2020 IL App (2d) 180838-U
No. 2-18-0838
Order filed December 14, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHARLES McGUIRE TUCKER, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 13-CF-1988 Honorable Rosemary Collins, Judge, Presiding.

PRESIDING JUSTICE BRIDGES delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 66-year aggregate prison sentence for multiple child sex offense was not an abuse of discretion given the severity of the crimes and the need for deterrence.

¶ 2 Defendant, Charles McGuire Tucker, appeals from his sentences of 4 consecutive terms of 15 years' imprisonment and 9 concurrent terms of 6 years' imprisonment imposed for 13 convictions of child sex offenses. He contends that, "[g]iven [his] age, minor criminal history, and low risk of committing a future offense, the [aggregate] sentence is excessive and should be reduced." He concedes that he did not file a motion to reconsider his sentence and that this would

ordinarily mean that he forfeited his claim of an excessive sentence. However, he argues that, because the trial court did not advise him per Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001) of the need to file such a motion to preserve sentencing claims for appeal, we should address his claim as though he had filed a motion. Alternatively, he asks that we remand this cause to allow him to file a motion. The State concedes that the trial court failed to give defendant Rule 605(a) admonishments, and the State likewise asks that we address defendant's claim in this appeal. We accede to the parties' request that we address defendant's claim. We conclude that the sentences in aggregate were consistent with the seriousness of defendant's offenses and the need for deterrence, and we therefore affirm those sentences.

¶ 3 I. BACKGROUND

¶ 4 A grand jury indicted defendant, Charles McGuire Tucker, on 5 counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2012)), 12 counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(l)(i), (d) (West 2012))) and 1 count of possession of child pornography (720 ILCS 5/11-20.1(a)(1)(vii), (a)(6) (West 2012)). The predatory criminal sexual assault of a child counts alleged that defendant committed acts of sexual penetration with M.L.—born October 3, 1999—who was under the age of 13 when those acts occurred. The aggravated criminal sexual abuse counts alleged that defendant committed various acts of sexual touching with M.L., some of which occurred when she was under 13 and some when she was 13 or older. M.L. was also the alleged victim in the child pornography count.

¶ 5 Defendant had a bench trial. The evidence showed that M.L.'s mother died when she was eight years old. Defendant, who was born in 1968, grew up with M.L.'s four half-brothers. Defendant went to the same church as M.L. and her father. M.L. attended the church school, where defendant worked as the bus mechanic. He took on a role with M.L. that was akin to babysitter.

For instance, she would do her homework at defendant's workplace (the school's bus barn) while waiting for her father to pick her up. When M.L. was 11 years old, defendant started to engage in sexual activity with her. He told her that he loved her, and M.L. testified that she considered herself to be in love with him. The sexual activities came to include vaginal intercourse and, on one occasion, anal intercourse. Defendant treated M.L. roughly, leaving her with bruises on her arms and legs; he also tied her up and choked her.

¶ 6 At the close of the State's case-in-chief, the trial court entered a directed finding in favor of defendant on one count of predatory criminal sexual assault of a child and two counts of aggravated criminal sexual abuse. At the close of the evidence, the court entered a directed finding in favor of defendant on a further count of aggravated criminal sexual abuse. The court found defendant guilty on all remaining counts except for the child pornography count.

¶ 7 At his sentencing hearing, defendant argued that his limited criminal history—nonfelony convictions for battery and multiple traffic offenses including driving under the influence and driving with a suspended license—made the minimum sentence of 27 years appropriate. Defendant, who was 50 years old at sentencing, suggested that the goal of rehabilitation weighed against imposing a sentence that amounted to a *de facto* life sentence. The State argued that the manner in which defendant had taken advantage of M.L.'s lack of other adult contacts to engage repeatedly in sexual conduct with her required a sentence that would keep him in prison for the rest of his life.

¶ 8 The trial court, focusing on the need for deterrence, imposed consecutive sentences of 15 years' imprisonment for each of the four predatory criminal sexual assault of a child counts and concurrent terms of 6 years' imprisonment for each of the 9 aggravated criminal sexual abuse

counts. The aggregate sentence was 66 years' imprisonment. The court ruled that defendant was entitled to credit for 1913 days in custody.

¶ 9 The court did not advise defendant under Illinois Supreme Court Rule 605(a) that he needed to file a motion to reconsider his sentence to preserve sentencing issues for appeal. Defendant filed no postsentencing motion and instead took an immediate appeal.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues on appeal that his sentence is excessive. Defendant, however, filed no postsentencing motion, which would normally result in forfeiture of his claim of sentencing error. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Complicating matters is the fact that the trial court failed to admonish defendant under Rule 605(a) that he had to file a postsentencing motion to preserve a claim of sentencing error. Under *People v. Henderson*, 217 Ill. 2d 449 (2005), when a defendant receives insufficient Rule 605(a) admonishments about the role of a postsentencing motion in preserving sentencing error, "no remand is required unless the defendant is prejudiced or denied real justice as a result of the inadequate admonishments." *Henderson*, 217 Ill. 2d at 459. A defendant shows such prejudice when he or she raises a potentially forfeited claim of sentencing error in his or her appeal. *Henderson*, 217 Ill. 2d at 467-68. When a defendant raises such a claim on appeal, the reviewing court may then take "whatever actions it deem[s] appropriate, including hearing the challenges itself or remanding them to the trial court." *Henderson*, 217 Ill. 2d at 468.

¶ 12 Defendant, relying on *Henderson*, prefers that we address the merits of his claim of sentencing error. He asks us to reduce his sentence as inconsistent with the mitigating factors present. He asks in the alternative that we remand the matter for him to receive proper admonishments under Rule 605(a) so that he may file a motion to reconsider his sentence if he wishes.

¶ 13 Here, as significant under *Henderson*, defendant raises a potentially forfeited sentencing issue. Both parties ask us to address the claim on its merits; neither suggests any benefit to a remand. Under the circumstances, we acquiesce to defendant's request and will address this case on its merits.

¶ 14 "A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court." *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). In general, we may not reduce a sentence that is within the statutory range "unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Horta*, 2016 IL App (2d) 140714, ¶ 40. We treat the seriousness of the offense as the most important sentencing factor. *People v. Watt*, 2013 IL App (2d) 120183, ¶ 50. And we must not reweigh the factors in aggravation and mitigation. See, *e.g.*, *Alexander*, 239 Ill. 2d at 213 (a reviewing court must not substitute its judgment for that of the trial court merely because it would have given different weight to the sentencing factors). That said, a sentence can constitute an abuse of discretion if the trial court ignored relevant mitigating factors or considered improper factors in aggravation. *People v. Roberts*, 338 Ill. App. 3d 245, 251 (2003). When we review a sentence, we must presume that the trial court considered all the factors in mitigation; that presumption can be overcome only if the record demonstrates that the court failed to consider mitigating factors. *E.g.*, *People v. Towns*, 2020 IL App (1st) 171145, ¶ 48.

¶ 15 Defendant concedes that his sentence is within the statutory range. Aggravated criminal sexual abuse is a Class 2 felony punishable by a prison term of no less than three years and no more than seven years. 720 ILCS 5/11-1.60(c)(1)(i), (g) (West 2012); 730 ILCS 5/5-4.5-35(a) (West 2012). Predatory criminal sexual assault of a child is a Class X felony punishable by a prison term of no less than six years and no more than 60 years. 720 ILCS 5/11-1.40(a)(1), (b)(1) (West

2012). The court was required to impose consecutive prison terms for the predatory criminal sexual assault of a child convictions. 730 ILCS 5/5-8-4(d)(2) (West 2012).

¶ 16 Here, defendant's claim is, in essence, that his sentence is "greatly at variance with the spirit and purpose of the law." *Horta*, 2016 IL App (2d) 140714, ¶ 40. His challenge is only to his sentence in the aggregate, not to any of the aggregate's components. He notes that his aggregate "66-year sentence is 2.5 times longer than the minimum and will require [him] to remain in prison until he is 99 years old." He contends that "[g]iven his age, minor criminal history, and low risk of committing a future offense, the sentence is excessive and should be reduced." He further argues that this sentence is costly to the taxpayer without any associated benefit. He concludes that reducing his sentence to one of 33 years would "strike an appropriate balance between retribution and rehabilitation."

¶ 17 We disagree that defendant's aggregate sentence is excessive. We begin with the seriousness of the offenses, which is the most important sentencing factor (*Watt*, 2013 IL App (2d) 120183, ¶ 50). The trial court noted how the case showed "evil *** masquerade[ing] in the form of a loved one." The court remarked that defendant

> "did a lot of bad to one little girl who trusted him, a little girl who was vulnerable because of the death of her mother and the lack of a strong father relationship in her life at that time, and trusted somebody that she believed in who then abused and misused that trust to abuse her."

¶ 18 We recognize that M.L.'s age was near the maximum to sustain a predatory criminal sexual assault of a child conviction. On the other hand, not only were the offenses serious violations of trust, as the trial court emphasized, but defendant was also physically hurtful. The court found

credible M.L.'s testimony that defendant's acts included roughness, binding, and, most dangerously, choking.

¶ 19 Defendant implies that his aggregate sentence grossly misbalanced the factors in aggravation and mitigation. We disagree. Defendant notes that a police officer "testified *** that he found no evidence that [defendant] had ever conducted an online search for, much less visited any child pornography websites." Defendant makes the fair point that this evidence is mitigating in one possible respect: defendant apparently was not motivated by a special attraction to girls of M.L.'s age. However, this arguably casts defendant in an even worse light, as his offenses are revealed as crimes of opportunity, with defendant taking advantage of M.L.'s vulnerability. Thus, the trial court appropriately emphasized deterrence when imposing sentence; a person who might engage in sexual activity with a child merely because a child is available and easily influenced may well be deterred by the prospect of severe punishment. Moreover, defendant was part of a community that was likely to be aware of his punishment, thus making the deterrent effect more powerful. We presume—and the record does not show otherwise—that the trial court considered all other mitigation that defendant stresses here. However, the trial court's emphasis on the severity of the crimes and the need for deterrence was well within the range of its discretion. Notably, despite the strong aggravation, defendant's individual sentences for predatory criminal sexual assault of a child were well below the midpoint of the sentencing range. There was no abuse of discretion.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we uphold defendant's sentence and thus affirm the judgment of the circuit court of Winnebago County.

¶ 22 Affirmed.