2025 IL App (2d) 240370-U
No. 2-24-0370
Order filed June 18, 2025

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. FIDEL BELLO, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 21-CF-945 Honorable David P. Kliment, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Kennedy and Justice Mullen concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in sentencing defendant, Fidel Bello ("Bello") to 35 years in prison for first-degree murder, as the sentence is neither a *de facto* life sentence nor disproportionate to the offense given the court's proper consideration of defendant's youth, rehabilitative potential, and other mitigating factors.

¶ 2 Bello appeals his 35-year prison sentence following his plea of guilty to first-degree murder. He argues that this sentence violates the proportionate penalties clause of the Illinois constitution and is excessive in light of *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on two counts of first-degree murder and two counts of unlawful possession of a firearm following the slaying of Samuel Ortiz-Rodriguez in Aurora on May 24, 2021. Defendant was 17 years old at the time of the offense. Defendant pled guilty to count II, first-degree murder, on March 30, 2023. The State dismissed the companion charges as well as a separate felony from 2023. Count II alleged that defendant personally discharged a firearm that caused the death of Ortiz-Rodriguez, knowing that his acts created a strong probability of death or great bodily harm.

¶ 5 As its factual basis, the State alleged that on May 24, 2021, defendant and co-defendant Cesar Ponce, both active members of the Latin Kings street gang, traveled on foot from Ponce's house at 532 East Downer Place to the area of 400 South Spencer Street, which is a known area of the Insane Deuces, a rival gang to the Latin Kings. There, defendant observed the victim, Ortiz-Rodriguez. Defendant then made two hand signs: the first being anti-Deuce, and the second being pro-Latin Kings. Defendant turned, pulled a loaded revolver from his waistband, and fired three times at the victim. Two of the bullets struck Ortiz-Rodriguez in the head, killing him instantly. The Bureau of Alcohol, Tobacco, and Firearms caught the entire incident on video while monitoring the area for Insane Deuce gang activity. Defendant fled, changed his clothing, and shaved off his sideburns and eyebrows. Police found gunshot residue on defendant's hands upon his arrest. The defense stipulated to these facts. The court accepted defendant's plea of guilty and continued the case for sentencing.

¶ 6 At the sentencing hearing, the State presented testimony from five Aurora police officers and one Kane County jail sergeant. This testimony revealed an escalating pattern of criminal conduct. First, on December 3, 2020, defendant stole a car from the parking lot of Holy Angels

Church in Aurora. Police arrested defendant and charged him with possession of a stolen vehicle, possession of a converted vehicle, and obstruction of justice. A month later, police linked defendant to the January 15, 2021, murder of Fernando Carapia. Surveillance video showed defendant with Daniel Aguirre, who was later convicted of the murder, approximately one minute after Aguirre gunned Carapia down behind 311 South Spencer Street. Police ultimately did not charge defendant in connection with Carapia's murder.

¶ 7 Police next encountered defendant on March 18, 2021, in response to a report that three men in a silver SUV had fired at another vehicle near 2177 North Elmwood in Aurora. Aurora police stopped a vehicle matching the report's description, and its occupants fled on foot. By following the occupants' tracks in the snow, officers located defendant hiding in the backyard of 910 Charles Street. Defendant refused to identify himself to police and was arrested.

¶ 8 On April 11, 2021, a 911 caller reported a disturbance at his family gathering. He had observed a black Kia circling the area of Plumb Street in Aurora, whereupon its occupant, a young Hispanic male, flashed a Latin Kings hand sign and declared "this is a Latin Kings neighborhood." The caller followed the Kia in his own vehicle, recording on his cell phone. At the intersection of Elmwood and Charles, the Kia's occupant fired a single shot out of the car's window. The caller shared his video with Aurora police, who in turn shared it with the FBI Gang Task Force. The Task Force related that defendant drove a black Kia and lived at 307 Sheldon, near the location of the shooting. Proceeding to 307 Sheldon, detectives observed a black Kia in the driveway. This Kia bore a distinctive decal like that shown on the cell phone video. The caller refused to pursue the matter with police, fearing gang-related retaliation.

¶ 9 Then, nine days before the instant murder, Aurora police stopped defendant and four other Latin Kings members in their car. Defendant was dressed in black and red, Latin King "war

colors." Finally, the night before the murder, defendant was again observed wearing war colors, this time flashing gang signs at passing cars near State and Spring streets.

¶ 10 Defendant's arrest and incarceration for Ortiz-Rodriguez's murder did not, evidently, temper his Latin Kings affiliation. On August 1, 2022, defendant participated in the beating of Graciano Perez Guzman inside of Guzman's cell, apparently as part of initiating Guzman into the gang. Five days later, jail officials observed that defendant had a new tattoo: a cross bearing the words "Latin Kings." Defendant was charged yet again in January 2023, this time for fighting with other inmates.

¶ 11 In mitigation, the defense presented the testimony of Santillinty Garcia, who was present at the shooting. Garcia related that, just prior to being shot, Ortiz-Rodriguez had his hands up, which Garcia interpreted as Ortiz-Rodriguez "trying to gang bang." The defense also presented evidence bearing on defendant's psychological profile. Among this evidence was a written report and video from Dr. James Garbarino, a developmental psychologist. Garbarino's work identified *Miller* factors present in defendant's case, including his immaturity, impetuosity, and family dysfunction. Prominent in Dr. Garbarino's analysis was the murder of defendant's father and its effect on defendant's development.

¶ 12 In announcing its sentence, the Court observed that defendant had his back to the victim immediately prior to firing on him and concluded that this was inconsistent with him feeling startled by Ortiz-Rodriguez. The Court acknowledged defendant's low IQ but found no indication of cognitive disability. As to impetuosity, the Court observed that defendant had months to consider the consequences of further criminal action after his involvement in Carapia's murder.

¶ 13 The trial court acknowledged the inherent immaturity of individuals defendant's age, as well as the negative influence of his gang membership, but stopped short of finding significant

peer pressure. It observed that "there [was] no one of rank ordering him around" and determined that defendants' actions sprang principally from a desire to "become a full-fledged member of the Latin Kings." It noted defendant's prior contact with the criminal justice system, although admitted that this contact was not extensive. It considered defendant's statement of allocution, finding in it genuine remorse.

¶ 14 Regarding the defendant's family, educational, and social background, the Court acknowledged the trauma of losing his father and grandmother but noted that many people experience such losses without committing murder. It discounted Dr. Garbarino's discussion of individuals who grow up in "urban war zones," noting that defendant did not grow up in a bad neighborhood but rather sought out the gang life. The Court thought that defendant was capable of rehabilitation, "provided he engages in the things he needs to do in order to be rehabilitated."

¶ 15 In announcing the sentence, the court summarized its reasoning as follows:

> "Taking into account all of the factors in aggravation and mitigation, taking into account the sentencing ranges available to the court, taking into account the age of the defendant at the time of the commission of the offense, Dr. Garbarino's report, all the evidence I heard in aggravation and mitigation in this case, I'm going to impose a sentence of 35 years in the Department of Corrections, that sentence is to be served at 100 percent. The defendant is eligible for parole after serving 20 years of this sentence."

¶ 16 Defendant filed a Motion to Reconsider Sentence on August 17, 2023. Following a hearing on October 10, 2023, the court denied this motion. Defendant filed a timely notice of appeal on October 10, 2023. On April 9, 2024, this Court remanded this case for post-plea proceedings pursuant to Illinois Supreme Court Rule 604(d). On remand, defendant filed an amended motion to reconsider and a Rule 604(d) certificate on May 30, 2024. On June 20, 2024, the circuit court again denied the motion. Defendant filed a timely notice of appeal on June 20, 2024.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues that his 35-year sentence violates the proportionate penalties clause and is excessive in light of the factors set forth in *Miller v. Alabama*, 567 U.S. 460 (2012), which have been codified in 730 ILCS 5/5-4.5-105(a) (West 2024). The State argues defendant's sentence was proper. For the following reasons, we affirm.

¶ 19 Whether a sentence violates the proportionate penalties clause is a purely legal question that we review *de novo*. *People v. Cavazos*, 2023 IL App (2d) 220066, ¶ 67. That said, a trial court's sentencing determination is "entitled to great deference and weight." And is reviewed for an abuse of discretion. *People v. La Pointe*, 88 Ill.2d 482, 492-93 (1981).

¶ 20 The proportionate penalties clause provides that "[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., art I, §11. A sentence contravenes the proportionate penalties clause when it is "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community." *People v. Clark*, 2023 IL 127273, ¶ 51. "The legislature's determination of a particular punishment for a crime in and of itself is an expression of the general moral ideas of the people." *People v. Hilliard*, 2023 IL 128186, ¶38. That said, Illinois case law has "long held that the proportionate penalties clause require[s] the circuit court to take into account the defendant's 'youth' and 'mentality' in fashioning an appropriate sentence." *Clark*, 2023 IL 127273 at ¶ 92. Indeed, the statute requires that courts consider several special factors relating to youth and its associated characteristics before sentencing an individual who was 18 years old or younger at the time of the offense. 730 ILCS 5/5-4.5-105(a) (West 2024).

¶ 21 Here, defendant pled guilty to first-degree murder. "First degree murder is the most serious offense that can be committed, and it is therefore reasonable that the penalty for it also be severe."

People v. Gorgis, 337 Ill.App.3d 960, 975 (1st Dist. 2003). For defendant to succeed, therefore, the sentencing court must have failed to properly consider the defendant's youth, mentality, and other statutory factors when fashioning its sentence. A reviewing court must not substitute its judgment for that of the sentencing court merely because it would have weighed such factors differently. *People v. Alexander*, 239 Ill.2d 205, 213 (2010).

¶ 22 The record here is clear. The trial judge meticulously considered the statutory factors before him and arrived at a sentence well within the sentencing range for first-degree murder. The sentencing transcript demonstrates that the trial judge carefully considered all evidence presented and noted specifically that it was "a given that at the age of 17 you are not mature." Nevertheless, the court reasoned that defendant's involvement in the January 2021 murder of Fernando Carapia counterweighed any claim of youthful impetuousness, observing that defendant's arrest in connection with that offense "should have been an eye-opening experience for him, and apparently it was not." Likewise, the court gave due regard for defendant's trauma, such as that arising from the loss of his father and grandmother. Indeed, the court explicitly noted that defendant would "get credit" for the loss of these family members. Here, the trial court in fact demonstrated some leniency, as evidence of a defendant's turbulent childhood is not inherently mitigating. *People v. Hickey*, 204 Ill.2d 585, 619 (2001). This leniency is not negated by the court's entirely reasonable observation that "many people lose parents and many people lose grandparents; and very, very, very few of them go out and commit murders."

¶ 23 Defendant next contends that the trial court failed to consider peer pressure as a mitigating factor. In support, he relies on *People v. McKinley*, 2020 IL App (1st) 191907. In *McKinley*, the sentencing judge improperly considered the influence of peer pressure as a factor in aggravation, stating that being part of a gang "gave the defendant strength." *Id.* at ¶ 88. The *McKinley* court

found this "especially egregious in light of the fact that defendant's peer specifically instructed defendant to shoot the victim." *Id*. This case is different. Here, the court acknowledged the negative influence of defendant's gang membership but concluded that the defendant acted independently, among "similarly situated individuals," with "no one of rank ordering him around." It is one thing for a court to consider peer pressure in aggravation, but it is another thing to not find it at all.

¶ 24 Relying on *McKinley* at ¶ 89, which in turn relies on the U.S. Supreme Court decision in *Montgomery v. Louisiana*, 577 U.S., 190, 207 (2016), defendant disputes the court's consideration of deterrence as a sentencing factor. However, while the *Montgomery* court found that deterrence is a *diminished* factor in juvenile sentencing, the U.S. Supreme Court has never found it to be an irrelevant or improper factor. *Id*. Here, the circuit judge considered deterrence only insofar as it is necessary to dissuade youth gang membership. This appears to be precisely the type of "diminished" consideration that *Montgomery* permits. Accordingly, we decline to disturb the trial court's determination.

¶ 25 Finally, defendant argues that the circuit court failed to properly weigh his rehabilitative potential in imposing its sentence. The court, however, believed that defendant was "100 percent" capable of rehabilitation, and specifically referenced defendant's familial support and character letters in making that determination. The court stated it would not impose the maximum penalty, emphasizing the defendant's chance to demonstrate rehabilitation at his parole hearing in twenty years. Moreover, the court declined to impose the 25-years-to-life firearm add-on; this it did despite evidence that defendant discharged a firearm multiple times in the months leading up to the murder. All of this demonstrates a measured approach to sentencing which neither discounted defendant's rehabilitative potential, nor minimized the magnitude of defendant's crime.

¶ 26

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 29 Affirmed.