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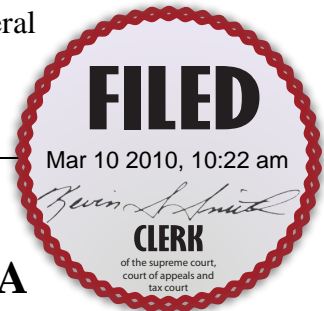
ATTORNEY FOR APPELLANT:

RANDY M. FISHER
Deputy Public Defender
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

LOREAL L. BLACKWELL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A04-0911-CR-664

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0903-FA-18

March 10, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Loreal Blackwell (“Blackwell”) was convicted in Allen Superior Court of Class A felony burglary. The trial court sentenced her to a term of thirty years. Blackwell appeals and argues:

- 1) Whether the State presented sufficient evidence to support Blackwell’s conviction for Class A felony burglary;
- 2) Whether the trial court abused its discretion by imposing the advisory thirty-year sentence on the Class A felony burglary; and,
- 3) Whether Blackwell’s thirty-year sentence was appropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

In November, 2007, Katelyn Stayton (“Stayton”) was involved in an on-again off-again relationship with Jamarkus McCloud (“McCloud”) with whom she had a son. Although this was an “open” relationship, Stayton was unaware that McCloud was simultaneously carrying on a relationship with Blackwell. At the time, Blackwell was pregnant with McCloud’s child. Blackwell eventually found out about Stayton’s relationship with McCloud and their mutual child, even though Stayton did not know Blackwell.

On November 7, 2007, Blackwell and McCloud planned to see a movie. That night Stayton returned from work at 9:00 p.m. McCloud was in contact with both Blackwell and Stayton throughout the evening via phone or text messaging. McCloud cancelled his movie date with Blackwell by text message. He then called Stayton around 10:00 p.m. to notify her that he would come over that night when he could. McCloud called her back shortly after 11:00 p.m. telling her that he would be over within a few

minutes and asked that she unlock the door for him, which she did before returning to bed.

Stayton was in bed when she heard her door open. Thinking that McCloud had arrived, she called out to him. After hearing nothing but footsteps, she called again. She looked up and saw a figure at her door. The figure was later identified as Blackwell. Blackwell attacked Stayton, cut her neck with a knife and said, “This isn’t [Jamarkus].” Tr. pp. 128-29. Stayton called out for help. Blackwell cursed her, told her to shut up, and punched her in the face. Blackwell stuck her fingers in Stayton’s throat. Stayton struggled with Blackwell until Blackwell cut her neck again. Stayton found her cell phone, but Blackwell threw it across the room and ran from the room.

Stayton followed Blackwell out and tried to lock her door but could not because of the wounds to her hands. She tried to use her cell phone but her blood had rendered it unusable. Stayton ran downstairs where she saw the knife laying on the ground. She asked a neighbor for help. The neighbor called 911. Police and emergency personnel arrived shortly thereafter.

Fort Wayne Police Detective John Helmsing (“Detective Helmsing”) arrived and took over the investigation. From his preliminary investigation, Detective Helmsing obtained a description of Blackwell. He then interviewed McCloud a number of times and obtained the phone records of McCloud and Blackwell. Detective Helmsing also interviewed Blackwell on two occasions.

Blackwell’s phone records showed a ten minute gap which coincided with the attack at Stayton’s apartment. Detective Helmsing interviewed Stayton and showed her

two different photo arrays. Each time Stayton was shown a photo array, she identified two possible suspects and each time, one of the two was Blackwell.

During Blackwell's second interview, she admitted to going to Stayton's apartment on the night in question. She also admitted to bringing a knife which matched the description of the knife used in the attack with her to Stayton's apartment. Blackwell told Detective Helmsing that she went to Stayton's apartment and entered after no one answered the door. Blackwell told Helmsing that upon hearing Stayton say McCloud's name, she became upset, and then "everything just happened." Ex. Vol. State's Exh. 34. Blackwell also stated that she fought with Stayton after learning that McCloud was supposed to be coming over to Stayton's, but that she did not remember the details of the fight.

On March 3, 2009, the State charged Blackwell with Class A felony burglary and Class C felony battery. Following a jury trial, Blackwell was found guilty as charged.

A sentencing hearing was held on August 24, 2009. The trial court merged the Class C felony battery conviction into the Class A felony burglary conviction. After determining that the aggravators outweighed the mitigators, the trial court sentenced Blackwell to a term of thirty years. Blackwell now appeals.

I. Sufficiency of the Evidence

Blackwell argues that the evidence is insufficient to support her conviction for Class A felony burglary. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict

and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt, then circumstantial evidence will be sufficient. Id.

Under Indiana Code section 35-43-2-1 (2004),

A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony. However, the offense is:

* * *

(2) a Class A felony if it results in:
 (A) bodily injury; or
 (B) serious bodily injury;
to any person other than a defendant.

Blackwell contends that the State failed to present sufficient evidence of the intent element. The requisite intent to commit a felony typically can be inferred from the subsequent conduct of the individual once inside the premises or by the manner in which the crime was committed. Smith v. State, 671 N.E.2d 910, 912-13 (Ind. Ct. App. 1996). Blackwell contends that she did not have the intent to commit a felony in Stayton's apartment when she entered.

Blackwell entered Stayton's apartment and attacked Stayton with the knife she brought to the apartment, causing Stayton bodily injury. This evidence can and does show Blackwell's intent to commit class A felony burglary. The jury could reasonably infer that Blackwell entered Stayton's apartment with the knife with the intent to commit

a crime therein. This evidence is sufficient to support Blackwell's conviction for Class A felony burglary.

II. Aggravators and Mitigators

Blackwell next argues that the trial court abused its discretion by giving improper consideration to aggravating and mitigating circumstances. Specifically, Blackwell contends that the trial court failed to recognize two mitigators: that Blackwell is capable of rehabilitation and would benefit from a short term of incarceration and the hardship that incarceration would have on her dependent.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. Id. We can review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. Id. at 491. One way in which a court may abuse its discretion is by entering a sentencing statement that omits mitigating circumstances that are clearly supported by the record and advanced for consideration. Id. at 490-91. However, a trial court is not obligated to accept a defendant's claim as to what constitutes a mitigating circumstance. Rascoe v. State, 736 N.E.2d 246, 249 (Ind. 2000).

Initially, Blackwell argues that the trial court abused its discretion when it failed to recognize as significant mitigators her capability for rehabilitation and that she would

benefit from a short term of incarceration. The trial court is not required to find the presence of mitigating factors or give them the same weight that the defendant does. We cannot say that the trial court abused its discretion in this regard.

Blackwell also contends that the trial court should have considered the hardship that incarceration would have on her dependent as a significant mitigator. While awaiting trial Blackwell gave birth to McCloud's child. The trial court found Blackwell's incarceration would not result in undue hardship on her dependent because it felt that this claimed mitigator was really about the hardship to the defendant not to her dependent. A trial court "is not required to find a defendant's incarceration would result in undue hardship on [her] dependents." Davis v. State, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005), trans. denied. Indeed, "[m]any persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship." Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999). Poor decisions made by adults often have negative effects upon their children.

III. Appropriateness of Sentence

Blackwell finally argues that her sentence is inappropriate under Indiana Appellate Rule 7(B), which provides: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007), our supreme court explained:

It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that

includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

868 N.E.2d at 494. “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” Id.

The nature of the offense before us is particularly egregious. Blackwell entered Stayton’s apartment with a knife. She brutally attacked Stayton. Blackwell slashed Stayton’s neck twice and inflicted numerous other injuries upon Stayton that required months of physical therapy. Fortunately, Stayton survived Blackwell’s brutal and senseless attack. The nature of the offense supports Blackwell’s thirty-year sentence.

As to Blackwell’s character, she knew that Stayton was a single mother with a small child at the time of the attack, and yet she was willing to stab Stayton. Blackwell brutally attacked Stayton simply because they were both dating McCloud. Stayton did not even know Blackwell at the time of the attack. Blackwell’s character supports her thirty-year sentence.

Conclusion

The evidence is sufficient to support Blackwell’s conviction for Class A felony burglary. The trial court did not abuse its discretion when it did not find or weigh the mitigators as Blackwell would have preferred. Blackwell’s thirty-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

BARNES, J., and BROWN, J., concur.