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IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

ALFREDO E. REYES,
Defendant-Appellant.

Supreme Court No. 2017-SCC-0034-CRM
Superior Court No. 13-0180

SLIP OPINION

Cite as: 2019 MP 6

Decided August 2, 2019

Robert Charles Lee, Assistant Attorney General, Office of the Attorney
General, Saipan, MP, for Plaintiff-Appellee.

Charles Reyes Jr., Saipan, MP, for Defendant-Appellant.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

MANGLONA, J.:

¶ 1 Defendant–Appellant Alfredo E. Reyes (“Reyes”) challenges and seeks to vacate his sentence on this second appeal, arguing (1) the court failed to properly individualize his sentence and parole restriction; and (2) to remand his case to a different judge for resentencing. For the following reasons, we AFFIRM Reyes’s 30-year sentence.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 In 2013, a jury found Reyes guilty of three counts of sexual abuse of a minor in the first degree in violation of 6 CMC § 1306(a)(2).¹ *Commonwealth v. Reyes*, 2016 MP 3 ¶ 7 (Slip Op. April 8, 2016). The court also convicted him on three counts of assault and battery in violation of 6 CMC § 1202(a). *Id.* The sexual abuse involved a family member on three separate occasions. *Id.* ¶ 4. “Each time, Reyes removed his clothes, directed [the victim] to undress, and forced himself upon her. The victim testified she felt pain in her private parts each time.” *Id.* He received the maximum sentence of thirty years of imprisonment for the sexual abuse, and one year for each count of assault and battery. *Id.* ¶ 8. The sentences ran concurrently, without the possibility of probation, parole, early release, work release, weekend release, or any other similar program. *Id.*

¶ 3 On appeal, we affirmed his convictions but vacated the sentence, finding the lack of a presentence investigation report impaired the court’s ability to craft an individualized sentence. *Id.* ¶ 20. We remanded his case for resentencing on this basis.

¶ 4 On remand, the court considered the findings in the presentence investigation report, and resentenced Reyes to the maximum thirty years of imprisonment for sexual abuse, without the possibility of parole, probation, early release, work or weekend release, or any other similar program. As to assault and battery, the court did not issue a sentence “as this charge [was] already included in [the] [s]exual [a]buse [sentence].” *Commonwealth v. Reyes*, No. 13-0180 (NMI Super. Ct. Nov. 29, 2017) (Sentencing and Commitment Order at 6) (“Order”).

¶ 5 The court did not discern any significant mitigating factors in the presentence investigation report or the parties’ arguments. In particular, there was no evidence Reyes “cooperated with law enforcement to apprehend and

¹ 6 CMC § 1306(a)(2) states: “An offender commits the crime of sexual abuse of a minor in the first degree if being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim’s natural parent, stepparent, adopted parent, or legal guardian[.]” 6 CMC § 1306(b) states sexual abuse of a minor in the first degree “is punishable by imprisonment for not more than 30 years.”

convict other criminals in other cases,” no evidence his age could be a mitigating factor, and he did not appear to suffer from any “mental issues, disease and illness.” Order at 4. The court considered Reyes’s indigency as a mitigating factor. Several aggravating factors were noted including his history of criminal convictions and temporary restraining orders, and the “deviant . . . act to have sex with the very young,” especially with someone who is “an immediate blood relative.” Order at 5. The court also mentioned Reyes’s “use[] [of] information that the victim was having sex (incest) with another family member as leverage to impose his own sexual deviant desires on the victim.” *Id.* An additional and final aggravating factor was the public location of the sexual abuse. *Id.* (“All three sexual abuse incidents happen[ed] in locations — beach or jungle area, the Court takes these facts as aggravating factors as [Reyes] got some sexual deviant ‘turn on’ to have sex in ‘public/out of the home’ locations.”).

¶ 6 The court denied any possibility of parole. It found that any earlier release from the thirty year sentence via parole was problematic. Instead, the parole restriction was deemed appropriate in order “to allow the young victim and other minor family members to have some peace of mind and a chance to have a normal life without the threat of [Reyes’s] abuse.” *Id.* It did “give[] some weight to the victim[’s statement] that she has forgiven [Reyes] and balance[d this] against [Reyes] repeatedly sexually penetrating the victim on three different occasions.” *Id.* at 7–8. Aggravating the circumstances were the “serious prior convictions,” and using his knowledge of the victim’s sexual relations with her brother to “impose his control on the victim.” *Id.*

¶ 7 Reyes timely appeals his sentence.

II. JURISDICTION

¶ 8 We have jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 9 There are four issues on appeal. We first review whether the court properly individualized Reyes’s sentence by ascertaining any procedural improprieties “for plain error where no objection [was] raised.” *Commonwealth v. Babauta*, 2018 MP 14 ¶ 11 (Slip Op., Dec. 19, 2018). We review the sentence for an abuse of discretion, regardless of Reyes’s failure to object, where the appeal challenges the sentence’s substantive reasonableness. *Id.* Depending on whether the challenge is based on procedural error or on the restriction’s substantive reasonableness, we review the parole restriction for plain error or abuse of discretion. *Id.* ¶ 24. Whether to remand Reyes’s case to a different judge for resentencing is determined by considering any difficulties the court may have at remaining objective, whether reassignment would preserve the appearance of justice, and whether the wasteful and duplicative efforts would outweigh the gains in preserving justice. *Commonwealth v. Hocog*, 2015 MP 19 ¶ 34.

IV. DISCUSSION

A. Individualized Sentencing

¶ 10 Reyes asserts the trial court failed to individualize his sentence when it impermissibly focused on elements of the crime as aggravating factors. He maintains the court focused substantially on the crime itself, retribution, and deterrence to the exclusion of his unique individual circumstances and the prospects of his rehabilitation or “diminished threat capacity.” Opening Br. 10. In light of these circumstances, he concludes his sentence was not individualized.

¶ 11 We review procedural defects for plain error where no objection was preserved. *Babauta*, 2018 MP 14 ¶ 12. Plain error review requires determining whether (1) there was error, (2) the error was plain, and (3) the error affected the appellant’s substantial rights. *Id.* ¶ 16 (citing *Reyes*, 2016 MP 3 ¶ 11). Once we find the three prongs satisfied, we may still reverse “only if it is necessary to safeguard the integrity and reputation of the judicial process or to forestall a miscarriage of justice.” *Commonwealth v. Hossain*, 2010 MP 21 ¶ 29 (citation and internal quotation marks omitted).

¶ 12 The substantive reasonableness of a sentence will then be reviewed for an abuse of discretion, regardless of Reyes’s failure to object. *Babauta*, 2018 MP 14 ¶ 12. We defer to the sentencing court’s decision under this standard, and reverse “only if no reasonable person would have imposed the same sentence.” *Commonwealth v. Lin*, 2016 MP 11 ¶ 15 (Slip Op. Sept. 12, 2016); *Commonwealth v. Palacios*, 2014 MP 16 ¶ 12 (internal quotation marks omitted).

i. Procedural Defects

¶ 13 Where a party asserts improper reliance on an impermissible aggravating factor, we will examine this as procedural error. *Commonwealth v. Hocog*, 2019 MP 5 ¶ 17 (Slip Op., Aug. 2, 2019). However, “[a]lthough the use of an impermissible aggravating factor creates a procedurally flawed sentence, we do not necessarily find plain error . . .” *Id.* ¶ 18. Instead, we must determine whether such procedural error created “a reasonable probability the sentence would have been different if the court had not relied on the impermissible factor[.]” *Id.* ¶ 19.

¶ 14 In describing Reyes’s relationship to the victim, the court in fact used an impermissible aggravating factor. Sexual abuse of a minor in the first degree requires the victim must have suffered the abuse by a parent. *See* 6 CMC § 1306(a)(2). Reyes is the victim’s biological father. Thus, the description that “[i]t is even more disturbing when the deviant behavior is inflicted upon an immediate blood relative,” Order at 5, is an impermissible use of an element of the crime as an aggravating factor and a procedural flaw in the sentence.

¶ 15 This procedural flaw, however, does not warrant a finding of plain error. The court relied on a number of other aggravating factors such as Reyes’s criminal history and his manipulation of information about the victim’s sexual relationship with another family member. Although the court gave Reyes’s parental relationship with the victim “much weight,” Order at 5, we cannot say it

was to the exclusion of all other aggravating factors. Nor can we say that the other aggravating factors were not given significant consideration. While the court did commit procedural error, it was not such that it affected Reyes's substantial rights. Since the court's sentence passes procedural muster, we next evaluate whether the sentence is substantively reasonable.

ii. Substantive Reasonableness

¶ 16 A properly individualized sentence will “examine and measure the relevant factors, the deterrent value of the sentence, the rehabilitation and reformation of the offender, the protection of society, and the disciplining of the wrongdoer.” *Commonwealth v. Kapileo*, 2016 MP 1 ¶ 22 (citations and internal quotation marks omitted). When a defendant-appellant argues the sentencing “court gave less weight to factors he considers important, and more weight to factors he considers unimportant,” this is a substantive reasonableness challenge. *Hocog*, 2019 MP 5 ¶ 24. We will review whether a sentence is substantively unreasonable for abuse of discretion and give significant deference to the trial court. See *Palacios*, 2014 MP 16 ¶ 12 (nearly unfettered discretion). Indeed, sentencing judges are “in a superior position” insofar as they have “full knowledge of the facts.” *Gall v. United States*, 552 U.S. 38, 51 (2007) (internal quotation marks omitted). And certainly, “the sentencing judge has access to, and greater familiarity with, the individual case and the individual defendant” *Id.*

¶ 17 We do not find the sentencing decision “logically untenable” under the deferential abuse of discretion standard. Opening Br. 17. To be sure, giving the maximum sentence is harsh, but not without reason. Even without considering the impermissible aggravating factor, the court discussed Reyes's various criminal convictions and temporary restraining orders, and the manipulation he used to coerce the victim. That the court decided to give more weight to these aggravating factors and less weight to the possible mitigating factors does not render the sentence unreasonable or “logically untenable.” The court gave significant consideration to the sentencing goals of deterrence, retribution, incapacitation, and rehabilitation. Reyes's ability to learn from his crime, the safety of the community, and the multiple times the sexual abuse occurred were articulated and examined. All these factors and considerations contributed to the court's sentencing discretion.

¶ 18 We hold Reyes's sentence was sufficiently individualized and the court neither committed plain error nor abused its discretion. We next evaluate the court's restriction on his parole eligibility.

B. Parole Eligibility

¶ 19 Reyes argues the court did not properly individualize the parole restriction because the justification focused on the crime, deterrence, and his past criminal convictions in justifying the parole restriction. These justifications, he maintains, do not properly account for his individual circumstances.

¶ 20 “[W]hen a trial court restricts a defendant's parole eligibility greater than

the statutory minimum, it must state why the extended restriction is warranted for the defendant.” *Lin*, 2016 MP 11 ¶ 23 (citation omitted). Where a court fails to adhere to this procedural step, the defendant’s sentence must be examined as procedural error. Parole restrictions must also be individually justified and not based solely on the act of the crime. *Commonwealth v. Lizama*, 2017 MP 5 ¶¶ 14, 22 (Slip Op. June 16, 2017); *Lin*, 2016 MP 11 ¶ 24. We review Reyes’s claims of procedural defects for plain error where he has failed to object, and abuse of discretion for challenges to the substantive reasonableness of the parole restriction. *Babauta*, 2018 MP 14 ¶¶ 11, 13.

¶ 21 We find the court sufficiently individualized Reyes’s parole restriction. The court found it necessary to restrict Reyes’s parole eligibility in its entirety based on his prior criminal convictions, his manipulation of the victim, and the number of times he sexually abused her. We do not see a failure to justify, nor do we see any other significant procedural deficiency in further restricting parole. Rather the court provided ample reason for restricting Reyes’s parole eligibility aside and apart from any procedural deficiencies he flags. The court issued a substantively reasonable sentence and did not abuse its discretion.

V. CONCLUSION

¶ 23 For the foregoing reasons, we AFFIRM Reyes’s 30-year sentence.

SO ORDERED this 2nd day of August, 2019.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice



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JUDGMENT

Defendant-Appellant Alfredo E. Reyes appeals his sentence, arguing (1) the court failed to individualize his sentence; (2) the court impermissibly restricted his parole eligibility; and (3) his case should be remanded to a different judge for resentencing. For the reasons discussed in the accompanying opinion, the Court AFFIRMS Reyes's sentence.

ENTERED this 2nd day of August, 2019.

/s/

GRETCHEN A. SMITH
Clerk of the Supreme Court