2022 IL App (3d) 190672-U

Order filed August 4, 2022

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2022

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 13th Judicial Circuit, La Salle County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-19-0672
v.	)	Circuit No. 18-CF-151
	)	
EVERETT CLINTON,	)	Honorable Cynthia M. Raccuglia,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice O'Brien and Justice Peterson concurred in the judgment.

ORDER

¶ 1 *Held*: The court did not err in admonishing potential jurors under Illinois Supreme Court Rule 431(b). Defendant's sentence is not excessive.

¶ 2 Defendant, Everett Clinton, appeals his conviction for harassment of a witness. He argues that the La Salle County circuit court erred in admonishing the potential jurors under Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) by grouping the four principles into one broad statement of law. Defendant further argues that his 15-year sentence was excessive. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with two counts of harassment of a witness (720 ILCS 5/32-4a(a)(2) (West 2018)). Count I alleged that defendant communicated with Bianca Escamilla, who was expected to serve as a witness, in such a manner as to produce mental anguish or emotional distress and count II alleged that defendant threatened injury to Escamilla.

¶ 5 The matter proceeded to a jury trial. During jury selection, the court admonished some potential jurors that

> "The defendant is presumed innocent. And that presumption exists throughout this trial. Now that means the defendant doesn't have to testify. He doesn't have to do anything. He has nothing to prove. It's the State's burden to prove the defendant guilty beyond a reasonable doubt. And if the defendant does not testify or if he does not present evidence in defense, you cannot assume guilt or anything else by that because he has nothing to prove. He doesn't have to.
>
> Now, having said that, [juror], do you understand and accept that principle of law?"

The court used substantially similar language in admonishing the rest of the jurors.

¶ 6 The evidence generally established that defendant came into contact with Escamilla at a store. He took a picture of Escamilla and made statements to her that scared and upset her. Escamilla was going to testify as a witness against defendant in a separate criminal proceeding, but defendant pled guilty in that matter. The jury found defendant guilty of count I and not guilty of count II.

¶ 7 At the sentencing hearing, the State presented testimony from Mark Larson, who worked at the La Salle County jail. On the day of defendant's trial, after the verdict, Larson was

responsible for taking defendant to jail. When Larson was exiting the courtroom with defendant, defendant "kicked the door and caused the handle to go through the wall."

¶ 8 The State advised the court that defendant faced a sentencing range of 6 to 30 years' imprisonment and that the sentence would be consecutive to his sentence in another matter because he was on bond when he committed the instant offense. The State noted defendant's criminal history—which included weapon, drug, and battery convictions—as an aggravating factor. The State further argued there was a need to deter others and requested a sentence of 15 years' imprisonment. In mitigation, defense counsel argued that defendant had mental health issues. Defense counsel requested the minimum of six years' imprisonment.

¶ 9 The presentence investigation report (PSI) noted that defendant reported that he had a mental health evaluation, but he could not remember his diagnosis. Additionally, the PSI set forth that in a PSI from another case, defendant reported that he had been diagnosed with bipolar disorder and attention deficit hyperactivity disorder.

¶ 10 Defendant made a statement to the court. He told the court he was "so sorry I had to be in your courtroom because of what someone said. I had so many cases on me in this court since I have been here. *** They put every case they can on me."

¶ 11 The court noted that defendant would have to deal with the "real world" without the use of alcohol, ecstasy, and marijuana. It asked "[f]rom your own admission, how would anybody know if you had any mental health problems? Because from my [PSI] and your own admissions, since you were a teenager and up until 2018, you used those drugs every single day." The court stated

> "There is no mitigating factor in this case, not even the mental health because you did have some therapy and treatment. You know, marijuana is known to be

> therapeutic, I guess—and that's the issue—so you have your own therapy. But Ecstasy is dangerous, and you were using Ecstasy every day until you in 2018 were imprisoned and charged with these crimes. And today you don't have the use of that. And in addition to what I said as no mitigating factors, you are blaming the State, the police, everybody but yourself."

The court continued, "I watched what you did when the verdict came in. You hit the wall. You went beserk [*sic*]. And you sit here today and are putting all the blame on everybody else but yourself." The court sentenced defendant to 15 years' imprisonment. Defendant filed a motion to reconsider sentence. The court denied the motion and defendant appeals.

¶ 12 II. ANALYSIS

¶ 13 A. Rule 431(b) Admonishments

¶ 14 In his opening brief, defendant argued that the court erred by combining the four principles of Rule 431(b) into one statement. He acknowledged that he forfeited this issue but requested plain error review, arguing the evidence was closely balanced. In his reply brief, while not explicitly conceding this issue, he notes that our supreme court has since determined that the procedure employed by the circuit court in this matter does not amount to plain error. See *People v. Birge*, 2021 IL 125644, ¶ 41. The first step in applying the plain error doctrine is to determine if an error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 15 Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) provides that the court shall ask prospective jurors if they understand and accept

> "the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the

> defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects."

Rule 431(b) further provides that the "method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. July 1, 2012)

¶ 16 Here, rather than separately asking if the potential jurors understood and accepted each principle set forth in Rule 431(b), the court stated all four principles together and then asked if the potential jurors understood and accepted the principles. The supreme court, in *Birge*, 2021 IL 125644, ¶¶ 4, 23, 41, addressed whether this procedure comports with the rule, and it determined that there was "no merit to defendant's argument that the purpose of the rule is thwarted by reciting the four principles together" and thus, the circuit court had not erred. In accordance with *Birge*, we necessarily conclude that the court in this matter did not err in stating the Rule 431(b) principles together. Finding no error, we need not continue further with the plain error analysis.

¶ 17 B. Sentence

¶ 18 Defendant argues that his 15-year sentence is excessive. In support, he argues that the court should have considered his mental health and drug addiction issues as mitigating factors and it failed to take into consideration the high cost of imprisonment. Further, he argues that the sentence was not warranted by the seriousness of the offense, which caused no physical harm.

¶ 19 "It is well settled that a trial judge's sentencing decisions are entitled to great deference and will not be altered on appeal absent an abuse of discretion." *People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007). A reviewing court "must not substitute its judgment for that of the trial court

simply because the reviewing court would have weighed the factors differently." *Id.* at 800-01. A sentence that falls within the statutorily prescribed range is presumptively valid (*People v. Busse*, 2016 IL App (1st) 142941, ¶ 27), and "is not an abuse of discretion unless it is manifestly disproportionate to the nature of the offense" (*People v. Franks*, 292 Ill. App. 3d 776, 779 (1997)). "Importantly, it is the seriousness of the crime—rather than the presence of mitigating factors—that is the most important factor in determining an appropriate sentence." *People v. Decatur*, 2015 IL App (1st) 130231, ¶ 12. We presume the circuit court considered the relevant factors and mitigation evidence presented. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. The court is not required to "recite and assign a value to each factor." *Id.* It is defendant's burden to show that the court did not consider the relevant factors. *Id.*

¶ 20 First, defendant's 15-year sentence is within the statutory sentencing range of 6 to 30 years' imprisonment and is thus, presumptively valid. See *Busse*, 2016 IL App (1st) 142941, ¶ 27; 730 ILCS 5/5-4.5-95(b) (West 2018) (providing for Class X sentencing for certain Class 1 or Class 2 felonies based upon defendant's criminal history); *id.* § 5-4.5-25(a) (providing a sentencing range of 6 to 30 years' imprisonment for Class X felonies); 720 ILCS 5/32-4a(a) (West 2018) (providing that harassment of a witness is a Class 2 felony).

¶ 21 With regard to defendant's drug addiction issues, although defendant argues the court should have considered his drug addiction as a mitigating factor, the court was not required to do so. See *People v. Shatner*, 174 Ill. 2d 133, 159 (1996) ("Simply because the defendant views his drug abuse history as mitigating does not require the sentencer to do so."). Moreover, "the sentencing judge was free to conclude, under the circumstances, that defendant's drug history simply had no mitigating value but was, in fact, aggravating." *Id.* at 160. Therefore, the court's

refusal to consider defendant's drug addiction as a mitigating factor was not an abuse of discretion.

¶ 22 With respect to defendant's mental health issues, the court is required to consider a defendant's mental health as a mitigating factor if "[a]t 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." 730 ILCS 5/5-5-3.1(a)(16) (West 2018); see also *id.* § 5-5-3.1(a)(4) (requiring the court to consider in mitigation if "[t]here were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense"). No evidence was presented that defendant had a serious mental illness at the time of the offense that affected his ability to understand the nature of his acts or conform his conduct to the law. The only evidence the court had regarding defendant's mental health were defendant's statements in the PSIs that he had been evaluated for mental illness but could not remember his diagnosis and that he had been diagnosed with bipolar disorder and attention deficit hyperactivity disorder. No information was presented to the court as to how those purported diagnoses would affect defendant, let alone impact his ability to understand the nature of his actions or conform his conduct to the law or tend to excuse or justify his conduct. Therefore, the court was not required by statute to consider defendant's mental health issues as mitigating and it was not otherwise an abuse of discretion to refuse to do so under the circumstances presented here.

¶ 23 Additionally, although defendant asserts the sentence is excessive in light of the fact that no physical harm occurred, it was within the circuit court's discretion to weigh all of the factors and come to a sentencing decision, which it did well within the statutory range. Notably, while

defendant's sentence was far from the maximum allowed, "[t]he existence of mitigating factors does not obligate the trial court to reduce a sentence from the maximum sentence allowed." *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998). We cannot say the court abused its discretion in weighing the applicable factors.

¶ 24 Last, although defendant asserts that the court failed to consider the cost of incarceration, he has pointed to no affirmative evidence in support of that assertion. The court is not required to recite every factor and we presume the court considered all relevant factors in the absence of an affirmative showing to the contrary. See *Wilson*, 2016 App (1st) 141063, ¶ 11.

¶ 25 III. CONCLUSION

¶ 26 The judgment of the circuit court of La Salle County is affirmed.

¶ 27 Affirmed.