

NOTICE
Decision filed 10/10/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 190033-U

NO. 5-19-0033

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

COLE Y. STEVENS,

Defendant-Appellant.

) Appeal from the
) Circuit Court of
) Jefferson County.
)
) No. 17-CF-254
)
) Honorable
) Jerry E. Crisel,
) Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not abuse its discretion and properly considered all relevant evidence in mitigation and aggravation in determining defendant’s sentence.

¶ 2 Defendant pleaded guilty to two counts of aggravated driving under the influence of drugs, a Class 2 felony (625 ILCS 5/11-501(d)(1)(F) (West 2016)) and a Class 4 felony (625 ILCS 5/11-501(d)(1)(C) (West 2016)), and one count of driving under the influence of drugs, a Class A misdemeanor (625 ILCS 5/11-501(a)(6) (West 2016)). He was sentenced by the circuit court of Jefferson County to 14 years’ imprisonment on the first felony count, to run concurrently with 12 years on the second felony count. The third count

was merged into the felony counts. Defendant argues on appeal the trial court did not consider all relevant mitigation evidence at defendant's sentencing hearing, and therefore the court abused its discretion in fashioning his sentence. We affirm.

¶ 3 On the morning of June 11, 2017, defendant drove to Carbondale to pick up his girlfriend for a day trip to St. Louis, Missouri. They began driving to St. Louis traveling north on Illinois Interstate 57. While driving, defendant lost control of his car. His car went into the median, and then launched into the air into the southbound lane of the interstate, striking the victim's vehicle on the other side of the highway. The 18-year-old victim died at the scene, and the driver's 18-year-old passenger was severely and permanently injured. Defendant and his girlfriend were also injured in the accident and were taken to the local hospital.

¶ 4 At the hospital, defendant underwent a urine drug screen and a blood test. The blood alcohol test was negative, but the urine screening showed positive results for cocaine metabolites and opiates. No clinical impairments were noted, however. Defendant was given morphine for pain and released from the hospital before investigating officers had a chance to speak with him. A sheriff's deputy therefore went to defendant's residence and asked him for consent to conduct a blood draw. Defendant went back to the hospital with the deputy where samples of his blood and urine were collected again. The Illinois State Police laboratory tests were negative for alcohol in defendant's blood but the urine tested positive for hydrocodone, oxycodone, and benzoylecgonine, a metabolite that is produced and found in the human body only as a result of the consumption of cocaine. Defendant told the investigating officers he had not used any medication on the morning of the

accident but admitted to using cocaine a few days earlier. He had also used OxyContin and Norco (hydrocodone/acetaminophen) after being discharged from the emergency room. Defendant also admitted he had used Norco as well a day or two before the accident for a prior injury.

¶ 5 Defendant admitted to the deputy that he had been driving between 80 and 90 miles per hour at the time he lost control of his car, thereby causing the accident. Other than the speed of the defendant's vehicle, it is unclear, however, what the circumstances were just prior to defendant losing control of his vehicle. At one point, defendant told one of the deputies that he was in the process of passing a semi-truck when he lost control of his car. At another point, defendant stated that a nearby car swerved close to his car causing defendant to swerve and lose control of his vehicle. Defendant's girlfriend reported that they had gotten into a heated discussion right before the accident. The girlfriend claimed she had attempted to reach for defendant's phone which was in the side compartment of the driver's side door. Shortly after doing so, defendant lost control of the vehicle. Text messages exchanged between defendant and his girlfriend at the hospital immediately after the accident suggested that the two actually had been engaged in a physical altercation shortly before defendant lost control of the car.

¶ 6 Defendant was arrested July 12, 2017, and charged with two counts of aggravated driving under the influence of drugs, both felonies, and one misdemeanor count of driving under the influence of drugs. In a supplemental indictment, defendant was charged with an additional five counts of aggravated driving under the influence of drugs. On April 3, 2018, defendant agreed to plead guilty to the first three counts in exchange for the

additional counts to be dismissed. After a sentencing hearing on September 6, 2018, defendant was sentenced to the maximum penalty of 14 years' imprisonment on the first count, with two years of mandatory supervised release, to run concurrent with 12 years' imprisonment on the second count, with one year of mandatory supervised release. The misdemeanor count was merged into the other two felony counts. Defendant subsequently filed a motion to reconsider, which the trial court denied. Defendant now appeals.

¶ 7 Defendant argues on appeal that the trial court did not properly consider all the relevant mitigation evidence presented at the sentencing hearing before determining his sentence. Defendant asserts that the court is to consider the specific facts surrounding the offense and consider all relevant and reliable evidence before it to best determine the most appropriate sentence. Here, according to defendant, the court failed to consider mitigating evidence from the expert testimony presented by defendant. Defendant points out that his expert opined that defendant was not impaired by any drugs at the time of the accident and that there was no evidence of drug impairment causing or contributing to the accident. Defendant believes such evidence helps to mitigate the seriousness of his crimes. The court, however, found that the evidence was not relevant because impairment is not one of the elements of aggravated driving under the influence. Defendant further asserts that the court also failed to consider the evidence which indicated that his conduct was induced by his passenger. Defendant believes that while he is ultimately culpable for the offenses for which he was convicted, the facts surrounding the crimes are relevant because they are directly related to the main element of the offenses, defendant's impairment, and should therefore be considered in mitigation.

¶ 8 We begin by noting that the imposition of sentence is peculiarly within the discretion of the trial court, and this discretion should be interfered with only if the discretion is clearly abused. *People v. Buford*, 125 Ill. App. 2d 424, 431 (1970). We, as a reviewing court, are to give great deference to the trial court's sentencing decision because the trial court, having observed the defendant and the proceedings, has a far better opportunity to consider all the factors than a reviewing court relying on a cold record. *People v. Somers*, 2012 IL App (4th) 110180, ¶ 20. Absent an abuse of discretion, we will not disturb a sentence which falls within the statutory limits. See *People v. Maldonado*, 240 Ill. App. 3d 470, 484 (1992). A sentence within the statutorily mandated guidelines can be overturned or reduced only if it is affirmatively shown to greatly depart from the spirit or purpose of the law or is manifestly contrary to constitutional guidelines. *People v. Valadovinos*, 2014 IL App (1st) 130076, ¶ 49. A reviewing court will find an abuse of discretion when the sentencing decision is so fanciful, unreasonable, or arbitrary that no reasonable person would take the view adopted by the trial court. *People v. Abrams*, 2015 IL App (1st) 133746, ¶ 32.

¶ 9 We also recognize that a trial court is presumed to have considered all relevant evidence of mitigation before it. *Somers*, 2012 IL App (4th) 110180, ¶ 24. A defendant's history, character, and rehabilitation potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed. *Somers*, 2012 IL App (4th) 110180, ¶ 19. We agree with the State that in this instance the trial court did take into consideration all aggravating and mitigating evidence and properly concluded that the sentences were appropriate under the circumstances. First,

both sentences were within the sentencing range for Class 2 and 4 felonies. See 625 ILCS 5/11-501(d)(2) (West 2016). The circuit court specifically found in aggravation that the injuries caused by defendant were extreme. Defendant's history of prior criminal activity and disregard for the rules of the road showed little rehabilitative potential. There was also a need to deter others from committing the same crime. More importantly, as the court noted, impairment is presumed by virtue of the legislature's providing that driving under the influence of drugs is proven simply by there being any illegal drug in the defendant's system. See 625 ILCS 5/11-501(a)(6) (West 2016). The level of defendant's impairment at the time of the accident was irrelevant because defendant violated section 11-501(a)(6) of the Illinois Vehicle Code simply by driving with controlled substances in his body. This flat prohibition against driving with any amount of controlled substance in one's system is considered necessary because of the difficulty in detecting and determining whether someone is impaired given that there is no standard by which one can determine whether one is driving under the influence. *People v. Fate*, 159 Ill. 2d 267, 269-70 (1994). The court therefore was not required to accord any weight to defendant's degree of impairment at the time of the accident and could appropriately give little weight to the expert's testimony. Again, at the time of this offense, driving under the influence of drugs was proven simply by the presence of an illegal drug in the defendant's system at the time of the accident. Additionally, the possibility that there were some text messages indicating some dispute between defendant and his girlfriend proves little about what actually happened in the car. Although the circuit court did not find the girlfriend to be a credible witness, regardless of what actions occurred in the car that might have contributed to the

defendant's vehicle leaving the roadway, the accident was still the proximate result of defendant's conduct. Defendant's guilty plea was an admission that his conduct was a proximate cause of the accident, and defendant accepted full legal responsibility for his criminal actions. Accordingly, we find no abuse of the circuit court's discretion in this instance.

¶ 10 Defendant also argues on appeal that the court erroneously considered the victim's standing in the community when determining defendant's sentence. Defendant points out that the personal traits of a victim are not relevant to the question of the proper sentence to be imposed. See *People v. Walker*, 109 Ill. 2d 484, 505 (1985). While this may be true, any consideration the trial court gave to the victim impact statements is permissible under the law. See *People v. Mauricio*, 2014 IL App (2d) 121340, ¶ 19. Victim impact evidence is another form or method of informing a sentencing authority about the specific harm caused by the crime in question. *Mauricio*, 2014 IL App (2d) 121340, ¶ 19. Defendant cannot otherwise point to any facts that indicate the circuit court was influenced by prejudicial evidence in determining defendant's sentence. Again, absent an abuse of discretion, we, as a reviewing court, will not disturb a sentence which falls within the statutory limits. *People v. Abernathy*, 189 Ill. App. 3d 292, 315 (1989). We find no abuse of the court's discretion under the circumstances presented. Accordingly, we affirm defendant's convictions and sentence.

¶ 11 For the foregoing reasons, we affirm the judgment of the circuit court of Jefferson County.

¶ 12 Affirmed.