior record, and the [sentencing] statute does not mandate that the absence of aggravating factors requires the minimum sentence be imposed." *Id.*

¶ 20 The trial court is afforded "substantial deference" in sentencing because it personally observed the defendant and the proceedings and is "in a much better position to consider factors

such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36. When a defendant challenges a sentence within the statutory limits for the offense, we presume the sentence is proper. *People v. Villalobos*, 2020 IL App (1st) 171512, ¶ 73. Absent the trial court's abuse of discretion, "the sentence may not be altered on review." *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000).

¶ 21 In the sentencing context, an abuse of discretion occurs when the imposed sentence "varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." *People v. Jones*, 2019 IL App (1st) 170478, ¶ 50. A reviewing court will not substitute its judgment for that of the trial court merely because it would have weighed the sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010).

¶ 22 Second-degree murder is a Class 1 felony with a sentencing range of 4 to 20 years in prison. 720 ILCS 5/9-2(d) (West 2010), 730 ILCS 5/5-4.5-30 (West 2010). Aggravated discharge of a firearm is a class 1 felony with a sentencing range of 4 to 15 years in prison. 720 ILCS 5/24-1.2(a)(2), (b) (West 2010), 730 ILCS 5/5-4.5-30(a) (West 2010). Because the 20-year sentence for second degree murder and the 15-year sentence for aggravated discharge of a firearm are within the statutory limits for the offenses, we presume they are proper unless defendant affirmatively shows otherwise. *People v. Burton*, 2015 IL (1st) 131600, ¶ 38. Defendant does not make that showing here.

¶ 23 Defendant claims the trial court did not take into consideration that his prior adult conviction for AUUW had been vacated. But the record shows that, at the resentencing hearing, the court agreed that it would not consider the vacated AUUW conviction pursuant to this court's remand. Additionally, the PSI reflects that defendant's AUUW conviction had been vacated, and

the court is presumed to consider all mitigating evidence presented. *People v. Brewer*, 2013 IL App (1st) 072821, ¶ 55 (mitigating evidence presented is presumed considered by sentencing court unless positively rebutted by record).

¶ 24 The trial court's reimposition of the maximum sentences, standing alone, does not affirmatively show that the court disregarded this court's directive to exclude consideration of the vacated AUUW conviction at resentencing. See *Brewer*, 2013 IL App (1st) 072821, ¶ 55; *Quintana*, 332 Ill. App. 3d at 109 ("The trial judge is not required to detail precisely for the record the exact process by which she determined the penalty nor is she required to articulate her consideration of mitigating factors, nor is she required to make an express finding that defendant lacked rehabilitative potential.").

¶ 25 Though defendant argues that the sentence "should have been much lower" without the AUUW conviction as aggravation, this court's remand for resentencing should not be construed as a mandate for the court to impose a lesser sentence. See *People v. Raya*, 267 Ill. App. 3d 705, 709 (1994). In fact, this court purposefully clarified that it was "*not* saying that the same sentence imposed by the trial court could not be reimposed on remand." (Emphasis in original.) *O'Neal*, 2021 IL App 172569-U, ¶ 60.

¶ 26 Defendant similarly identifies nothing in the record, apart from the court's reimposition of the maximum sentence, to support his claim that the trial court did not consider: (1) mitigating evidence of his "young age at the time of the offense, 20 years old," exposure to peer pressure, and diagnosis and treatment for schizophrenia; and (2) recent evidence of his rehabilitative potential, including defendant's IDOC promotion to a lower security level for having no disciplinary tickets in two years, his obtaining a job and earning a food handler certificate while in prison, and his

future plans to talk to young people "about the mistakes that he made and how he suffered from those consequences."

¶ 27 Again, this evidence was before the court and, without more, we presume the court considered it. *Brewer*, 2013 IL App (1st) 072821, ¶ 55. The length of defendant's sentence alone does not rebut the presumption that the court considered the relevant mitigating evidence before it. *People v. Allen*, 344 Ill. App. 3d 949, 959 (2003). Further, in announcing the sentence, the trial court expressly stated that it had "reanalyzed all the factors in aggravation and mitigation that apply in the case" and felt the sentence for second degree murder "should stay the same."

¶ 28 The trial court was not required to reduce defendant's sentence from the maximum simply because mitigating factors were present. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19. In also arguing that there was very little aggravation on the "other side of the balance," defendant is essentially asking that we weigh the factors in mitigation and aggravation differently than the trial court. This we cannot do. *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 28.

¶ 29 Further, defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense, which is the most important factor in fashioning an appropriate sentence. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. The evidence at trial established that defendant, who proclaimed that he was "on security" for a street party located near the territory of a rival street gang, discharged his firearm at least five times in the direction of an approaching van in an unreasonable belief in self-defense, striking and killing his cousin sitting in a parked vehicle. At resentencing, the court stated it understood "the facts of the case" and that the victim was defendant's "cousin and close personal friend," but "nevertheless" found the maximum sentence warranted. Defendant is requesting that we reweigh the evidence of his rehabilitative potential and

the seriousness of the offense differently than the trial court, but that is something we cannot do. See *McWilliams*, 2015 IL App (1st) 130913, ¶ 28.

¶ 30 In sum, we do not find defendant's maximum sentence greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offenses. We thus find that the trial court did not abuse its discretion in imposing the same sentence on remand. See *Raya*, 267 Ill. App. 3d at 709 (remanding for resentencing after conviction has been vacated should not necessarily be construed as mandate for the resentencing court to impose lesser sentence).

¶ 31 We affirm the sentence of the trial court.

¶ 32 Affirmed.