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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. 2014 CR 18394
	)	
DANIEL GARCIA,	)	Honorable
	)	Ursula Walowski,
Petitioner-Appellant.	)	Judge Presiding.

JUSTICE WILSON delivered the judgment of the court.
Presiding Justice Oden Johnson concurred in the judgment.
Justice Mikva dissented.

ORDER

- ¶ 1 Held: The circuit court did not abuse its discretion in resentencing defendant to 72 years' imprisonment after remand.
- ¶ 2 Following trial, Daniel Garcia was convicted of three counts of aggravated criminal sexual assault and one count of aggravated kidnapping and was sentenced to 25 years' imprisonment on each of the four counts, to run consecutively, for a total of 100 years. On

appeal, we reversed and remanded for resentencing, finding that Garcia was denied a fair sentencing hearing when the trial court imposed a trial tax. We also found that the court abused its discretion when it failed to consider Garcia’s intellectual disability and his rehabilitative potential at sentencing. *People v. Garcia*, 2023 IL App (1st) 172005, ¶ 103 (*Garcia I*). On remand, Garcia was sentenced to 72 years’ imprisonment. He now appeals and argues: (1) his 72-year sentence is excessive in that it does not reflect his substantial mitigation; (2) the trial court erred in using his trial testimony to find that he lacked remorse because his intellectual disability may have played a role in explaining his performance on the stand; and (3) the trial court imposed another trial tax. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3

I. BACKGROUND

¶ 4 The following recitation of facts comes from our prior decision in *Garcia*, 2023 IL App (1st) 172005, ¶¶ 3-45. Prior to trial in this case, in September of 2015, the assistant public defender who represented Garcia at the time requested a behavioral clinical exam (BCX) to evaluate Garcia for sanity at the time of the offense, citing Garcia’s claim that he had “mental health issues.”

¶ 5 Following the BCX, the psychologist indicated that in his meeting with Garcia, Garcia’s “affect was stable” and his thought process was “logical and goal directed.” Garcia provided a vague account of audio and visual hallucinations, which are severe psychotic symptoms, and “highly inconsistent with his calm, logical and friendly demeanor.” Garcia reported a history of learning disability and past treatment for “bipolar,” but provided vague and evasive responses to follow-up questions. Garcia denied symptoms of psychosis or mania at the time of his arrest, indicating he “was feeling fine, just a little depressed about [his] friend.” He gave a vague

account description but was evasive again when asked follow-up questions.

¶ 6 The psychologist reviewed Garcia's medical records from Cermak Hospital where Garcia had been given a mental health screening three days after his arrest in this case. During that screening, Garcia denied symptoms of psychosis or mania and no indications of either were observed. He was then placed in the general jail population.

¶ 7 Notes during follow-up visits with the psychologist in 2014-2015 revealed that Garcia displayed no external indication of psychosis or mania. Due to Garcia's vague account of hallucinations, and his manipulative behavior, there was "strong concern" for exaggeration of symptoms "because [Garcia] thinks it will help with his case and being granted [mental health] probation." Garcia was not prescribed any psychotropic medication, as Garcia's issues appeared to be behavioral, not mental illness. In addition, the psychologist reviewed the police reports that showed Garcia "took steps to obscure his identity," suggesting that Garcia understood the criminal nature of his actions. Based on his assessment of the available information, the psychologist opined that Garcia was legally sane at the time of the offense.

¶ 8 The issue of Garcia's mental health arose again during bond hearings in November and December of 2015, during which defense counsel stated that Garcia had not worked for the last four to five years because of a "bipolar disorder" and Garcia received social security disability income. The court inquired as to whether defense counsel was seeking a second opinion as to sanity. Defense counsel responded that he was not.

¶ 9 Four days prior to the start of trial, attorney Frank Avila filed his appearance for Garcia. The court noted that Garcia hiring a new attorney on the eve of trial appeared to be a dilatory tactic, but allowed Avila to file his appearance, nevertheless. Garcia was advised of the sentencing possibilities if convicted after a trial.

¶ 10 The State filed a motion to prevent Garcia from introducing evidence of any prior sexual interaction between he and the victim. The State also presented an oral motion *in limine* to bar Garcia from introducing evidence of his mental health history, if any existed. Avila responded that he was “not anticipating doing that” but stated Garcia was bipolar and had been receiving social security prior to his incarceration. The court indicated that any evidence of Garcia’s mental health history was “not coming in” because there was no affirmative defense of insanity and there is no other defense that has to do with mental illness.

¶ 11 At trial, C.P. testified that she was employed as an esthetician and was working on October 2, 2014, at a fashion show in downtown Chicago. After the event, she went to an after-party at a nearby hotel with John Castilla and another woman. She was wearing leather shorts, a black sweater, a leather jacket, and black shoes. While they were at the party, John invited C.P. to his lake house in Wisconsin. C.P. agreed, and they left the party between 11:30 p.m. and midnight.

¶ 12 John drove C.P.’s 2012 Hyundai Sonata because he had not been drinking and knew where they were headed. C.P. consumed two drinks and was not intoxicated but did not want to drive because it was raining. John stopped to get gas at a gas station at Irving Park Road and Pulaski Road in Chicago. He started the gas pump, and then went inside the store. C.P. remained in the car.

¶ 13 As C.P. sat in her car, Garcia opened the car door and jumped into the driver’s seat. C.P. did not know Garcia. She screamed, and Garcia punched her repeatedly in the face, while cursing at her and telling her to “shut up.” She tried to grab the steering wheel in an attempt to crash the car, but Garcia was able to drive it out of the gas station. C.P.’s attempt to block his punches with her hands resulted in most of her acrylic fingernails breaking off.

¶ 14 As Garcia drove, he told C.P. that he was with the cartel and was there to kill her, and that they had kidnapped the man she was with and threw him in the trunk of a car. Garcia said that he had a gun. C.P. told Garcia that she needed to get home to her son, hoping Garcia would see her as a mother who was raising a child. Garcia continued to drive and then parked.

¶ 15 After he parked, Garcia grabbed C.P.'s breasts. When she resisted, he choked her with both hands around her neck. C.P. could not breathe and nearly lost consciousness. He then ripped the crotch out of C.P.'s shorts and inserted his penis into her vagina, while commenting about her liking what he was doing. He kissed her and licked her face as he touched her "all over" until he ejaculated. After he ejaculated, Garcia returned to the driver's seat and grabbed C.P. by her hair and forced her to "suck his penis" while making vulgar, sexual comments. Then, he grabbed her by her hair and made her get on top of him. Garcia threatened to kill her. Garcia again put his penis in C.P.'s vagina. Garcia also inserted his finger into C.P.'s anus while he had his penis in her vagina. During this interaction, C.P. suffered a burn to her knee from the center console.

¶ 16 C.P. did not consent to any of these acts. Garcia repeatedly threatened to kill her and told her he had a gun. Garcia climbed on top of her in the front passenger seat again, and again inserted his penis into her vagina. Garcia again ejaculated inside her vagina and onto the outside of her vagina and inner legs.

¶ 17 Garcia then began looking through the car for money. C.P. told him that she did not have any money but led him to Chase bank in Orland Park near her home. As he drove, Garcia played with C.P.'s hair and rubbed her shoulders, assuring her everything was going to be okay. He told C.P. about his life, his daughter, and his deceased mother. C.P. continued to tell Garcia about her son, so that maybe Garcia would see that she was "human as a mother[,] as someone who wanted to go home alive." When they arrived at the bank, Garcia asked for C.P.'s debit card. After

telling Garcia that she needed the money for rent, C.P. gave Garcia her debit card. Garcia withdrew \$200 and handed C.P. \$40 afterward, telling her that “if [she] helped him he will help [her].”

¶ 18 Garcia then drove C.P. home and said he would come back the next day. Garcia had taken C.P.’s cell phone from her earlier in the night. In order to get her cell phone back, C.P. asked him how she would get ahold of him the next day. Garcia programmed his phone number into C.P.’s cell phone and gave it back to her. C.P. ran into her house.

¶ 19 C.P. woke up her sister Polly. Polly noted that C.P. was disheveled, had marks on her face and neck, and “her clothes were all torn off her.” C.P. appeared “scared” and “in shock” and told her sister that she had been raped. Polly called 911, and C.P. spoke to the police. C.P. was transported to Palos Hospital, where she submitted to a sexual assault kit. C.P.’s shorts with the crotch torn out were admitted into evidence, as was the recording of the 911 call.

¶ 20 The nurse and doctor who treated C.P. in the emergency department testified that C.P. was crying and her makeup was “smeared all down her face and she was just very anxious.” C.P. relayed the details of her time with Garcia in the car, including his repeated sexual assaults. The nurse documented C.P.’s statements. She also noted injuries to C.P.’s body, including a “bruising hematoma on her forehead.” She further noted that C.P.’s shorts were ripped, and a sexual assault kit was conducted. C.P.’s blood sample, head and pubic hair combings, as well as oral, anal, and vaginal swabs were collected over the course of an approximately two-hour long process.

¶ 21 The doctor testified that C.P. had an injury to her forehead that was consistent with being punched and identified injuries in several photographs, taken in the days following the attack, as being consistent with the actions C.P. had reported. These photographs showed marks on C.P.’s

face and neck, indicating possible punches and strangulation, and an acute injury to her knee. The doctor also opined that C.P.'s broken fingernails could be consistent with blocking punches. He did not note any injuries to her vagina or anus but testified that it is not unusual that a sexual assault victim would not have physical injuries to those areas, as they have "accommodation and flexibility and elasticity that does allow it to take you know some degree of trauma." A urinalysis showed "trace blood" in her urine, which "means that there was evidence of red blood cells in the urinalysis from her bladder or urethral track[,] which can result possibly from trauma or any other number of things." C.P. was prescribed medications to minimize the risk of her contracting any sexually transmitted diseases or HIV and was educated as to an option she could seek to prevent pregnancy.

¶ 22 At approximately 4:15 a.m., on October 3, 2014, Garcia was pulled over driving C.P.'s car a half a mile from her house. An evidence technician recovered a broken fingernail located on the right front side floor and observed white stains on the back of the passenger seat. No weapons were found. C.P. identified Garcia in a lineup later that day.

¶ 23 When Garcia drove out of the gas station with C.P., John Castilla's phone was in the car. John learned what happened to C.P. from a mutual friend and went to the police station, where he spoke with detectives who returned his cell phone. John's phone verified the purchases he made at the gas pump and in the gas station store that night, as his credit card company sent him text messages every time he used his credit card.

¶ 24 Chicago Police Detective Mona Majeed testified that none of the cameras at the gas station that would have captured the relevant areas of the crime were recording at the time of the crime, and the video from Chase bank was not available. She also testified that the phone number that Garcia had entered into C.P.'s phone was likely a "pay-as-you-go type phone," with no

subscriber or service provider information available.

¶ 25 Detective Majeed and her partner, Detective Aileen O’Grady, interviewed Garcia after his arrest. Garcia consented to provide a DNA sample, and a buccal swab was taken. A lineup was conducted wherein C.P. identified Garcia as the person who kidnapped her, sexually assaulted her, and took her car. Forensic testing from samples gathered for the sexual assault kit revealed that “semen was identified on the vaginal, anus and oral swabs.” DNA analysis showed that Garcia’s DNA was on the vaginal and anal swabs, and he could not be excluded from the oral swabs.

¶ 26 The State rested. Garcia indicated that he wished to testify. The State renewed its motion *in limine* to bar Garcia from testifying “that he’s taking any type of medication, has any type of mental health history or anything like that, that the State has—and the State has not been tendered any information of such.” The motion was granted with no objection from the defense.

¶ 27 Garcia testified that, in the early morning hours of October 3, 2014, he was walking in the area of Irving Park Road and Elston Avenues in Chicago, when C.P. pulled up in her silver car and said “hello” and asked “how are you doing?” Garcia denied having a gun or forcing his way into the car. Garcia testified that after he got into C.P.’s car, she drove “[u]p Elston” “[t]owards Pulaski Road, stopped the car to smoke, and “kind of start[ed] touching [him].” According to Garcia, they “had intercourse,” and he did not force himself on her. The intercourse lasted for “[n]o more than, like, ten minutes,” and “[a]fter that, [they] were done.”

¶ 28 C.P. then jumped into the passenger seat and Garcia started driving because “[s]he was intoxicated.” Garcia drove her home, stopping first at a Chase bank, where she used the ATM and withdrew \$200. Garcia dropped her off and she programed his phone number into her phone. He never told her his name, but she told him her name. After dropping her off, he went to the gas

station no more than 10 minutes from her house. Garcia denied having a weapon or punching C.P. and stated they were together no more than an hour and had “more than one variety of a type of sex.”

¶ 29 On cross examination, Garcia testified that he met C.P. at a party in 2013. According to Garcia, when C.P. approached him in her car at Irving Park and Elston, she told him to get in, which he did, but did not know why. Garcia testified that he was coming from the funeral of a “good friend,” but could not remember his friend’s first name. He testified his friend dropped him off in the area of “Irving and Pulaski,” although it was in the complete opposite direction of his home on the west side of Humboldt Park. He was “surpris[ed]” that C.P. “just appeared on the north side of the city on this random day,” because he knew she lived in the south suburbs.

¶ 30 Garcia further testified that after C.P. ordered him to get in, she drove to an unknown side street, stopped, smoked “[s]ome weed” (but Garcia did not), and “[t]hen [they] had intercourse.” Garcia admitted that he had vaginal intercourse with C.P. in the passenger seat and that she had climbed on top of him, but denied having any other form of sexual intercourse with C.P. Later, however, he acknowledged that he put his penis in C.P.’s mouth, claiming she grabbed his penis when he was driving her home. He denied ejaculating and said he told her to stop because he was driving, and so she stopped and fell asleep on his arm. Garcia also denied putting his fingers in C.P.’s anus, and stated he only put his penis in her vagina one time. Garcia repeatedly claimed that he did not want to have sex with C.P. that night, and although she did not “technically” rape him, “she did force herself on top of [him]” and forced his penis into her vagina and her mouth.

¶ 31 According to Garcia, it was C.P.’s idea to stop at the bank, and she was the one who withdrew \$200 from the ATM and gave him \$40 to get gas. Also, according to Garcia, C.P. ripped her own shorts before they had sex. Garcia denied knowing how her fingernails had

broken. He also denied seeing any red marks on C.P.'s neck in the State's exhibits and did not know how C.P. injured her knee as shown in the photos. Garcia conceded that it was a good night for him—he had sex with a pretty woman, she gave him money afterwards, and she then gave him her car and a spare set of keys.

¶ 32 Garcia conceded that after he was stopped by the police, he told the detectives that he was driving his girlfriend's car but denied being unable to tell them his girlfriend's name. He admitted he initially told the detectives he and C.P. had only kissed, but denied admitting they had sex only after the detectives told him of the likelihood of finding his DNA on C.P. He also denied telling the detectives that "if [he] wanted, [he] could have left [C.P.] in a ditch."

¶ 33 Detective Majeed testified in rebuttal that Garcia told her that he was driving his girlfriend's car, but could not remember her name, and that he and C.P. only kissed. She testified that, after explaining that his DNA would likely be found on the victim or at the crime scene, Garcia changed his story and stated the woman had given him oral sex. He told the detectives that he put his number in her phone, and that "if [he] wanted, [he] could have left her in a ditch."

¶ 34 Following closing arguments, the jury found Garcia guilty of all three counts of aggravated criminal sexual assault and one count of aggravated kidnapping. Prior to sentencing, defense counsel filed a motion for new trial, alleging, in pertinent part, that "[s]ometime within the last month, [counsel] discovered evidence that Garcia has an intelligence quotient of 70 (mild mental retardation), suffers from bipolar disorder, and has memory issues." He asserted that Garcia's relatives happened upon the evidence while going through the family's storage boxes. He argued that Garcia was entitled to a new trial because this "newly discovered evidence," if discovered prior to trial, would have changed the outcome of the trial by explaining why Garcia had memory lapses and providing a viable insanity defense. Defense counsel attached the

following to the motion: a release of health information from Advocate Health Care, signed by Garcia July 7, 2007; a letter to Garcia from Advocate Behavior Health Center, indicating Garcia had an out-patient intake appointment on July 11, 2007; a decision of a Social Security Disability Hearing officer (SSR), dated February 22, 2006; a social work treatment summary from January 2004; and a Chicago Public School Report of a Psychological Evaluation from April 23, 2003.

¶ 35 The 2003 psychological evaluation, performed when Garcia was 16 years old, showed that Garcia had been placed in a therapeutic day school due to “aggressive and assaultive behaviors” and that he was in counseling and speech/language services. He had no attention or concentration difficulties during the evaluation, but his response style was “impulsive.” It was also noted that Garcia’s “cognitive ability [wa]s within the borderline range” and his “inappropriate behavior/feelings” score was borderline.

¶ 36 The January 2004 social work treatment summary indicated that, in spring of 2002, Garcia had been “arrested and charged with attempted murder, and possession of a weapon,” and was placed on probation. Garcia tested positive for drugs while on probation and attended a drug rehabilitation center. After he was released from probation, Garcia was charged with possession of an illegal substance. Garcia was impulsive, often yelling out for no reason; disrespectful; and verbally aggressive. Treatment goals included anger management, helping him take responsibility for his own actions, and impulse control.

¶ 37 The SSR indicated that Garcia began receiving benefits when he was 13 years old due to learning disabilities and speech and language delays. His benefits were terminated when he turned 18 because he failed to provide necessary documentation. The termination was later reviewed, based on Garcia’s allegation that he had adult disability due to “Learning Disability and [ADHD],” with Garcia and his mother providing testimony, a psychiatric evaluation dated

November 2005, and his school individualized education program (IEP) from 2005.

¶ 38 The 2005 IEP showed that at 18 years old, Garcia was receiving services for a learning disability and emotional behavior problems. He required adult supervision for all nonacademic and extra-curricular activities, as he often “provoke[d] peers and f[e]d into negative behavior.” He was disrespectful toward authority figures when he was frustrated or angry. He had attention seeking behavior and often got frustrated by his low academic achievement and inability to express himself. A 2005 psychiatric evaluation showed an IQ of 70, in “the lower half of the borderline range of intellectual functioning.”

¶ 39 Garcia, who was 19 at the time of the termination of disability benefits hearing, testified that his behavior was “fine,” he had no trouble with the law, and was not involved with gangs or drugs or alcohol. The hearing officer found that Garcia “testified very well on his own behalf. He did not have a problem comprehending any questions directed to him. He had a very good memory about basketball scores or different players *** he loves the sport.” In finding Garcia disabled, the hearing officer noted that Garcia had been diagnosed with “Severe learning Disorder and a history of Severe Conduct Disorder[,] *** [ADHD] and Speech and Language Delays.” The hearing officer further noted the limitations on Garcia’s cognitive and social interaction skills, where Garcia gets “frustrated,” can be “disrespectful to authority figures,” has limitations on his ability to interact appropriately with co-workers and the general public, and exhibits “impulsive behavior and low self-esteem.” The hearing officer reinstated Garcia’s social security benefits, based on the adult criteria for disability.

¶ 40 At the hearing on Garcia’s motion for new trial, defense counsel stated that these documents could not have been discovered sooner because he came on the case “somewhat late in the game,” Garcia’s mother is deceased, and Garcia does not have a relationship with his

father. Defense counsel pointed out that the documents showed Garcia “has an IQ of 70,” meaning Garcia is “developmentally disabled but borderline or mildly retarded,” and argued that Garcia has “bipolar or schizophrenia,” as Garcia self-reported to the investigator who prepared his presentence investigation report (PSI). Counsel further stated that the documents show Garcia “has memory issues, a specific disorder and a primary grade academic level.” Counsel argued that had he known about these issues sooner, he could have presented the case differently and could have explained to the jury Garcia’s “speech and his ability to remember specific details.”

¶ 41 Counsel conceded that Garcia had told him he was receiving social security disability benefits prior to trial and acknowledged that he had so informed the court prior to trial. Counsel also admitted that he was aware of Garcia’s “bipolar or schizophrenia condition” prior to trial and was aware of the BCX before he filed his appearance. Nevertheless, counsel argued that Garcia was entitled to a new trial.

¶ 42 The State argued that the documents provided by Garcia showed that Garcia “had a learning disability and an attention deficit disorder, not a mental illness,” and that Garcia had “not provided any evidence that he suffered from bipolar disorder, a mental disorder, or anything else that would entitle him to a new trial.” The State referenced the BCX done in relation to this case wherein Garcia was found to be legally sane at the time of the offense, with the psychologist determining that “Garcia was not manifesting symptoms of a mental disease or defect which would have caused him to lack substantial capacity to appreciate the criminality of his conduct.” The psychologist rendered this decision after reviewing Garcia’s medical records from Cermak Hospital (the hospital at the jail where he was detained), wherein Garcia denied any symptoms of psychosis or mania and where the Cermak psychiatrist believed Garcia was exaggerating symptoms and “manipulating his conditions” in an attempt to help his case.

¶ 43 In reply, defense counsel conceded that his “client did not get medical treatment. Perhaps he should have,” and reiterated that the PSI states that Garcia self-reports that “he’s bipolar and schizophrenic.” Counsel again argued that Garcia’s mental illness could explain some of his memory loss issues at trial, like not remembering his good friend’s name who had passed away. The court denied Garcia’s motion for new trial, and the parties proceeded to sentencing.

¶ 44 The PSI reflected that Garcia had been adjudicated delinquent in 2002 for unlawful possession of a weapon (at sentencing, the prosecutor indicated that Garcia was in possession of ammunition), in 2003 for possession of a controlled substance, and in 2004 for possession of a controlled substance. He was convicted of delivery of cannabis in 2014, for which he received conditional discharge and had a pending possession of cannabis case. Contrary to the January 2004 social work treatment summary, the PSI did not indicate that Garcia had ever been “arrested and charged with attempted murder.”

¶ 45 Garcia reported that he was raised by his mother, a school nurse; had a “good” childhood; and was close with his siblings. He graduated from an alternative high school, where he was a “good” student and had received Social Security benefits for 15 years due to a disability. He reported that he joined the Maniac Latin Disciple street gang when he was 10 years old, and he “called the shots [as] a well-known leader,” although counsel verbally indicated that Garcia denied he ever made those statements to the investigator. Garcia stated that he had been diagnosed with bipolar disorder and schizophrenia 20 years prior but had not participated in treatment for the past 5 years.

¶ 46 The court sentenced Garcia to 25 years on each count of the four counts for which he was convicted, to run consecutively to each other, for a total of 100 years. Garcia did not file a motion to reconsider the court’s sentence. Garcia appealed.

¶ 47 On appeal, he argued that the trial court erred in denying his motion for a new trial based on newly discovered evidence and ineffective assistance of trial counsel. He also argued that his 100-year sentence violated the United States and Illinois Constitutions and was otherwise excessive. We affirmed the judgment of Garcia’s conviction but vacated his sentence and remanded to the trial court for a new sentencing hearing. We found that Garcia was denied a fair sentencing hearing under the second prong of plain error because he was penalized for exercising his constitutional right to trial where the circuit court, despite having recommended a term of 36 years at a plea bargain conference, sentenced him to 100 years’ imprisonment. We also found that the circuit court abused its discretion by failing to adequately consider Garcia’s intellectual disability and rehabilitative potential. We remanded to the circuit court for resentencing. *Garcia*, 2023 IL App (1st) 172005, ¶ 104.

¶ 48 The circuit court ultimately sentenced Garcia to 18 years on each count, for an aggregate term of 72 years’ imprisonment. The defense’s oral motion to reconsider was denied, and Garcia filed a timely notice of appeal.

¶ 49 II. ANALYSIS

¶ 50 Garcia first argues that the 72-year sentence he received on remand is excessive because the circuit court failed to adequately consider his mitigation evidence. In addition, he asserts that the sentencing court has punished him for exercising his right to trial. Thus, he urges us to vacate his sentence and either reduce his sentence or remand for a new sentencing hearing

¶ 51 All 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. art. I, § 11. In that framework, a trial court has broad discretionary powers in choosing the appropriate sentence a defendant should receive. *People v. Jones*, 168 Ill. 2d 367, 373 (1995). The trial court is

presumed to have considered all relevant sentencing factors, both aggravating and mitigating, but is not obligated to recite or assign a value to each factor. *People v. Meeks*, 81 Ill.2d 524, 534 (1980); *People v. Hill*, 408 Ill.App.3d 23, 30 (2011).

¶ 52 There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and the court is presumed to have considered any evidence in mitigation that is before it. *People v. Partin*, 156 Ill. App. 3d 365, 373 (1987). The imposition of a sentence is a matter within the trial court's discretion, and a reviewing court has the power to disturb the sentence only if the trial court abused its discretion. *Jones*, 168 Ill. 2d at 373-74. A reviewing court will not substitute its judgment merely because it would have weighed the factors differently. *People v. Alexander*, 239 Ill.2d 205, 213 (2010).

¶ 53 We begin by noting that Garcia was convicted of three counts of aggravated criminal sexual assault and one count of aggravated kidnapping, all Class X felonies. Each of the four counts is punishable by a sentencing term of 6 to 30 years (720 ILCS 5/11-1.30, 10-2 (West 2018)), and the sentences imposed on each count are required to run consecutively (730 ILCS 5/5-8-4(d) (West 2018)). The 72-year sentence Garcia received on remand falls within the applicable aggregate sentencing range of 24 to 120 years. A sentence within the statutory range is presumed proper (*People v. Lopez*, 2025 IL App (1st) 232120, ¶ 41) and will be deemed excessive only where it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense (*People v. Stacey*, 193 Ill. 2d 203, 210 (2000)). Garcia must serve at least 85% of his 72-year sentence. 730 ILCS 5/5-8-4(g)(4), 3-6-3(a)(2)(ii) (West 2024).

¶ 54 With respect to aggravation and mitigation, Judge Walowski reviewed the updated PSI, mitigation materials, institutional records, trial transcripts, and the procedural history. She found

Garcia’s intellectual disability, difficult childhood, and family support mitigating. She also concluded that Garcia’s mental-health diagnoses were both mitigating and aggravating—mitigating insofar as they reduced culpability, and aggravating insofar as his historical noncompliance with treatment increased the likelihood of relapse and future dangerousness. The court found his disciplinary record relevant to rehabilitative potential and concluded that the infractions indicated difficulty adjusting to institutional structure. The court further agreed with the prior judge that Garcias’s trial testimony reflected a lack of remorse. The court also heard a new victim-impact statement. The facts of the offense, which involved a sustained and violent attack resulting in significant ongoing trauma to the victim, were properly weighed as substantial aggravation.

¶ 55 In imposing the sentence, the circuit court expressly considered the required statutory factors in mitigation and aggravation. See 730 ILCS 5/5-5-3.1 (West 2024) (listing mitigating factors); 730 ILCS 5/5-5-3.2 (West 2024) (listing aggravating factors). Garcia acknowledges that the circuit court considered the statutory factors in mitigation and aggravation. Yet he argues that the sentencing court improperly considered his intellectual disability and mental illness as aggravation, failed to treat his lack of criminal history as mitigating, and failed to thoroughly evaluate his rehabilitative potential. In short, Garcia challenges the relative weight assigned to these factors by the circuit court. We may not substitute our judgment for that of the circuit court “simply because we would have weighed the factors differently.” *People v. Cavazos*, 2023 IL App (2d) 220066, ¶ 73. See *People v. Dominguez*, 255 Ill. App. 3d 995, 1004 (1994) (noting that “[w]here relevant mitigating evidence is before the court, it is presumed that the court considered it absent some indication in the record to the contrary other than the sentence itself”).

¶ 56 Garcia argues the sentencing court failed to properly apply the statutory mitigating factor for intellectual disability. An intellectual disability is a mitigating factor at sentencing and is defined as a “sub-average general intellectual functioning generally originating during the maturation or reduced learning ability or inadequate social adjustment.” 730 ILCS 5/5-5-3.1(a)(13) (West 2024).

¶ 57 Here, the circuit court expressly acknowledged the diagnosis and treated it as mitigating. The weight given to mitigating evidence lies within the court’s discretion, and nothing in the record indicates that the court disregarded or minimized this factor. See *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 104.

¶ 58 Garcia next argues that the court improperly treated his mental illness as aggravation. Under section 5/5-5-3.1(a)(16) (730 ILCS 5/5-5-3.1(a)(16) (West 2024)), mental illness is a statutory mitigating factor when, at the time of the offense, the defendant was suffering from a serious mental illness which, though insufficient to establish the defense of insanity, substantially affected his or her ability to understand the nature of his or her acts or to conform his or her conduct to the requirements of the law. However, a judge considering evidence of mental illness at sentencing might view the information as either mitigating or aggravating, depending on whether it evokes compassion or demonstrates possible future dangerousness. *People v. Thompson*, 222 Ill. 2d 1, 43 (2006).

¶ 59 Here, the resentencing court did not find Garcia’s mental illness diagnosis aggravating. Rather, it treated Garcia’s repeated failure to adhere to prescribed treatment, resulting in symptom relapses and increasing risk of dangerous behavior as aggravating. This was permissible. See *People v. Heider*, 231 Ill. 2d 1, 20-21 (2008) (mental illness evidence may be viewed as demonstrating possible future dangerousness and may be treated as aggravating rather

than mitigating).

¶ 60 Garcia next contends that the resentencing court failed to treat his limited criminal history as mitigating. The court noted his juvenile adjudications and adult misdemeanor history, found it “not significant,” and did not rely on it as substantial aggravation. The court was not required to characterize that history as mitigation. See 730 ILCS 5/5-5-3.2 (West 2024).

¶ 61 Garcia also argues that the court failed to adequately consider his rehabilitative potential. The potential for rehabilitation need not be given any greater weight than the seriousness of the offense. *People v. Alexander*, 239 Ill. 2d 205, 213-14 (2010) (quoting *People v. Coleman*, 166 Ill. 2d 247, 261 (1995)). Here, the court reviewed multiple IDOC disciplinary infractions, none violent, but demonstrating repeated refusal to follow orders in a controlled environment. The court found repeated rule violations relevant to rehabilitation and adjustment to institutional structure. The court was entitled to consider institutional misconduct in assessing rehabilitative prospects. See, e.g., *People v. Willis*, 2013 IL App (1st) 110233 (prison disciplinary reports were relevant to the likelihood that the defendant would commit other offenses).

¶ 62 Garcia next argues that the circuit court erred in “using [his] trial testimony to find that he lacked remorse because it ignored *Garcia I*’s instruction to determine what role his intellectual disability may have played in explaining his performance on the witness stand.” We disagree and find that the court did not abuse its discretion by failing to consider his intellectual disability.

¶ 63 In *Garcia I*, we noted that, “[a]t the very least, [defendant’s] statements and behaviors reasonably beg the question whether [defendant’s] apparent belief that he could dupe the jury was due, at least in part, to his intellectual disability.” *Id.* ¶ 98. We further stated that it was “at least conceivable that [his] intellectual disability may mitigate his sentence, and the court abused its discretion in failing to adequately consider it.” *Id.* At resentencing, the circuit court explicitly

acknowledged Garcia’s documented intellectual disability and its impact, exactly as *Garcia I* instructed. Although the resentencing court ultimately agreed with the prior sentencing judge that Garcia’s trial testimony reflected a lack of remorse, that does not violate *Garcia I* where the court clearly considered his intellectual disability.

¶ 64 Garcia also argues that the 72-year sentence imposed on remand constitutes a trial tax. The record does not support this claim. The resentencing judge did not participate in pretrial proceedings, expressly declined to rely on the prior Rule 402 conference recommendation because she was not present, and relied on the statutory factors and the evidence presented at sentencing when she resentenced Garcia.

¶ 65 A disparity between a plea offer and a posttrial sentence, without more, does not establish an improper trial penalty. *People v. Walker*, 2021 IL App (4th) 190073, ¶¶ 65-66 (“Where the trial court is not involved in the plea-bargaining process, we emphatically reject the notion that a permissible inference arises that a ‘trial tax’ was imposed instead of the exercise of a trial court’s independent discretion at sentencing.”). In addition, unlike *Garcia I*, there was no probability that discord between the court and defense counsel played a part in the sentence Garcia received on remand. *Garcia*, 2023 IL (1st) 172005, ¶ 86 (“In this case, however, we find it entirely probable, based on the disparity between the sentence offered in exchange for a plea of guilty and the sentence Garcia received, that the discord between the court and Avila played a part in the sentence Garcia received after trial.”). Nothing in *Garcia I* transformed the 36-year recommendation into a mandatory comparative baseline; the mandate required proper consideration of intellectual disability, rehabilitative potential, and the prohibition on penalizing the right to trial — not adoption of the prior judge’s pretrial assessment.

¶ 66 The resentencing court considered all relevant mitigation, relied on permissible

aggravating factors, complied with the mandate of *Garcia I*, and imposed a sentence within statutory parameters supported by the record. Garcia has not demonstrated an abuse of discretion. Even applying the heightened ‘exacting scrutiny’ referenced in *Garcia I* for lengthy or *de facto* life sentences, a sentence within the statutory range is not manifestly disproportionate where the seriousness of the offense, the sustained physical and sexual violence, the victim’s continuing trauma, and the defendant’s documented treatment noncompliance together supply compelling aggravation fully supporting the court’s exercise of discretion. His 72-year sentence does not vary from the spirit and purpose of the law and is not manifestly unreasonable.

¶ 67

III. CONCLUSION

¶ 68 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 69 Affirmed.

¶ 70 JUSTICE MIKVA, dissenting:

¶ 71 In 2023, this court held that Mr. Garcia’s 100-year sentence was excessive. *People v. Garcia*, 2023 IL App (1st) 172005. We recognized that this sentence, 85% of which Mr. Garcia would have to serve, was a *de facto* life sentence—given his age and the length of the sentence, there was no doubt that he would die in prison. *Id.* ¶¶ 70-71. In fact, our supreme court has held that, in sentencing a juvenile, any sentence of over 40 years is a *de facto* life sentence. *People v. Buffer*, 2019 IL 122327, ¶¶ 41-42. Mr. Garcia received a far longer sentence than that. Not only was this sentence excessive, we found that the court committed second-prong plain error in imposing it, denying Mr. Garcia a fair sentencing hearing, because the sentence constituted an impermissible trial tax, failed to take into account Mr. Garcia’s significant intellectual disability, and ignored the possibility of his becoming rehabilitated. *Id.* ¶¶ 65-103.

¶ 72 The sentence that the circuit court imposed on remand was 72 years. With service at 85%,

the sentence requires Mr. Garcia to spend over 60 years in prison. This is, again, a *de facto* life sentence, not because Mr. Garcia was a juvenile subject to the sentencing protections stemming from *Buffer* and other decisions, but for the simple fact that, because he was 27 years old at the time he went into custody, will be at least 88 years old before reaching any potential out date. This almost assuredly means that there will be no out date and he will die in prison. As a practical matter, this is precisely the same sentence that Mr. Garcia received initially and that we have already found to be excessive.

¶ 73 I do not read the circuit court’s sentencing decision as consistent with the mandate we issued. We directed that the circuit court conduct a new sentencing hearing, which it certainly did. However, we also instructed that this new hearing be “consistent with our analysis.” *Id.* ¶ 106.

¶ 74 That analysis included submitting any *de facto* life sentence to “exacting scrutiny” to ensure that a defendant was not being taxed for choosing to go to trial, rather than pleading guilty. *Id.* ¶ 85. Here, as in our initial case, Mr. Garcia was given a sentence that was significantly greater than the 36-year sentence that the court recommended at the Rule 402 conference. More importantly, he could survive that recommended sentence, but not the one he received after trial. We specifically found it “significant that, for [Mr.] Garcia, the plea-trial sentencing disparity represents the difference between possible release from prison in his late fifties and definitely spending the rest of his life in prison.” *Id.* Here, as in the initial sentence, the price that Mr. Garcia paid for going to trial was losing any right to spend any part of his life outside of prison.

¶ 75 Our analysis also mandated that the sentencing court recognize that Mr. Garcia’s intellectual disability (a documented IQ of 70) was the likely reason that Mr. Garcia “spun wild fabrications of what occurred” when he testified at trial. *Id.* ¶ 98. The original sentencing judge was clearly horrified by Mr. Garcia’s testimony and appeared to rely on that in imposing sentence.

That was no less true on resentencing, where the sentencing judge concluded her explanation for the sentence she imposed by pointing to Mr. Garcia's trial testimony, saying that she found that an "important" consideration, without recognizing how his low IQ could have factored into that testimony.

¶ 76 Finally, in our initial decision, we mandated that the circuit court consider Mr. Garcia's potential for rehabilitation. *Id.* ¶¶ 99-101. On resentencing, the circuit court disregarded this factor because of Mr. Garcia's "infractions" while in custody, even while acknowledging that those infractions were relatively minor. As Mr. Garcia points out, the State presented a total of eight tickets and Mr. Garcia was in custody for nine years. More importantly, all of these tickets were for nonviolent infractions like improperly hanging T-shirts. Mr. Garcia also points out that the resentencing court failed to consider these infractions in light of Mr. Garcia's intellectual limitations.

¶ 77 In short, while I think that both the circuit court on remand and this court on review have followed the general parameters that guide sentencing decisions, in this case we gave specific instructions to the circuit court and I believe that those instructions were not followed. Rather than remand again, I would impose a sentence that follows the analysis that we asked the circuit court to follow when we remanded this case. I respectfully dissent.