2023 IL App (4th) 220995-U

NO. 4-22-0995

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 31, 2023
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macoupin County
CHANCEY Y. HUTSON,	)	No. 19CF206
Defendant-Appellant.	)	
	)	Honorable
	)	Joshua A. Meyer,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice DeArmond and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) defendant failed to show ineffective assistance of counsel or plain error when trial counsel did not object to the admission into evidence of a 911 recording and (2) defendant's sentence was not excessive.

¶ 2 In July 2019, the State charged defendant, Chancey Y. Hutson, with three counts of first degree murder (720 ILCS 5/9-1(a)(1), (2), (3) (West 2014)) alleging, while committing a forcible felony, she intentionally and knowingly shot and killed Cody Adams. In August 2022, a jury acquitted defendant of intentional murder but found her guilty of the knowing and felony murder counts.

¶ 3 On appeal, defendant contends (1) it was plain error for the trial court to admit into evidence the recording of a 911 call made by the victim's father, and her counsel was ineffective for failing to object to it and (2) her 46-year sentence was excessive.

¶ 4 We determine defendant has failed to show counsel's lack of objection to the 911 recording was not a matter of reasonable trial strategy or that its admission was a clear and obvious error. The trial court's sentence was also not an abuse of discretion. Accordingly, we affirm.

¶ 5 I. BACKGROUND

¶ 6 The State charged defendant in connection with the January 1, 2015, shooting death of Cody Adams during an attempted burglary at Cody's home. Cody's father, Wayne Adams, witnessed the shooting but was deceased at the time of trial.

¶ 7 Before trial, defense counsel filed several motions *in limine*, including a motion to introduce statements Wayne made to Paul Bouldin, a detective with the Macoupin County Sheriff's Office, in support of the theory the shooter was male. Counsel argued Wayne had reported to Bouldin that Cody told Wayne "he shot me." Wayne also reported he saw Cody struggling with a "guy" in a black hoodie. The trial court denied the motion, finding the statements were hearsay and not admissible as excited utterances.

¶ 8 A. Trial

¶ 9 In August 2022, a jury trial was held. Tabitha Rives, a dispatcher with the Macoupin County Sheriff's Office, testified she took Wayne's 911 call connected to the shooting. The call, with audio lasting approximately 4 minutes and 18 seconds, was admitted into evidence and played for the jury without objection. During the call, Wayne was distraught and crying. He told the operator "somebody" broke into his house and shot his son. He said he did not know who the shooter was but, referring to the shooter, stated "he" had a hoodie on and "he" came running out of the kitchen. On two more occasions, Wayne stated the person wore a hoodie but did not refer to whether the shooter was a male or a female. After the time mark of

approximately 1:44, the recording generally consisted of Wayne crying and the operator repeatedly stating "sir," as he was unresponsive to her questions.

¶ 10 Bouldin testified he responded to the call and found Cody on the landing between the kitchen and the basement stairs. He also spoke to Wayne, who was "in shock" and "completely shaken." As an offer of proof, defense counsel questioned Bouldin outside the presence of the jury about Wayne's statements he saw Cody struggle with a "guy," and Cody said a "guy" shot him. When asked if Wayne seemed "excited," Bouldin stated, "I guess," and "it was kind of hard for him to like put things together." Defense counsel renewed his motion *in limine* seeking to admit the statements, arguing the 911 recording and other statements made by Wayne had already been admitted. The trial court denied the motion, finding the statements Wayne made to Bouldin were inadmissible hearsay that did not qualify as excited utterances based on the totality of the circumstances and the amount of time that had passed. The court also noted, even if Cody's statement to Wayne was an excited utterance, it was not admissible via Wayne's report of it to Bouldin.

¶ 11 Cody's mother, Ruth Adams, testified Cody lived with her, Wayne, and Cody's nephews, Stormmy and Clayton, at the time of his death. Cody helped take care of Wayne, who had muscular dystrophy and passed away in September 2021. On the night of the shooting, Ruth was home by 6 pm. Ruth, Wayne, and Cody planned on staying home that night, while Stormmy and Clayton, who were teenagers, left at 7 p.m. for an overnight event at the church down the block. Ruth went to bed around 9 p.m., and Wayne went to sleep in the recliner in the living room. Cody was playing video games in the living room.

¶ 12 The next morning, Ruth heard a commotion in the living room and thought she heard Wayne say he needed help. She had not heard any gunfire that morning. When she came

into the living room, she saw Cody engaged in a physical tussle with another person. Ruth grabbed them to try to separate them and saw blood. Ruth thought she heard Cody say, "[g]et it out of me, mom," and she assumed he had been stabbed. Ruth started pulling on something and realized it was a gun barrel, but she failed to grab the gun. She then heard Cody say, "[g]et out of here, Mom." Cody fell down the steps to the back door while Ruth fought with the other person, who was wearing a mask and a hoodie. During the struggle, the mask fell off, and the person kicked it; however, Ruth could not see the person's face because "they" had the hoodie pulled down. Ruth testified the person was about 5'9" or 5'10" tall and had "skinny" arms. The person ran out the door after breaking the glass. Ruth chased "them" outside and down the block, but the person got away. Ruth did not see a second person in the house. The record contains evidence defendant was approximately 5'11" tall and had thin arms.

¶ 13 During her testimony, Ruth often referred to the shooter as "they" or "she." However, she also initially told the police she thought the shooter "was the neighbor guy" because he had a hoodie hanging on his front porch and lived in the same direction the person ran. Ruth testified she was in shock and "grasping for straws" when she made the statement to the police. She also repeated she knew the person was a woman because they had skinny arms, stating, "I know it's a woman now, and I did then." However, she did not tell the investigating officers it was a woman and referred to the shooter as "he" when she talked to the police because murderers are usually men.

¶ 14 The police recovered a ski mask with a skull design in the kitchen. DNA was found on the mask, and the test results were sent to the Illinois State Police crime lab. Police found a .22-caliber weapon in a ditch 150 to 200 feet from the residence. A .38-caliber cartridge

case was found near the kitchen that could not have been ejected from a .22-caliber weapon. The police initially had no leads in the case, and it was moved to cold-case status.

¶ 15 In June 2017, Sergeant Patrick McGuire of the Illinois State Police received a phone call from the crime lab stating DNA from the mask matched with defendant. There were six other DNA profiles on the mask, three of which were identifiable. In addition to defendant's DNA, profiles matching Cody and a woman named Kailee Irvin were also identified.

¶ 16 McGuire interviewed defendant in July 2017. During the interview, defendant admitted being Facebook friends with Cody but said she did not know him well and had only met him once. She said she was not aware Cody had been killed. She stated she did not recognize a photograph of the mask and, when told her DNA was found on the mask, she responded, "Really." When asked to provide additional information about why her DNA was on the mask or who was with her at the scene of the crime, defendant asked for an attorney, and McGuire concluded the interview. Defendant provided additional DNA samples, which were also returned as a match to the DNA found on the mask.

¶ 17 The police obtained a search warrant for defendant's and Cody's Facebook accounts. They were friends on Facebook and had exchanged messages. On the day before the murder, defendant and Cody had a conversation over Facebook Messenger. Defendant told Cody she wanted him to come over. He responded he could not because he was with his son. Defendant asked if she could come to Cody's home if she could get a taxi, indicating she knew where Cody lived. He said no to that as well.

¶ 18 In September 2018, McGuire interviewed defendant a second time. During the interview, defendant initially denied any knowledge of the murder but then became tearful and said, "I'm going to prison for a long time, ain't I?" Defendant told McGuire she and a person

named “D,” who McGuire testified was William Kavanaugh, went to Cody’s house early on New Year’s Day to commit a burglary. She said they thought Cody would not be home and did not know Cody lived with other people. Defendant said the burglary was Kavanaugh’s idea and the plan was to steal anything they could sell. Defendant initially told the police they arrived in Kavanaugh’s truck and entered through an unlocked back door. She indicated Cody was sitting and watching TV, and Kavanaugh put a gun to his head. Defendant said Kavanaugh shot Cody, and they both ran out of the house.

¶ 19 Shortly afterwards, defendant admitted to struggling with Ruth and said Ruth tried to grab her gun. Defendant then admitted she had a gun and said Kavanaugh gave it to her. She said the gun did not have a firing pin and she did not know what happened to it after the offense. Defendant stated Kavanaugh had already left the house and she stayed behind because she wanted to help Cody. At times defendant denied she wore a mask or said she did not remember. Later in the interview, defendant stated she was wearing a plain black stocking cap and Kavanaugh was wearing a Velcro mask with a design on it. McGuire testified the mask with defendant’s DNA did not have any Velcro on it. Defendant said Irvin and Kavanaugh were dating, but Irvin was not at the scene with them. After the interview, both defendant and Kavanaugh were arrested. McGuire stated there was no physical evidence linking Kavanaugh to the murder, and he did not think Kavanaugh “pulled the trigger.”

¶ 20 Nathaniel Patterson, a forensic pathologist, performed the autopsy on Cody’s body. He testified Cody died from a single gunshot fired from one to three feet away. Cory Formea, a forensic scientist, testified about the results of the DNA testing on the ski mask. The highest concentration of DNA was from defendant’s profile around the mouth area of the mask. Irvin’s profile was found on the inside and outside of the mask at the mouth and the back of it.

Cody's profile was the third identifiable profile discovered. Vicki Reels, a forensic scientist and firearms expert, testified the cartridge case found on the kitchen floor was fired from a .38-caliber weapon. The only gun recovered in the case was the .22-caliber weapon found outside in a ditch.

¶ 21 The jury acquitted defendant of intentional murder and convicted her of knowing and felony murder. The jury rejected the proposition defendant personally discharged the weapon.

¶ 22 Defendant filed a motion for a new trial, arguing in part the trial court erred by denying the motion *in limine* to allow evidence of Wayne's hearsay statements indicating a male was the shooter. Defendant did not allege error regarding the admission of the audio recording of the 911 call. The court denied the motion.

¶ 23 B. Sentencing

¶ 24 At sentencing, McGuire testified defendant was stopped in 2018 for driving a stolen car. During the stop, she called 911 and reported a carjacking so the officer would leave the scene. That same year, defendant attempted to escape a county jail by climbing through the ceiling tiles in the visiting room before falling into an adjoining room. Also in 2018, she was arrested for possession of methamphetamine.

¶ 25 Larry Rayburn, a detective sergeant with the Macoupin County Sheriff's Office, testified about a video taken in the county jail four days before the sentencing hearing. In the video, an inmate who had overdosed fell down in the day room, and defendant and another inmate attempted to perform cardiopulmonary resuscitation on her until help arrived. When interviewed about the incident, defendant admitted that she and the other inmates involved had snorted fentanyl that had been smuggled into the jail.

¶ 26 Defendant's sister, Samantha Williams, testified she had been in foster care until defendant took her in in 2012. Williams described defendant as a caring and kind person who was involved with an animal rescue organization. Evelyn Brown, defendant's stepmother, testified defendant was always kind, loving, and willing to help her family and friends. She stated defendant was the mother of four children, who would be adversely affected if the trial court sentenced defendant to a lengthy prison term.

¶ 27 Ruth and Cody's son provided victim impact statements. In them, they addressed the personal difficulties they experienced after Cody's death. Defendant gave the following statement in allocution: "I would just like to say that I'm sorry for what happened to Cody. I'm sorry for the part that I played in it. And if I could go back and turn back time to prevent it from happening, I would. I'm sorry to the friends and family."

¶ 28 The presentence investigation report (PSI) showed defendant was age 24 at the time of the offense and 32 at the time of sentencing. She had previously been convicted of multiple felonies between 2017 and 2018, including aggravated unlawful use of a weapon, false report of an offense, escape of a felon from a penal institution, criminal damage to government property, and possession of methamphetamine. In two of those cases, defendant's probation had been revoked. Defendant also had a 2014 misdemeanor conviction for retail theft and a history of multiple traffic offenses.

¶ 29 Defendant had four children, who were adopted by her cousin when she was taken into custody. Defendant was raised by her grandparents from the time she was two weeks old because her parents struggled with addiction. Her father had also been in and out of prison and had "abuse issues." Defendant's grandmother died when defendant was nine years old. Because her grandfather was getting older and struggling to raise a teenager, between the ages of 13 and

18, defendant lived with different family members and friends. Defendant dropped out of high school and later pursued a general equivalency diploma through the Department of Corrections but had not yet completed it. She had been unemployed for approximately three years before her incarceration. Before that, she was employed by many different companies over the years.

¶ 30 Defendant was diagnosed with several psychological disorders, including dissociative disorder, psychosis, and anxiety disorder. She took multiple medications for those conditions. Defendant reported past abuse of drugs and alcohol. She had successfully completed a drug rehabilitation program. Defendant gave the following statement for the PSI: "I don't remember a lot of this, but I do know I feel bad for the family and Cody's life shouldn't have ended so soon." The PSI stated, because defendant indicated she could not remember the details surrounding the case, the reporter had no insight as to whether defendant had any remorse or regret regarding her actions related to the offense. The PSI recommended a "significant term of incarceration." The State sought a 50-year term of incarceration, and the defense asked for 24 years.

¶ 31 In determining the sentence, the trial court stated it considered the evidence presented, the aggravating and mitigating factors, the information in the PSI, defendant's statement, and the victim impact statements. The court specifically noted defendant's criminal history, including the commission of a crime four days before sentencing. The court also stated it gave "utmost weight" to the need for deterrence. The court recognized factors in mitigation, including defendant's lack of education, mental-health issues, drug use, difficult childhood, and the existence of a codefendant in the case. The court also stated it considered the nature and circumstances of the crime, including that defendant interrupted a peaceful New Year's Eve. The court then stated:

> "I also keep thinking about what, I believe, was the first piece of evidence that the State introduced on day one of the trial and I think that piece of evidence might be the most compelling to me. It was the 911 call from the victim's father, Wayne. That call was so sad it wasn't just his words, it was the sounds that were coming from him. Those sounds were so visceral, and those sounds were the pain and anguish that you caused him and the rest of the family by the decisions and the actions that you took on that night. None of this had to happen but it did because of you."

¶ 32 The trial court also entered a written sentencing order stating it considered multiple factors in aggravation and mitigation and emphasized defendant's criminal history and the need for deterrence as aggravating factors. The court wrote defendant committed a crime four days before sentencing and stated it put "significant weight on her delinquent or criminal activity." The court did not specifically mention the 911 recording or Wayne's anguish in the written order. The court sentenced defendant to 46 years' incarceration and denied defendant's motion to reconsider the sentence.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 A. The 911 Recording

¶ 36 On appeal, defendant first contends the admission of the 911 recording was unfairly prejudicial. Defendant concedes she did not object to admission of the evidence or raise the issue in her motion for a new trial. "[T]he presence of both a trial objection and a written post-trial motion raising the issue are necessary to preserve an issue for review." *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988). Failure to properly preserve an

issue results in forfeiture on appeal. *Enoch*, 122 Ill. 2d at 186, 522 N.E.2d at 1129. However, defendant argues her counsel was ineffective for failing to challenge the admission of the 911 recording into evidence or, in the alternative, the admission of the recording was plain error.

¶ 37 This court evaluates ineffective assistance of counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To succeed on such a claim, a defendant must demonstrate (1) counsel's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's conduct, the results of the proceeding would have been different. *Strickland*, 466 U.S. at 687. To satisfy the deficiency prong of *Strickland*, the defendant must demonstrate counsel made errors so serious and counsel's performance was so deficient that counsel was not functioning as "counsel" guaranteed by the sixth amendment (U.S. Const., amend. VI). *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999). To satisfy the prejudice prong, the defendant must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceeding's result would have been different. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163-64.

¶ 38 The defendant must also overcome the strong presumption the challenged action or inaction could have been the product of sound trial strategy. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. The decision whether to file a motion to exclude evidence is generally a matter of trial strategy entitled to great deference. See *People v. Bew*, 228 Ill. 2d 122, 128, 886 N.E.2d 1002, 1006 (2008).

¶ 39 "It is well established in Illinois that sound recordings, which are otherwise competent, material and relevant, are admissible into evidence if a proper foundation has been established to assure the authenticity and reliability of the recordings." *People v. Jurczak*, 147 Ill. App. 3d 206, 213, 497 N.E.2d 1332, 1338 (1986). "Gruesome and inflammatory evidence

may be admitted provided that it is probative of one or more issues in a homicide investigation, depicts the amount of force used in the crime, or tends to corroborate or dispute the testimony of the pathologist or other witnesses." *Jurczak*, 147 Ill. App. 3d at 213, 497 N.E.2d at 1338. Such evidence may properly be admitted even if cumulative to oral testimony covering the same issue. *People v. Williams*, 181 Ill. 2d 297, 315, 692 N.E.2d 1109, 1119 (1998); *Jurczak*, 147 Ill. App. 3d at 213, 497 N.E.2d at 1338. "It is true that the admissibility of evidence may also depend upon whether the probative value outweighs its prejudicial effect to the defendant." *Jurczak*, 147 Ill. App. 3d at 214, 497 N.E.2d at 1339. However, otherwise relevant evidence will not be excluded merely because it may prejudice the accused or because it might arouse feelings of horror or indignation in the jury. *Williams*, 181 Ill. 2d at 314, 692 N.E.2d at 1119 (1998); *Jurczak*, 147 Ill. App. 3d at 214, 497 N.E.2d at 1339.

¶ 40 Here, the recording was the most probative evidence available of the actual commission of the crime. See *Jurczak*, 147 Ill. App. 3d at 213, 497 N.E.2d at 1338. Further, the recording was relevant to show the shooter was wearing a hoodie, which the State directly connected to defendant through Ruth's testimony showing the person wearing the hoodie was also wearing the mask that included defendant's DNA. Thus, the trial court would not have erred in admission of the recording had counsel chosen to object. Regardless, defendant has also not overcome the strong presumption counsel's decision not to challenge admission of the 911 recording was sound trial strategy.

¶ 41 We note trial counsel specifically sought to introduce statements Wayne made to McGuire that a "guy" shot Cody. However, the trial court denied the motion. Counsel then did not object to the 911 recording in which Wayne twice referred to the shooter and the person wearing the hoodie as "he." Counsel later renewed his motion *in limine* to allow evidence of

Wayne's statements to McGuire, noting other statements had already been allowed into evidence. Thus, it was reasonable to conclude counsel did not object to the 911 recording as a matter of strategy because it allowed into evidence that Wayne referred to the shooter as a male and further permitted counsel to renew the argument that other previously excluded statements should be allowed into evidence.

¶ 42 Nevertheless, defendant relies on *People v. Smith*, 2017 IL App (1st) 143728, 91 N.E. 3d 489, to argue the material was so prejudicial that counsel's decision not to object was ineffective assistance. However, *Smith* is distinguishable.

¶ 43 In *Smith*, the First District held a 911 recording in which the caller described the defendant's acts of stabbing the victims was more prejudicial than probative when its admission served to primarily inflame the passion of the jury. *Smith*, 2017 IL App (1st) 143728, ¶¶ 64-72. But there, it was undisputed the defendant stabbed the victims and, by the point in trial where the recording was admitted, the defendant had already stipulated to the autopsy report showing the death of a victim was caused by stabbing and the caller had already personally testified about the events. Thus, the 911 recording provided no insight into the crimes or what precipitated them. *Smith*, 2017 IL App (1st) 143728, ¶ 72. As such, the recording had little to no probative value but was highly prejudicial. That is not the case here, where, as previously discussed, the recording provided relevant evidence connecting the defendant to a crime she denied committing. Further, the defense counsel in *Smith* objected to the testimony. Thus, unlike here, *Smith* did not involve a question of trial strategy.

¶ 44 Defendant next argues the admission of the recording was plain error. We may consider an unpreserved claim if (1) a clear or obvious error occurred and the evidence is so closely balanced the error alone threatened to tip the scales of justice against the defendant,

regardless of the seriousness of the error or (2) a clear or obvious error occurred and the error is so serious it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence at defendant's trial. *People v. Khan*, 2021 IL App (1st) 190679, ¶ 66, 186 N.E. 3d 431. However, having determined there was no clear or obvious error demonstrated, there can be no plain error. See *People v. Hood*, 2016 IL 118581, ¶ 18, 67 N.E.3d 213. Likewise, where a defendant actively participated in an alleged error as a matter of trial strategy, she may be foreclosed from obtaining relief under the plain error doctrine. See *People v. Rosalez*, 2021 IL App (2d) 200086, ¶ 155, 194 N.E. 3d 929. Thus, plain error does not apply here.

¶ 45 B. Sentencing

¶ 46 Defendant asks this court to reduce her sentence or, in the alternative, vacate her sentence and remand the cause for a new sentencing hearing because her 46-year sentence is excessive. She argues the trial court essentially imposed a *de facto* life sentence without properly considering her youth, potential for rehabilitation, and multiple additional mitigating factors. She also argues the court improperly considered Wayne's anguish in the 911 recording as a factor in aggravation.

¶ 47 The Illinois Constitution provides "[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. "This constitutional mandate calls for balancing the retributive and rehabilitative purposes of punishment, and the process requires careful consideration of all factors in aggravation and mitigation." *People v. Daly*, 2014 IL App (4th) 140624, ¶ 26, 21 N.E.3d 810.

¶ 48 "The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference." *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010). A court's sentencing determination must be based "on the particular circumstances of each case, considering such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). Additional relevant considerations include the nature of the crime, the protection of the public, deterrence, and the defendant's rehabilitative prospects. See *People v. Kolzow*, 301 Ill. App. 3d 1, 8, 703 N.E.2d 424, 430 (1998). "[A] reviewing court may not modify a defendant's sentence absent an abuse of discretion." *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656. "A sentence will be deemed an abuse of discretion where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *Alexander*, 239 Ill. 2d at 212, 940 N.E.2d at 1066.

¶ 49 Further, "the seriousness of the offense, rather than any mitigating evidence, is the most important factor in sentencing." (Internal quotation marks omitted.) *People v. Wheeler*, 2019 IL App (4th) 160937, ¶ 38, 126 N.E.3d 787. A reviewing court will presume the trial court considered all relevant factors and any mitigating evidence presented and may not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *Wheeler*, 2019 IL App (4th) 160937, ¶ 38.

¶ 50 "A sentence within the statutory guidelines provided by the legislature is presumed to be proper." *Wheeler*, 2019 IL App (4th) 160937, ¶ 38. "[S]o long as a defendant's lengthy prison sentence is not otherwise an abuse of discretion, it will not be found improper

merely because it arguably amounts to a *de facto* life sentence." *People v. Towns*, 2020 IL App (1st) 171145, ¶ 46, 174 N.E.3d 1036

¶ 51 Here, there is no dispute defendant faced a sentence of 20 to 60 years' incarceration for first degree murder. 730 ILCS 5/5-4.5-20(a) (West 2022). Thus, her sentence of 46 years is presumed proper. See *People v. Branch*, 2018 IL App (1st) 150026, ¶ 35, 140 N.E.3d 776.

¶ 52 Defendant argues that the trial court entered a *de facto* life sentence, showing the court failed to consider her rehabilitative potential and other mitigating factors. She also contends the court relied too heavily on her criminal history and deterrence and notes multiple mitigating factors such as her age, difficult childhood, mental-health struggles, expression of remorse, and evidence she was a kind and caring person. But in determining the sentence, the court expressly considered the allegedly mitigating circumstances, including defendant's age, background, and upbringing. Its consideration of deterrence was proper. The court then reasonably found any mitigating factors were outweighed by the seriousness of the offense, the need for deterrence, and defendant's criminal history. In particular, the court noted she committed a crime just four days before sentencing, yet the court still sentenced defendant to a term of 14 years less than the maximum term.

¶ 53 Further, although defendant argues the trial court improperly considered Wayne's anguish reflected in the 911 recording, the record shows the court considered the recording in relation to the seriousness of the offense. It was entitled to do so. Moreover, the record reflects the court did not substantially rely on the recording, as it did not specifically mention it in its written sentencing order. Indeed, the record as a whole shows the court was primarily concerned with defendant's criminal history and deterrence. Accordingly, the sentence was not an abuse of

discretion, even if it could arguably amount to a *de facto* life sentence. *Towns*, 2020 IL App (1st) 171145, ¶ 46.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we affirm the trial court's judgment.

¶ 56 Affirmed.