

2019 IL App (1st) 162047-U
No. 1-16-2047
Order filed September 17, 2019

Second Division

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).

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. 13 CR 13380
)	
MATTHEW BROWN-TURNER,)	Honorable
)	Paula M. Daleo,
Defendant-Appellant.)	Judge, presiding.

JUSTICE COGHLAN delivered the judgment of the court.
Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant's aggregate 85-year sentence for felony murder over his contention that it is excessive. We remand to the trial court to allow defendant to file a motion to correct his mittimus pursuant to Rule 472.

¶ 2 Following a jury trial, defendant Matthew Brown-Turner was found guilty of felony murder and attempted armed robbery. He was sentenced to an aggregate term of 85 years' imprisonment: 50 years for murder and 35 years for personally discharging the firearm that proximately caused the death of the victim Giovanni Donancricchia. On appeal, defendant

contends his sentence is excessive and asks that his mittimus be corrected to reflect only his murder conviction. For the following reasons, we affirm and remand for defendant to file a motion pursuant to Rule 472 (Ill. S. Ct. R. 472 (eff. May 17, 2019)).

¶ 3 Because defendant does not challenge the sufficiency of the evidence to sustain his conviction, we recite only those facts necessary to our disposition. The evidence at trial established that in the early morning hours of June 20, 2013, defendant entered Donancricchia's family-owned restaurant, Albano's Pizzeria, through a side door. He walked to the register area with a gun in his hand and gestured for Angela Donancricchia, the victim's wife, to open the register.¹ Donancricchia walked to where defendant and Angela were standing and pushed Angela to leave. Donancricchia grabbed a knife and the two men argued. Defendant then shot Donancricchia in the chest, which pierced his heart and lung and killed him. Surveillance video in the restaurant depicted the entire incident.

¶ 4 Defendant fled from the scene and went to his sister Lashavita Brown-Turner's apartment, where he had been staying for a month. At Lashavita's apartment, defendant seemed frantic and stated that he went into a store where a man cut him and "the gun went off." The following day, Lashavita heard about a man killed in his restaurant and, after defendant confirmed he had been at the restaurant the night before, she reported him to the Cicero police department. She also gave officers consent to search her apartment. The police arrested defendant on June 21, 2013, and defendant, in a video recorded statement, admitted to the shooting.² The State published portions of the video statement to the jury.

¹ Because Angela and Giovanni share the same last name we refer to Angela by her first name.

² The video statement is not included in the record on appeal.

¶ 5 The jury found defendant guilty of felony murder, attempted armed robbery, and personally discharging the firearm that proximately caused Donanricchia's death. The court denied defendant's posttrial motion for judgment of acquittal or in the alternative a new trial.

¶ 6 At sentencing, the court heard evidence in aggravation and mitigation. In aggravation, the State presented the testimony of Officer Christina Muhammad from the Cook County Sheriff's Department. Muhammad testified that at approximately 5 a.m. on January 1, 2016, she was working at Cook County jail distributing breakfast trays to the detainees on the second floor tier of Division 10. This process involves turning on the lights and loudly jingling keys in order to open the cells. When she opened the defendant's cell, he and his cellmate were laying on their beds with their pants down and penises exposed, masturbating. She believes that the defendant heard her and was laughing as she entered the cell.

¶ 7 Chicago police officer Salzman testified that on April 4, 2009, he was on patrol and observed defendant place a small piece of brown paper in the "lip" of a City of Chicago garbage can.³ Salzman approached defendant and the item was recovered from the trash can. A piece of plastic was inside the paper, which contained 15 mini ziplock baggies of suspected heroin. Defendant was detained and \$30 was found on his person. Five of the bags tested positive for 1.1 grams of heroin and the total weight of the bags was 3.4 grams. Defendant was ultimately charged in that case.

¶ 8 Cicero police sergeant Matt Ramirez testified that in June 2013, he was assigned to investigate Donanricchia's murder. Ramirez interviewed defendant after he was arrested.

³ Officer Salzman's first name does not appear in the record.

Defendant told Ramirez that, following the shooting, he met with a prostitute and received oral sex. Defendant appeared calm during the interview.

¶ 9 The State published the victim impact statements from Saverio Donancricchia, the victim's son; Maria Romo and Benedetta Fleischer, the victim's daughters; and Kimberly Spence, an employee of Albano's Pizzeria. In his statement, Saverio related that after his father's murder, he had trouble sleeping, developed obsessive compulsive disorder, was fearful of being assaulted, and suffered from anxiety. He also suffered from mood swings and post-traumatic stress disorder.

¶ 10 In her statement, Romo recounted that her father worked tirelessly to provide for their family and accomplish his dream of owning a restaurant. Romo described Donancricchia's love for his restaurant and family. She noted defendant's "lack of respect" for her father and stated how much her family missed him.

¶ 11 Fleischer recounted that, on June 20, 2013, their family was planning their summer and how they were going to spend the 4th of July weekend. She detailed receiving the call about her father's death at 1 a.m. and how their family has been devastated by his murder. Fleischer added that their family has not been able to move on because "[w]hat happened was not normal, not right, not anything [they] can understand." She described how her family "painfully [goes] through the motions when [they] get together" and how her mother was left alone after being married to Donancricchia for 40 years.

¶ 12 In her statement, Spence recounted that she worked at Albano's Pizzeria with Donancricchia for 17 years. She described Donancricchia as a father-figure to her and everyone who worked for him. Spence noted defendant's "senseless act" and how Donancricchia's death

impacted his business and his wife, who was “not the same anymore.” She recounted that customers are still asking about Donancricchia more than three years after the murder.

¶ 13 The State introduced two certified copies of defendant’s prior convictions for possession of a controlled substance.

¶ 14 The State argued several aggravating factors warranted a sentence significantly above the minimum. Specifically, the State argued defendant (1) lacked remorse, (2) committed the offense against a person over 60 years old, (3) was on probation at the time of the offense, and (4) caused serious harm. The State described defendant’s conduct as “cold and callous” and detailed how the evidence at trial established he “knew what he was doing.” The State recounted how defendant entered the restaurant knowing that there were people inside and “basically cocked” and pointed his gun directly at Donancricchia. After shooting Donancricchia, defendant stepped over his body and left the restaurant. Donancricchia’s family has been forced to return to the scene of his death every day because it is the family business that they rely on financially. Moreover, defendant failed to accept responsibility for his conduct and claimed his sister “turned on him” by turning him into the police.

¶ 15 The State further argued that while defendant’s prior convictions were nonviolent, he had a pattern for disregarding the law. The State pointed out that defendant’s presentence investigation report (PSI) indicated he “lived on the streets,” sold drugs to support himself, and had gang affiliations, which caused him to drop out of school. Defendant had also been suspended multiple times for fighting. Defendant continued to “pledge allegiance” to his gang and reported that his friends are also gang members, which showed he believed the law did not apply to him.

¶ 16 Finally, the State pointed out that defendant's behavior in jail showed he was undeserving of a lenient sentence. The State emphasized the correctional officer's testimony about defendant masturbating when she arrived at his cell, demonstrating he had no respect for authority. Moreover, defendant acknowledged in his PSI that he gambled, drank, and "got high" while incarcerated.

¶ 17 In mitigation, defense counsel highlighted defendant's "beyond tragic" childhood: his father was abusive and the leader of the Black P. Stones gang; his mother was a drug addict who overdosed and died; his stepfather was also a Black P. Stones leader; defendant started drinking at age 11, tried PCP and marijuana at age 12, tried crack at age 21, and tried powder cocaine and "Molly" at age 23. Counsel argued defendant was homeless and "was raised on the street," but argued his background was nonviolent. Counsel observed that any sentence would be significant because the minimum was "[e]ssentially 45 years to life," but requested that defendant be given "an opportunity to have some rehabilitation." Defendant declined the opportunity to speak in allocution.

¶ 18 The court merged the attempted armed robbery count into the felony murder count and sentenced defendant to a total term of 85 years' imprisonment: 50 years for murder and 35 years for the firearm enhancement. In imposing sentence, the court considered defendant's nonviolent criminal history, the mitigating factors, "the fact that he committed a murder here, that he had a prior history of criminal activity, that Mr. Donancricchia was over 60 years of age, *** that this sentence *** is necessary to deter others from committing the crime," and defendant's lack of remorse and refusal to take responsibility for his actions.

¶ 19 The court stated that the Donanricchia family was “what’s great about this country,” while defendant is “what this country is not about.” The court found defendant “decided he should have something that didn’t belong to him” and “came armed with a weapon” into the restaurant where he killed Donanricchia. The court pointed out that defendant had two prior experiences with the court system, but never “took responsibility for himself as a member of society, or himself as a member of some community other than gangs.” Despite defense counsel’s argument regarding defendant’s upbringing, the court stated:

“Quite frankly, I am tired of hearing that, because I hear other stories from other people who come into this courtroom who *** have tough beginnings, who make an effort to make something out of their life, try to better themselves. Do not go around considering themselves to be victims of society and victims of their upbringing.

And I believe [defendant] could have chosen a different path in his life. But from early on as a juvenile I believe, or certainly as a young adult, he got involved in drugs, and decided to make the easy buck. Let’s sell drugs. Let’s use drugs to wipe away whatever happened to me as a child.”

¶ 20 Defendant filed a motion to reconsider sentence, relying on the arguments set forth in mitigation. The court denied the motion, stating:

“I have considered factors in mitigation and aggravation in the case. I’ve considered the seriousness of the crime. I’ve considered the sentence as a deterrent for others committing *** the same crime.

I have considered the defendant's lack of violent *** background. However, his criminal activity from youth on [sic]. I believe that the sentence is appropriate in a case like this.”

¶ 21 On appeal, defendant argues that his sentence is excessive because the trial court “rejected [his] plea for mercy” based on his upbringing, rejected mitigating evidence, and failed to consider the constitutionally required objective of returning him to useful citizenship.

¶ 22 We accord great deference to a trial court's sentence and will not reverse it absent an abuse of discretion. *People v. Butler*, 2013 IL App (1st) 120923, ¶ 30 (citing *People v. Stacey*, 193 Ill. 2d 203, 209-210 (2000)). “A sentence which falls within the statutory range is not an abuse of discretion unless it is manifestly disproportionate to the nature of the offense.” *People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007). In determining an appropriate sentence, the trial court considers such factors as “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.” *People v. Hernandez*, 319 Ill. App. 3d 520, 529 (2001). Absent some affirmative indication to the contrary, other than the sentence itself, we presume the trial court considered all mitigating evidence before it. *People v. Jones*, 2014 IL App (1st) 120927, ¶55. Because the trial court, having observed the proceedings, is in the best position to weigh the relevant sentencing factors, (*People v. Arze*, 2016 IL App (1st) 131959, ¶121) we do not substitute our judgment for that of the trial court simply because we would have balanced the appropriate sentencing factors differently (*People v. Alexander*, 239 Ill. 2d 205, 214 (2010)).

¶ 23 Here, defendant was sentenced to 50 years' imprisonment for murder and 35 years' imprisonment for the firearm enhancement, which was within the sentencing parameters for the

crime he committed. See 730 ILCS 5/5-4.5-20(a) (West 2016) (imprisonment for first degree murder “shall be for a determinate term *** of (1) not less than 20 years and not more than 60 years”); see also 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2016) (for first degree murder, “if, during the commission of the offense, the person personally discharged a firearm that proximately caused *** death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court”). Because defendant’s sentence falls within the statutory guidelines, we presume it was proper, absent some indication that the court abused its discretion. *People v. Burton*, 2015 IL (1st) 131600, ¶ 36.

¶ 24 In this case, the trial court did not abuse its discretion because defendant’s sentence is not manifestly disproportionate to the nature of the offense. The evidence showed defendant entered Donancricchia’s restaurant, where he admittedly knew people would be, armed with a gun and shot Donancricchia in the chest before fleeing. *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 53 (the seriousness of the offense is considered the most important factor in determining sentence). The record shows that in reaching its sentencing determination, the court specifically relied on the factors in aggravation and mitigation, the PSI, the facts of the case, the need for deterrence, and defendant’s background, which were all proper sentencing considerations. See *Hernandez*, 319 Ill. App. 3d at 529. Given the trial court’s explicit consideration of the relevant sentencing factors, we decline to “balance the appropriate factors differently and independently conclude that this sentence is excessive.” *People v. Burke*, 164 Ill. App. 3d 889, 902 (1987) (noting that, where the trial court properly considered relevant sentencing factors, it is not the function of a reviewing court to rebalance those factors on appeal).

¶ 25 Defendant also contends that the trial court “rejected his plea of mercy” based on mitigation evidence which revealed that his mother was a drug addict, his father and stepfather were gang leaders, and he had a history of issues with addiction. The record expressly rebuts this contention. Although the trial court stated that it was “tired” of the argument that defendants should be given the minimum sentence due to “tough beginnings,” the court stated that it considered the mitigating evidence presented at the sentencing hearing. The court noted defendant had a nonviolent criminal history, but found the aggravating evidence compelled a more severe sentence than the 45-year minimum. *Arze*, 2016 IL App (1st) 131959, ¶121 (the trial court is in the best position to weigh the relevant sentencing factors). Such aggravating evidence included the victim’s age, the seriousness of the crime, and defendant’s lack of remorse for his conduct. Moreover, contrary to defendant’s contention, nothing in the record indicates that the trial court did not consider his rehabilitative potential. *Jones*, 2014 IL App (1st) 120927, ¶55; *Jackson*, 2014 IL App (1st) 123258, ¶ 53 (a sentencing court is not required to give greater weight to a defendant’s rehabilitative potential than to the seriousness of the offense). It is not our duty to reweigh the factors considered by the trial court in its sentencing decision. See *Alexander*, 239 Ill. 2d at 214.

¶ 26 Defendant next argues, and the State agrees, that his mittimus should be corrected to reflect only a conviction for murder. Currently, defendant’s mittimus reflects both a conviction for murder and attempted armed robbery.

¶ 27 On February 26, 2019, while this appeal was pending, our supreme court adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the written sentencing order. Ill. S. Ct. R. 472(a) (4) (eff.

Mar. 1, 2019). On May 17, 2019, Rule 472 was amended to provide that “[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill. S. Ct. R. 472(e) (eff. May 17, 2019). “No appeal may be taken” on the ground of any of the sentencing errors enumerated in the rule unless that alleged error “has first been raised in the circuit court.” Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Therefore, pursuant to Rule 472, we “remand to the circuit court to allow [defendant] to file a motion pursuant to this rule,” raising the alleged errors regarding clerical errors. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County and remand to allow defendant to file a motion to correct his mittimus.

¶ 29 Affirmed and remanded.