

2019 IL App (1st) 172004-U

No. 1-17-2004

Order filed August 1, 2019

Fourth 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. 14 CR 16035 |
| |) | |
| JULIO A. LOPEZ, |) | Honorable |
| |) | Timothy Joseph Joyce, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE GORDON delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant's six-year sentence. Under Rule 472(e), we remand so defendant may raise in the trial court his challenge to the probable cause hearing fee.

¶ 2 Following a bench trial, the trial court found defendant, Julio A. Lopez, guilty of failure to report a motor vehicle accident involving death (625 ILCS 5/11-401(b) (West 2012)). It sentenced him to six years' imprisonment and imposed, *inter alia*, a \$20 probable cause hearing fee (55 ILCS 5/4-2002.1(a) (West 2012)).

¶ 3 Defendant appeals, contending (1) his sentence is excessive in light of his rehabilitative potential and the lack of aggravating factors, and (2) the court erred by imposing the \$20 probable cause hearing fee where no probable cause hearing took place. We affirm defendant's sentence but remand the matter to the trial court for further proceedings consistent with Illinois Supreme Court Rule 472 (eff. May 17, 2019).

¶ 4 The State charged defendant by indictment with failure to report a motor vehicle accident involving death (625 ILCS 5/11-401(b) (West 2012)) and leaving the scene of a motor vehicle accident involving death (625 ILCS 5/11-401(a) (West 2012)). The evidence at trial established the following.

¶ 5 At approximately 2 a.m. on November 17, 2013, Latasha Amos and her boyfriend, Tory Person, left a bar where they had been drinking with friends and drove to Person's home on South Mason Avenue in Chicago. Amos and Person arrived home shortly after 2 a.m., and Person parked his vehicle in his garage, which is located in the alley behind his residence.

¶ 6 When Person parked his vehicle, both he and Amos were unable to find their cell phones. Person told Amos that he was going to go into his residence and call his cell phone from his landline, and Amos should stay near the vehicle so she could hear the phone ring. Amos told Person she was going to step outside the vehicle to smoke a cigarette.

¶ 7 Defendant, who also lived on South Mason Avenue, was driving his sister's vehicle in the alley behind Person's residence when he hit what he thought was a speed hump. Defendant felt the vehicle dragging something, and he stopped and exited the vehicle. Defendant observed a woman lying in the alley behind his vehicle and did not observe her moving. Defendant did not

call the police to report the accident; rather, he proceeded to drive to his home, park the vehicle, and go inside.

¶ 8 When Person returned to the garage, he did not observe Amos in the immediate vicinity. Person entered his vehicle and drove down the alley. After driving a short distance, Person discovered Amos lying in the alley several houses away. Person exited his vehicle and approached Amos, who had no pulse and was bleeding from her mouth and nose. Person began administering cardiopulmonary resuscitation (CPR) to Amos and, because he had no cell phone, called out for help. Two women came to the alley and told Person an ambulance had been called and help was on the way.

¶ 9 Shortly thereafter, an ambulance arrived to transport Amos to the hospital. Efforts to revive Amos were unsuccessful, and she died as a result of the significant injuries she suffered when she was struck and run over by defendant. The autopsy revealed Amos suffered 56 external points of injury and 28 internal points of injury. Amos's injuries included, *inter alia*, abrasions and bruises on her head, face, abdomen, arms, and legs; multiple fractured ribs; a fractured leg; and lacerations on both lungs, her colon, kidney, and liver.

¶ 10 The next day, on November 18, 2013, defendant told his coworker, Giovanni Camargo, that he had been in an accident in which he struck a woman in the alley behind his home while driving his sister's vehicle. When Camargo asked defendant if the woman was okay, defendant told Camargo he was not sure because "he just kept on going." A few days after his conversation with defendant, Camargo told Marisol Ortiz about his conversation with defendant.

¶ 11 Approximately nine months later, on August 5, 2014, Ortiz was arrested for driving under the influence. While she was in custody, Ortiz spoke with Detective Hector Matias, who was

investigating Amos's death. Based on the information given to him by Ortiz, Matias spoke with Camargo and, based on that conversation, Matias identified defendant as a suspect in Amos's death.

¶ 12 On August 11, 2014, Matias arrested defendant at his home in the 1000 block of South Mason Avenue, less than a block from where Amos was killed. Defendant gave a statement to Matias and an assistant State's Attorney, which was later memorialized in writing and signed by defendant. Defendant stated he left his sister's house early in the morning on November 17, 2013, driving home in his sister's vehicle. It was dark and raining heavily.

¶ 13 Driving through the alley between Mayfield and Mason Avenues, he felt like he went over a speed hump but then realized there was no speed hump in the alley. He felt like he was dragging something from the back of his vehicle. Defendant stopped and exited the vehicle, and observed a woman lying motionless on the ground in the alley. He did not notice the woman prior to hitting what he thought was the speed hump. He then returned to his sister's vehicle, drove it to the 1000 block of South Mason, parked the vehicle, and went inside the home where he lived with his parents. He did not call the police, nor did he tell his sister or parents.

¶ 14 The trial court found defendant guilty on both counts, and the matter proceeded to a sentencing hearing. Defendant's presentence investigation report (PSI) was submitted to the trial court. The PSI indicated defendant was born on July 28, 1988, in Mexico City, Mexico, and came to the United States with his parents and sister in 1992. Defendant had lived on the west side of Chicago since coming to the United States. Defendant was married to a United States citizen with whom he had two stepchildren, and he was in the process of becoming a United States citizen at the time of his arrest for this offense.

¶ 15 The PSI further indicated defendant completed two years at Morton College before joining the workforce and worked continuously from 2009 until his 2014 arrest. Defendant had no significant history of drug or alcohol abuse and no prior felony convictions or juvenile adjudications. At the time of sentencing, he had six adjudications for traffic offenses, five of which involved driving without or on a suspended license. As a result of one of the adjudications for driving on a suspended license, on December 10, 2013, defendant was sentenced to an unnoted term in the Cook County jail.

¶ 16 The State presented victim impact statements from Amos's sister, father, and 21-year-old son, all of which emphasized the significant impact the death of Amos had on their lives. The trial court also received several letters submitted in favor of defendant.¹

¶ 17 The State argued in aggravation the injuries suffered by Amos were horrific and unimaginable, noting Amos suffered several significant internal and external injuries. The State noted defendant dragged Amos's body behind his vehicle and left Amos for dead several houses from where she had been struck by the automobile he was driving. Further, the State argued Amos's family was left without answers for nine months, and defendant “thought he was getting away with it” until Ortiz came forward with information relating to Amos's death. According to the State, defendant's actions were unconscionable and caused “a great deal of pain” to Amos and her family. Finally, the State noted there was no reason or explanation for defendant's horrific actions, especially given he had a great childhood, completed two years of college, and had a steady income. The State recommended a sentence “closer to the maximum.”

¹ Defendant notes the letters submitted by defendant's family and friends are not contained in the record on appeal. The trial court made it clear it read and considered those letters, which partially formed the basis for its finding defendant was supportive of his family and had his family's support.

¶ 18 In mitigation, defense counsel first noted the offense of which defendant was found guilty was a Class 1 felony while reckless homicide is a Class 3 felony, meaning a person could deliberately drive while intoxicated and cause an accident which seriously injures or kills another but be subject to a lesser sentence than defendant. Defense counsel conceded Amos did not deserve to die in the manner in which she did and her death “was not a pleasant one,” but argued there was nothing to suggest defendant was driving recklessly or was at fault in her death. Defense counsel argued that while defendant had some traffic infractions, he had “never really been in the criminal system to this extent.” Defense counsel noted defendant came to the United States from another country, learned the language, went to school, graduated high school, went to college, and had been a productive member of the community until the day of his arrest. Further, he had avoided gang membership despite living in gang-ridden neighborhoods. Defense counsel argued the letters submitted to the trial court suggested defendant was a good, law-abiding person, and was a son, brother, and father to his family. Defense counsel suggested probation was an appropriate sentence for defendant, arguing his lack of criminal history, education, steady work history, social history, and history of helping out his family demonstrated his rehabilitative potential.

¶ 19 In allocution, defendant stated he never intended to hurt anyone and expressed remorse for his actions. Defendant stated he “freaked out” and did not know what to do after he struck Amos. Defendant took responsibility for his actions and apologized to Amos's family.

¶ 20 The trial court merged the two counts and sentenced defendant to a term of six years' imprisonment. As part of its sentence, the trial court imposed fines, fees, and costs, including a \$20 probable cause hearing fee. The court stated it had considered all the factors in aggravation

and mitigation noted in the Unified Code of Corrections (730 ILCS 5/1-1-1 to 8-6-1 (West 2012)), the evidence adduced at trial, and the evidence adduced at sentencing, as well as the parties' arguments and defendant's statement in allocution.

¶ 21 The trial court noted this was a challenging case and its sentence was not formulated on a whim but, rather, was a function of continued consideration since the finding of guilty, continuing through the review of the PSI, the victim impact statements presented, the letters offered on behalf of defendant, and defendant's statement in allocution. The court found defendant was not a hardened criminal, but what happened to Amos produced ripple effects which had a great impact on her loved ones. It recognized the same was true for defendant, who had numerous loving relationships and people who felt strongly about him.

¶ 22 Having reviewed the PSI, the trial court found defendant had “fashioned very admirable aspects of his life,” was involved in a loving relationship and had two stepchildren for whom he cared, and was supportive of his family. In addition, his family was supportive of him. It recognized the offense was an aberration with respect to how defendant lived his life but that fact provided no comfort to Amos's family.

¶ 23 The trial court recognized defendant did not have any prior felony convictions but noted defendant had six adjudications for traffic offenses and was sentenced to an unnoted term in the Cook County jail for driving on a suspended license shortly after defendant struck and killed Amos. Moreover, the court noted defendant was sentenced to conditional discharge for driving on a suspended license on December 10, 2015, which suggested the offense occurred while defendant was on bond for the instant case. Noting the instant offense was a Class 1 felony

punishable by probation or 4 to 15 years' imprisonment, it found “a sentence of probation would seriously denigrate the particular serious circumstances of all aspects of this case.”

¶ 24 Defendant filed a motion to reconsider sentence, which the trial court denied. This appeal followed.

¶ 25 On appeal, defendant first argues the trial court erred by sentencing him to six years' imprisonment. He asks this court to reduce his sentence to the minimum term of imprisonment pursuant to Illinois Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967) or vacate his sentence and remand the matter for a new sentencing hearing.

¶ 26 The Illinois Constitution states “[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. To achieve the constitutionally mandated balance between the retributive and rehabilitative purposes of punishment, the trial court must carefully consider all aggravating and mitigating factors, including: “the defendant's age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education, as well as the nature and circumstances of the crime and of defendant's conduct in the commission of it.” *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002).

¶ 27 The trial court, not the reviewing court, is in the best position to assess these factors because it has observed the defendant and the proceedings. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). Accordingly, “[t]he trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference.” *Alexander*, 239 Ill. 2d at 212. It is not our function to reweigh the evidence in aggravation and mitigation and substitute our judgment for that of the trial court because we would have weighed these factors differently.

People v. Stacey, 193 Ill. 2d 203, 209 (2000). We will overturn a sentence only where the court has abused its discretion. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19. An abuse of discretion occurs when the court's sentence “is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.” *People v. Charleston*, 2018 IL App (1st) 161323, ¶ 16.

¶ 28 We conclude the trial court did not abuse its discretion when it sentenced defendant to six years' imprisonment. Failure to report a motor vehicle accident involving death is a Class 1 felony which carries a sentencing range of probation to 4 to 15 years' imprisonment. 625 ILCS 5/11-401(b), (d) (West 2012); 730 ILCS 5/5-4.5-30(a), (d) (West 2012). The court sentenced defendant to six years' imprisonment, which is within the applicable sentencing range. Because the sentence is within the applicable range, we presume the sentence is proper. *Charleston*, 2018 IL App (1st) 161323, ¶ 16. This presumption will be rebutted only if defendant makes an affirmative showing the sentence greatly departs from the spirit and purpose of the law or the constitutional guidelines. *People v. Boclair*, 225 Ill. App. 3d 331, 335 (1992). Defendant has failed to make such a showing.

¶ 29 Defendant argues the trial court overlooked evidence and factors in mitigation, including his age, lack of flight when arrested by Matias, confession, acknowledgement of wrongdoing, remorse for Amos and her family, educational history, steady employment, and supportive relationships, all of which demonstrate his rehabilitative potential. According to defendant, the presence of these mitigating factors and the lack of aggravating circumstances demonstrate there was no penological interest justifying a sentence in excess of the minimum four-year prison term.

¶ 30 Defendant essentially invites this court to reweigh the evidence in aggravation and mitigation and substitute our judgment for that of the trial court. We decline to do so. *Stacey*, 193 Ill. 2d at 209. Moreover, trial courts are not required to impose the minimum sentence in the absence of any aggravating factors, even where mitigating factors are present. *Quintana*, 332 Ill. App. 3d at 109.

¶ 31 The record belies defendant's argument the trial court failed to consider the evidence in mitigation to which he points to on appeal. There exists a presumption the court considered all mitigating factors supported by the record absent some affirmative indication, other than the sentence itself, to the contrary. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. The record shows all of the mitigating evidence defendant raises here was before the court in the PSI and the evidence it heard at trial and was extensively argued by defendant's counsel. When announcing the sentence, the trial court noted it had reviewed the PSI and considered all the factors in aggravation and mitigation in light of the evidence adduced at trial and sentencing, as well as the arguments of the parties and defendant's statement in allocution. Thus, the record reflects the court considered all the mitigating evidence presented by defendant.

¶ 32 Defendant asserts the trial court's failure to mention his age of 25 years at the time of the accident at sentencing or how his age was a mitigating factor demonstrates this important factor played no role in the court's decision. However, “a trial court need not detail precisely for the record the exact thought process undertaken to arrive at the ultimate sentencing decision or articulate its consideration of mitigating factors.” *People v. Abrams*, 2015 IL App (1st) 133746, ¶ 32. Evidence of defendant's age was before the court. Absent any indication to the contrary, we

presume the court considered this evidence in mitigation. *Abrams*, 2015 IL App (1st) 133746, ¶ 33.

¶ 33 Defendant also argues his conduct was not so aggravating as to justify a prison term longer than the “already-long” minimum sentence. According to defendant, “every defendant found guilty of the offense at issue here was the driver in a fatal car accident, knew someone was injured in that accident, and failed to either remain at the scene or to report that accident,” and defendant did “nothing beyond that conduct that justified a prison term longer than the minimum sentence,” especially where, as here, the record contained significant evidence of defendant's rehabilitative potential.

¶ 34 The trial court is not required to give more weight to a defendant's rehabilitative potential than the seriousness of the offense. *People v. Gutierrez*, 402 Ill. App. 3d 866, 902 (2010). “In fact, the seriousness of the crime committed is considered the most important factor in fashioning an appropriate sentence.” *Gutierrez*, 402 Ill. App. 3d at 902.

¶ 35 We reject defendant's contention his conduct did not warrant a prison term longer than the minimum. Here, the nature and circumstances of defendant's conduct and its impact on Amos's family demonstrated the seriousness of the offense. See *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009) (court may consider the degree of harm to the victim, the manner in which the victim's death was brought about, and the seriousness, nature, and circumstances of the offense). The record shows Amos suffered 56 external and 28 internal injuries when she was run over by defendant and then dragged a significant distance. Defendant exited his vehicle and observed Amos lying motionless in the alley. Instead of reporting the accident or attempting to render aid to Amos, defendant disregarded her life and drove to his home. Not only did

defendant fail to report his involvement in Amos's death, he concealed it for approximately nine months and accepted responsibility for his actions only after Ortiz provided information to the police. Further, the record shows Amos's death had an immeasurable impact on her loved ones. The trial court was not required to disregard the seriousness of the offense in favor of defendant's rehabilitative potential.

¶ 36 Moreover, just 23 days after he struck and killed Amos, defendant was sentenced to a term in the Cook County jail for driving on a suspended license. Thus, as the trial court noted, the record suggests defendant did not have a valid license and should not have been driving at the time of this offense. In addition, defendant repeatedly drove without or on a suspended license both before and after this offense. On December 10, 2015, defendant was sentenced to conditional discharge for driving on a suspended license which, as noted previously, suggested that the offense occurred while defendant was on bond for the instant case. This defendant is historically a repeat offender who continues to drive a vehicle without a license in a reckless manner and is a danger to public safety.

¶ 37 In sum, the trial court carefully considered the evidence before it at sentencing and trial, weighed the factors in aggravation and mitigation, and fashioned an appropriate sentence in line with the seriousness of the offense and defendant's potential for rehabilitation. Based on the record before us, we do not find defendant's sentence was greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the seriousness of the offense. See *Charleston*, 2018 IL App (1st) 161323, ¶ 16. Accordingly, we conclude the trial court did not abuse its discretion in sentencing defendant to six years' imprisonment.

¶ 38 In his opening brief, defendant argued for the first time on appeal the trial court erred by assessing a \$20 probable cause hearing fee (55 ILCS 5/4-2002.1(a) (West 2012)) because no probable cause hearing occurred. In the alternative, defendant argued his counsel was ineffective for failing to object to the assessment in the trial court.

¶ 39 In his reply brief, however, defendant agrees with the State this matter should be remanded so defendant may file a motion raising the purported impropriety of the probable cause hearing fee under Illinois Supreme Court Rule 472(e) (eff. May 17, 2019). We agree with the parties.

¶ 40 Illinois Supreme Court Rule 472 provides the circuit court retains jurisdiction to correct certain sentencing errors at any time following judgment, including during the pendency of an appeal. Ill. S. Ct. R. 472(a) (eff. May 17, 2019). Among the errors which may be corrected are “errors in the imposition or calculation of fines, fees, assessments, or costs.” Ill. S. Ct. R. 472(a)(1) (eff. May 17, 2019). Pursuant to Rule 472(e), in all criminal cases pending on appeal as of March 1, 2019, in which a party has attempted to raise an error with respect to the imposition or calculation of fines, fees, assessments, or costs for the first time on appeal, the reviewing court must remand the matter to the circuit court to allow the party to file a motion pursuant to the rule. Ill. S. Ct. R. 472(e) (eff. May 17, 2019); see *People v. Sanders*, 2019 IL App (1st) 160718, ¶ 53.

¶ 41 Here, defendant's appeal was pending on March 1, 2019, and he has raised the purported error with respect to the probable cause hearing fee for the first time on appeal. Accordingly, we “remand to the circuit court to allow [defendant] to file a motion pursuant to [Rule 472].” Ill. S. Ct. R. 472(e) (eff. May 17, 2019); see *People v. Whittenburg*, 2019 IL App (1st) 163267, ¶ 6.

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¶ 42 For the reasons stated, we remand the probable cause hearing fee issue pursuant to Illinois Supreme Court Rule 472(e) and affirm the trial court's judgment in all other respects.

¶ 43 Affirmed and remanded as to fines, fees, and costs.