No. 3–09–0811

Order filed June 28, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	No. 06–CF–2446
WILLIAM LINLEY,	)	Honorable Daniel J. Rozak,
Defendant-Appellant.	)	Judge,Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err when it did not conduct a fitness hearing or make a determination as to defendant's fitness to stand trial, because the case concerned defendant's sanity at the time of the offense, not his fitness to stand trial, and defendant did not present a *bona fide* doubt as to his fitness at any time during the trial. Furthermore, the trial court did not abuse its discretion when it sentenced defendant to a 16-year term of imprisonment for the offense of aggravated discharge of a firearm.

¶ 2 FACTS

¶ 3 The State charged defendant, William Linley, with two counts of attempted first degree murder (720 ILCS 5/8--4(a), 9--1(a)(1) (West 2006)), six counts of aggravated discharge of a firearm (720 ILCS 5/24--1.2(a)(3) (West 2006)), and one count of criminal damage to government supported property (720 ILCS 5/21--4(1)(a) (West 2006)). The charges stemmed from an incident on September 22, 2006, where defendant, who was barricaded in his home, engaged in a 10-hour standoff with Bolingbrook police officers that ended after a police officer shot defendant in the arm.

¶ 4 Defendant appeared by video at a preliminary hearing on September 25, 2006. At this hearing, defendant addressed the trial judge as "sir" and informed the court of his income, savings, employment history, and the amount owed on his mortgage. Although the court found that defendant was not indigent, it appointed the public defender to represent defendant, given his high bond and the court's belief that defendant would not have a meaningful opportunity to hire counsel at that time.

¶ 5 On October 31, 2006, the public defender representing defendant filed a "Motion for Examination to Determine Sanity." In it, defense counsel stated that she "believe[d] that the Defendant lacked substantial capacity to appreciate the criminality of his conduct at the time of the crime, or to conform his conduct at that time to the requirements of law and further, that he may [have been] suffering from a mental defect or deficiency that render[ed] him legally insane." In this motion, defense counsel cited "Chapter 725, Section 5/104--10 *et sec* [*sic*] of the Illinois Compiled Statutes" and "Chapter 725, Section 5/104--13 of the Illinois Compiled Statutes." Both statutes relate to a defendant's fitness to stand trial.

¶ 6 The court conducted a hearing on November 3, 2006, at which time defense counsel stated that defendant "need[ed] to [be] examined for sanity." The court granted this request and entered an order pursuant to section 104--11 of the Code of Criminal Procedure of 1963 (725 ILCS 5/104--11 (West 2006)), a statute relating to fitness to stand trial. In the order, the court stated that "a *bona fide* doubt exist[ed] as to the defendant's sanity at the time of the offense." The court appointed Dr. Randi Zoot to examine defendant to determine "defendant's sanity at the time of the offense."

¶ 7 At subsequent hearings on January 3 and March 23, 2007, defense counsel stated that defendant was "being evaluated for sanity[,]" and that defendant had undergone "a sanity evaluation with Dr. Zoot." Also, at a February 9, 2007, hearing, the court inquired of defense counsel regarding defendant's evaluation with Zoot, and specifically asked, "it's a sanity evaluation, not a fitness evaluation?" Defense counsel responded "[c]orrect."

¶ 8 On January 24, 2007, the State filed the report of Zoot's psychological evaluation of defendant. In her report, Zoot noted that the "purpose of th[e] examination [wa]s to offer an opinion regarding [defendant]'s mental state at the time of the [instant] offense, specifically as to whether [defendant] suffered from a mental disorder that substantially impaired his ability to understand the criminality of his actions."

¶ 9 Zoot opined that while defendant "suffer[ed] from mental disorders and though [the mental disorders] were present at the time of the offense, they were not of such severity as to substantially impair his ability to understand the wrongfulness of his actions." Zoot believed that defendant's voluntary intoxication at the time he committed the offenses was the primary factor that "impaired his judgement and loosened his impulse control[,]" and that "within a reasonable

degree of psychological certainty, that at the time of the offense there was no mental disorder that substantially impaired [defendant's] ability to understand the criminality of his conduct beyond voluntary intoxication."

¶ 10 On April 25, 2007, defense counsel filed a "Motion for Contact Visit and Fitness Evaluation as to Sanity." In the motion, she cited "Chapter 725, Section 5/104--13 of the Illinois Compiled Statutes," a statute relating to fitness to stand trial. Defense counsel stated that defendant was "unable to assist in his defense and related facts concerning the elements of the charges and nature of the offenses, and further, that he may be *** legally insane." Defense counsel requested permission to allow Dr. Donald R. Catherall to conduct a psychological examination of defendant pursuant to section 104--13 (725 ILCS 5/104--13 (West 2008)) "to determine [defendant's] sanity and fitness to stand trial." The trial court granted this motion.

¶ 11 At a hearing on March 19, 2008, defendant addressed the court and stated that he sought to retain private counsel. Defendant specifically informed the court that his wife had retained private counsel and provided the name of his attorney to the court. Defendant further stated that private counsel "was asking for 60 days so his call would be cleared[,]" and explained "[y]our Honor, if [he] might, one of the reasons we're asking for 60 days now is because between September 20th and February 5th we were waiting with good faith that there were negotiations taking place." The court granted defendant's request for a 60-day continuance, to which defendant responded "[t]hank you."

¶ 12 The court conducted a pretrial hearing on May 8, 2009, at which time defendant's private counsel appeared on his behalf. At this hearing, the prosecutor stated that the case was set for trial that month, that it planned to give the court written and DVD evidence by stipulation, and

that "the real issues *** [were] more of a defense issue of sanity." After conferring further about witnesses and evidence in the case, the court stated to defense counsel:

> "THE COURT: Now, if--just so we're clear here, if I understand the Defense, there was never a fitness issue, because if [defendant was] going to waive jury--
>
> [DEFENSE COUNSEL]: No issue.
>
> THE COURT: There's no issue as to fitness?
>
> [DEFENSE COUNSEL]: Correct.
>
> THE COURT: Okay. Never has been?
>
> [DEFENSE COUNSEL]: No.
>
> * * *
>
> THE COURT: If [defendant was] going to waive jury, I want to make sure we don't need another exam."

¶ 13 At a hearing on May 18, 2009, defendant indicated that he was requesting a bench trial. The court asked defendant a series of questions to ascertain that defendant was voluntarily and intelligently waiving his right to a trial by jury, and defendant offered appropriate responses to the court's questions. At one point, defendant asked the court whether "when [he was] wearing civilian clothes, if [he would] be in shackles or not." After answering defendant's question, the court accepted defendant's waiver of a trial by jury.

¶ 14 Defendant's bench trial commenced on May 21, 2009. In defense counsel's opening statement, he stated that his evidence would show that defendant was "insane, a legal concept, at the time [the incident] took place [in that] he did not appreciate the criminality of his conduct."

¶ 15 The State began by offering the testimony of various Bolingbrook police officers by stipulation. The prosecutor stated that the stipulations would comprise all of its evidence with the exception of Zoot, who would "be offered as an expert" regarding "the issue [of] sanity." Before accepting the State's evidence by stipulation, the court asked defendant a series of questions to ensure he understood the nature of the stipulations and their contents. Defendant indicated that he had spoken with his attorney about the content of the stipulations, and that he understood that he was giving up his right to cross-examine these witnesses. Defendant otherwise offered polite and appropriate responses to the court's inquiries. Zoot testified and reiterated her opinion that at the time of the offenses, defendant did not meet the criteria of insane as defendant was not suffering from a mental disorder such that it substantially impaired his ability to understand the wrongfulness of his actions.

¶ 16 The evidence at trial generally showed that on September 22, 2006, defendant barricaded himself in his home and engaged in a 10-hour standoff with police that resulted in defendant firing approximately 125 rounds of ammunition at police. Defendant lived in a residential neighborhood, and he fired these gunshots at police who were outside defendant's home and inside the homes of defendant's neighbors. During defendant's standoff, he attempted to commit suicide three times. Police ultimately shot defendant in his right arm before he surrendered. After defendant surrendered, he went to Edward Hospital for treatment, and staff there ascertained that his blood alcohol content was approximately 0.195.

¶ 17 Defendant's evidence generally indicated that he was an active member of the Marines from 1982 to 1991 and from 2002 to 2006. Defendant was regarded as a "top grade Marine" who began to suffer from posttraumatic stress disorder (PTSD) and alcohol dependence after

taking part in combat missions during his tour of duty in the Iraq war.

¶ 18 Catherall, who performed a psychological examination on defendant on May 12, 2007, filed a report with the court and testified. According to Catherall's report and testimony, the purpose of his evaluation was to determine whether defendant suffered from "psychological difficulties," especially PTSD, and to determine whether defendant was "experiencing a flashback or other psychological phenomenon when he engaged in a shootout with the police on September 22, 2006."

¶ 19 Catherall opined that at the time of the incident, defendant suffered from PTSD, depression, and substance abuse. When asked whether defendant could appreciate the criminality of his actions during the standoff, Catherall stated that it was "a little bit complicated," and subsequently explained that he believed that defendant "knew that he was doing something that might be regarded as a criminal act, which is the shooting with the gun[,]" but that he did not believe that defendant was trying to kill anyone.

¶ 20 Before the close of the parties' evidence, counsel for defendant stated that he "believe[d defendant was] capable of making an appropriate, enlightened, reasoned decision to exercise [his] right [not to testify] and he [chose] not to [testify]." The court asked defendant a series of questions to ascertain that defendant voluntarily and intelligently made this choice, and defendant offered polite and appropriate responses to the court's questions.

¶ 21 The court found defendant not guilty of the two counts of attempted murder. The court found defendant guilty but mentally ill regarding the offenses of aggravated discharge of a firearm and criminal damage to government supported property. The court further found that defendant had not presented "clear and convincing evidence that [he] was unable to appreciate

the criminality of his conduct as a result of a mental disease or defect"; thus, defendant had not proven that he was legally insane when he committed the offenses.

¶ 22 The court began defendant's sentencing hearing on August 28, 2009, and concluded it on September 8, 2009. Defendant exercised his right of allocution, and stated that he regretted his actions and accepted responsibility for them. Prior to announcing defendant's sentence, the court stated that it had considered, among other things, the presentence investigation report, the arguments of counsel, and the statutory factors in mitigation and aggravation.

¶ 23 Regarding the mitigating factors, the court found that defendant's conduct caused or threatened serious physical harm; thus, this mitigating factor was not present. The court specifically stated that defendant came "close enough" to shooting someone, and that some bullets hit metal objects and could have ricocheted and hit a person. The court found the factor that defendant had no prior criminal history "certainly [was] present[,]" as defendant did not appear to even have a speeding or parking ticket. The court also noted that defendant suffered from a mental illness, and believed that with proper treatment, defendant was unlikely to reoffend.

¶ 24 Regarding the aggravating factors, the court found that many of the aggravating factors did not apply to defendant. However, the court stated that it was concerned with "the duration of the shots fired, the residential area--the number of shots fired, *** and the duration of time that it continued, the residential area, the people that were present [made this case have] some of the most serious aggravating factors [it had] seen[,]" but that defendant "offer[ed] more mitigation than [it] usually s[aw] for such a serious offense." The court also stated that the instant offenses were "committed under unusual circumstances," but decided that a sentence of imprisonment was

"necessary to deter others from committing the same offense."

¶ 25 The court noted that it had "never kept a secret of the fact that [it gave] veterans a huge break, *** especially when they are combat veterans." The court continued, however, that some of the police officers who were engaged in the standoff were also veterans. The court ultimately sentenced defendant to concurrent 16-year terms of imprisonment for the convictions for aggravated discharge of a firearm, and a concurrent 5-year term of imprisonment on the conviction for criminal damage to government supported property.

¶ 26 Counsel for defendant filed a motion to reconsider defendant's sentence. A letter written by defendant to the court was appended to this motion. In this letter, defendant thanked the court for conducting a fair trial, took responsibility and apologized for his conduct. Defendant asked the court to reconsider his sentence, as he believed that justice would not be served by his term of imprisonment and that he could better contribute to society with a shorter prison term. Defendant also believed that his wife and children were being punished by his term of imprisonment because they would live in poverty without his support. Defendant desired to raise his children and to work to secure money for their future. Defendant also acknowledged that he began to suffer from the mental illness of PTSD after he voluntarily served in the Marines, and asserted that his incarceration would not help other veterans who were suffering from a mental illness. The court denied defendant's motion to reconsider. Defendant appealed.

¶ 27 ANALYSIS

¶ 28 I. Fitness

¶ 29 On appeal, defendant contends that the trial court erred when it failed to hold a hearing or make a determination as to defendant's fitness to stand trial, as it had granted defense counsel's

motions for a sanity evaluation that cited statutes addressing fitness to stand trial.

¶ 30 Due process bars the prosecution of a person who is not fit to stand trial. *People v. Sandham*, 174 Ill. 2d 379 (1996). Although a defendant is presumed to be fit, the court is under a *sua sponte* duty to order a fitness hearing when a *bona fide* doubt exists regarding a defendant's fitness. *Id.*

¶ 31 A defendant is unfit to stand trial if, because of a physical or mental condition, he is unable to understand the nature and object of the proceedings against him or assist in his own defense. *People v. Chamberlain*, 354 Ill. App. 3d 1070 (2005). However, the fact that a defendant suffers from a mental illness or participates in psychiatric treatment, alone, does not demonstrate a *bona fide* doubt regarding a defendant's fitness. *People v. Eddmonds*, 143 Ill. 2d 501 (1991). As the supreme court noted, "[f]itness speaks only to a person's ability to function within the context of a trial. It does not refer to sanity or competence in other areas. A defendant can be fit for trial although his or her mind may be otherwise unsound." *People v. Easley*, 192 Ill. 2d 307, 320 (2000).

¶ 32 The statute articulating the insanity defense in Illinois states that "[a] person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct." 720 ILCS 5/6--2(a) (West 2006). The defendant has the burden of proving insanity by clear and convincing evidence. 720 ILCS 5/6--2(e) (West 2006); *People v. Frank-McCarron*, 403 Ill. App. 3d 383 (2010).

¶ 33 Our careful review of this record reveals that this defendant presented an insanity defense to the State's charges. Defendant’s public defender, as well as his subsequently retained private

counsel, both acknowledged that the case was about defendant's sanity at the time he committed the instant offenses, and not about his fitness to stand trial. Specifically, defendant's public defender acknowledged that Zoot's evaluation of defendant was "a sanity evaluation, not a fitness evaluation[.]" Private counsel also agreed that defendant's fitness to stand trial "never ha[d] been" an issue.

¶ 34 By making these statements, each attorney clearly advised the trial court that neither party was raising an issue of defendant's fitness to stand trial. Thus, given this context, we conclude defense counsel inadvertently cited to the statutes regarding fitness in error when requesting a sanity evaluation by motion. Accordingly, the court did not err by failing to conduct a fitness hearing or make a finding on defendant's fitness to stand trial.

¶ 35 Furthermore, the record does not indicate that a *bona fide* doubt concerning defendant's fitness to stand trial existed. Here, the record is replete with instances of defendant's meaningful and intelligent participation in his case. Specifically, at the first hearing on this matter, defendant answered the court's specific questions about his income, assets, and liabilities. At another hearing, defendant explained to the court that he had retained private counsel and that counsel needed 60 days to prepare for defendant's case. At other hearings in which the court conversed with defendant, defendant consistently offered appropriate responses to the court's inquiries, and defendant also spoke or asked questions of the court when defendant sought to interject his concerns during the proceedings.

¶ 36 The record further indicates that when defendant's retained counsel informed the court of defendant's decision to refrain from testifying, counsel stated that "[h]e believed [defendant was] capable of making an appropriate, enlightened, reasoned decision" not to testify. Defendant then

provided appropriate and polite responses to the court when it inquired into his decision not to present his own testimony to the jury. On multiple occasions, defendant's behavior indicated that he understood the nature and purpose of the proceedings, and that he assisted in his own defense.

¶ 37 Additionally, defendant wrote a thoughtful letter to the court after the court sentenced him. This thoughtful letter apologized for his actions, acknowledged his battle with PTSD, and asserted that his wife and children were also being punished due to his term of imprisonment. Consequently, the record does not indicate a *bona fide* doubt as to defendant's fitness to stand trial. Thus, the trial court did not err by failing to *sua sponte* order a fitness hearing or make a fitness determination, and therefore we decline to remand the cause for a new trial.

¶ 38 II. Sentence

¶ 39 Defendant next contends that the trial court abused its discretion by imposing a 16-year term of imprisonment on defendant's convictions for aggravated discharge of a firearm. Defendant specifically contends that the trial court failed to consider the mitigating factors of defendant's combat service, his PTSD diagnosis, and that he had not previously been convicted of a criminal offense. Defendant further contends that the court improperly considered the aggravating factors of deterrence and that defendant's conduct threatened serious harm.

¶ 40 The trial court's sentencing decision is entitled to great deference because the court is in a better position than the reviewing court to determine appropriate sentences (*People v. Stacey*, 193 Ill. 2d 203 (2000)) and to balance the need to protect society with the rehabilitation of the defendant (*People v. Spencer*, 303 Ill. App. 3d 861 (1999)). The sentencing judge has the opportunity to weigh defendant's credibility, his demeanor and general character, and his mentality, social environment, habits, and age. *People v. Streit*, 142 Ill. 2d 13 (1991); *People v.*

Perruquet, 68 Ill. 2d 149 (1977). Consequently, the trial court's sentencing determination will not be reversed absent an abuse of discretion. *Streit*, 142 Ill. 2d 13. A sentence that falls within the statutory range is not an abuse of discretion unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d 203.

¶ 41 The offense of aggravated discharge of a firearm is a Class X felony that is punishable by a term of imprisonment ranging from 10 to 45 years. 720 ILCS 5/24--1.2(a)(3), (b) (West 2006). In fashioning a sentence, the most important consideration is the seriousness of the offense. *People v. Evans*, 373 Ill. App. 3d 948 (2007).

¶ 42 In this case, the record indicates that the trial court considered each of the statutory factors in aggravation and mitigation. Contrary to defendant's assertion, the court noted that defendant was a combat veteran, and that it generally gave combat veterans "a huge break" during sentencing. The court also noted that defendant suffered from a mental illness. Nonetheless, the court found that defendant's conduct threatened serious harm, especially due to the number of shots defendant fired, the duration of the standoff, and defendant's firing into a residential area. We agree with the court's finding that defendant committed a serious offense, as defendant clearly threatened serious harm by discharging a firearm over 100 times into a residential neighborhood.

¶ 43 Furthermore, we also note that the court commented that a sentence of imprisonment was necessary to deter others from committing a similar crime. Thus, the court properly considered the need for deterrence as an aggravating factor, as it specifically noted that it sought to deter others. See *People v. Miller*, 284 Ill. App. 3d 16 (1996) (court affirmed sentence of defendant

who was found guilty but mentally ill where sentencing court noted in aggravation that it was necessary to deter others from committing the same crime). Also, defendant cites no authority for the proposition that a court is prohibited from considering deterrence as a factor when sentencing a defendant found guilty but mentally ill by the court.

¶ 44 Overall, our review of the record reveals that the trial court properly considered the aggravating and mitigating factors when it fashioned defendant's sentence. With respect to defendant's specific arguments, we note the sentence in this case is not manifestly disproportionate to the nature of the offense. Thus, we do not believe that the court's imposition of a 16-year term of imprisonment, which was on the low end of the 10- to 45- year range, indicates an abuse of its discretion.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the trial court of Will County is affirmed.

¶ 47 Affirmed.