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IN THE COURT OF APPEALS OF INDIANA

PHILLIP EUGENE SADLER,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 85A02-0912-CR-1281
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE WABASH CIRCUIT COURT
The Honorable Robert R. McCallen, Judge
Cause No. 85C01-0907-FC-102

May 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Phillip Sadler was convicted, following a jury trial, of battery, a Class C felony, and the trial court sentenced him to six years. Sadler appeals, raising two issues for our review, which we restate as: (1) whether sufficient evidence supports his conviction, and (2) whether the trial court properly sentenced him. Concluding the evidence is sufficient and the trial court properly sentenced Sadler, we affirm.

Facts and Procedural History

On July 18, 2009, Sadler and Jonathan Ward were inmates at the Wabash County Jail. Both housed in the C-1 cell block, they were acquainted with each other through family and through the jail. At approximately 10:44 p.m. that evening, Sadler went to the cell where Ward was and asked Ward if he wanted to wrestle. Ward consented to Sadler "showing me wrestling moves," transcript at 80, which Sadler did for three to four minutes before Sadler escalated the physical contact and it became "too rough" for Ward to handle, id. at 68. At this point, Ward told Sadler he had had enough and tapped Sadler "to show him that I was done," id. at 80, but Sadler did not stop. Sadler punched Ward in the sternum, knocking him unconscious. When Ward was conscious again and lying on the floor, Sadler used his knees and elbows to strike Ward repeatedly in the back and chest. Ward again told Sadler to stop and tried to push Sadler away but did not otherwise fight back. While Ward still lay on the floor, Sadler pressed his shin against Ward's throat, choking him and causing him to pass out a second time. After Ward regained consciousness near the time of the 11 p.m. lockdown, Sadler walked away. Ward suffered bruises to his back, chest, neck, and both arms.

The State charged Sadler with battery, a Class C felony based on causing serious bodily injury. At a jury trial held on September 29, 2009, the jury found Sadler guilty. The trial court held a sentencing hearing on October 26, 2009, and issued the following sentencing order:

> [T]he Court has found the following aggravating and mitigating circumstances allowed by statute and case law.
> Aggravating Circumstances: Significant juvenile delinquency and adult criminal history record[1]; in jail when offense was committed.
> Mitigating Circumstances: None.
>
> Based upon those circumstances, the Court now sentences [Sadler] for the charge of Battery Resulting in Serious Bodily Injury to the Indiana Department of Corrections [sic] for confinement for a period of 6 years.

Appellant's Appendix at 107. Sadler now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

In reviewing claims of insufficient evidence:

> [A]ppellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

[1] The pre-sentence investigation report shows Sadler has prior convictions of attempted burglary, a Class C felony, possession of a controlled substance, a Class D felony, disorderly conduct, a Class B misdemeanor, and two convictions of public intoxication, also Class B misdemeanors. In addition, Sadler has had his probation revoked twice and at the time of the sentencing hearing in this case had pending charges of battery, a Class C felony, and sexual battery, a Class D felony.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations, quotations, and footnote omitted) (emphasis original).

B. Consent as Defense to Battery

To convict Sadler of battery as a Class C felony, the State was required to prove beyond a reasonable doubt that Sadler knowingly or intentionally touched Ward in a rude, insolent, or angry manner resulting in serious bodily injury to Ward. See Ind. Code § 35-42-2-1(a)(3). Sadler does not dispute the sufficiency of the evidence supporting these elements, rather, he essentially argues the State failed to disprove his defense that Ward consented to the battery. See generally Govan v. State, 913 N.E.2d 237, 241-42 (Ind. Ct. App. 2009) (noting lack of consent is not an element of battery, and consent is a defense only in certain limited circumstances), trans. denied. Sadler's argument fails because Indiana law does not allow consent as a defense to battery in the circumstances of this case.

The availability of consent as a defense to battery in similar circumstances was considered and rejected in Jaske v. State, 539 N.E.2d 14 (Ind. 1989) and Helton v. State, 624 N.E.2d 499 (Ind. Ct. App. 1993), trans. denied, cert. denied, 520 U.S. 1119 (1997). In Jaske, the defendant, a leader of a prison inmate organization, undertook to initiate another inmate by a ceremony that involved beating the inmate to the point of losing consciousness; the inmate consented after having the ceremony explained to him. As actually carried out, the defendant's dozen or more blows to the inmate's torso resulted in death, and the defendant was convicted of Class C felony battery and involuntary

manslaughter. Holding that consent was not a defense to battery in such circumstances, our supreme court reasoned:

> Whether or not the victims of crimes have so little regard for their own safety as to request injury, the public has a stronger and overriding interest in preventing and prohibiting acts such as these. We hold that consent is not a defense to the crime of aggravated battery . . . irrespective of whether the victim invites the act and consents to the battery.

Jaske, 539 N.E.2d at 18 (quoting State v. Fransua, 510 P.2d 106, 107 (N.M. Ct. App. 1973)). Our supreme court also noted "the general view that in assault cases without sexual overtones, consent is ordinarily not a defense." Id. In Helton, this court observed consent could be a defense to battery in certain cases, but concluded it was not available to the defendant, who delivered twenty bare-fisted blows to the victim's head as part of a gang initiation ritual to which the victim consented. 624 N.E.2d at 514-15. "[S]triking someone continuously in an area which is susceptible of injury as severe as permanent brain damage is an atrocious, aggravated battery for which consent is no defense." Id. at 515.

Like the facts in Jaske and Helton, Sadler inflicted a prolonged beating on Ward and attacked him in parts of the body vulnerable to severe injury. Specifically, Sadler struck Ward repeatedly in the chest and back and placed his throat in a choke hold, causing him to lose consciousness twice. Given these facts, Sadler cannot raise Ward's purported consent as a defense to the charge of battery.[2] As a result, we conclude sufficient evidence supports his conviction.

[2] We further point out that even if Indiana law allowed Sadler to raise consent as a defense in this case, his actions went well beyond the scope of Ward's initial consent to wrestling: the blow to Ward's sternum and the choke hold occurred after Ward asked Sadler to stop.

II. Sentencing

A. Standard of Review

Sadler argues the trial court abused its discretion in sentencing him. When imposing a felony sentence, a trial court is required to issue a sentencing statement that includes a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (2007). If the trial court finds aggravating or mitigating circumstances, the statement must identify all significant mitigating and aggravating circumstances and explain why each is determined to be mitigating or aggravating. Id. The trial court may abuse its discretion if it fails to issue a sentencing statement at all, gives reasons for imposing a particular sentence that are not supported by the record, omits reasons that are clearly supported by the record and advanced for consideration, or gives reasons that are improper as a matter of law. Id. at 490-91. However, the trial court cannot be said to have abused its discretion by failing to "properly weigh" aggravating and mitigating factors. Id. at 491.

B. Victim Facilitation Mitigator

Sadler contends the trial court abused its discretion by failing to find Ward's inducement or facilitation of the offense as a significant mitigator. Because the trial court's sentencing statement included findings regarding aggravating and mitigating circumstances, the trial court was required to identify all significant mitigating circumstances. Indiana Code section 35-38-1-7.1(b)(3) provides it is a mitigating circumstance that "[t]he victim of the crime induced or facilitated the offense." On

appeal, Sadler bears the burden of persuading this court that his proffered mitigating circumstance "is both significant and clearly supported by the record." Anglemyer, 868 N.E.2d at 493.

The evidence presented at trial established that although Ward initially consented to wrestling with Sadler, after three to four minutes Ward asked Sadler to stop and physically and verbally withdrew from the encounter. Nonetheless, Sadler continued striking Ward, and even after Ward passed out from a blow to the sternum, Sadler placed Ward in a choke hold causing him to lose consciousness a second time. The trial court reasonably concluded that Ward's initial consent to wrestling, if a mitigator, was not significant because Sadler's actions went far beyond the consent, and thus, the consent was only minimally facilitative of the crime. See Tr. at 132 (trial court rejecting Sadler's mitigation argument because "you went way beyond what was contemplated in the beginning"); see also Rogers v. State, 878 N.E.2d 269, 272 (Ind. Ct. App. 2007) (noting a trial court "does not err in failing to find mitigation when a mitigation claim is highly disputable in nature, weight, or significance") (quotation omitted), trans. denied. The trial court did not abuse its discretion by failing to find victim facilitation as a significant

mitigator.[3]

Conclusion

Sufficient evidence supports Sadler's conviction of battery as a Class C felony, and the trial court did not abuse its discretion in sentencing him to six years.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.

[3] Sadler also argues that insofar as he lacks prior convictions for battery or similar crimes, the trial court "over-emphasized" his criminal history in imposing a six-year sentence. Brief of Appellant at 8. As noted above, such claims the trial court assigned improper weight to an aggravating circumstance are not available on review for abuse of discretion. Anglemyer, 868 N.E.2d at 491. Although Sadler's claim regarding the weight of his criminal history would properly pertain to review of his sentence under Appellate Rule 7(B), Sadler does not argue his sentence is inappropriate and he has therefore waived that issue for our review. See King v. State, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008) (clarifying that "inappropriate sentence and abuse of discretion claims are to be analyzed separately").