

Case Summary

In this consolidated appeal, Devin Steele appeals his sentence for Class D felony domestic battery with a child present, Class D felony domestic battery with a prior conviction, and Class D felony possession of a controlled substance, and the sentence imposed following the revocation of his probation. We affirm.

Issues

Steele raises two issues, which we restate as:

- I. whether his sentence imposed for Class D felony domestic battery with a child present, Class D felony domestic battery with a prior conviction, and Class D felony possession of a controlled substance convictions is inappropriate in light of the nature of the offense and the character of the offender; and
- II. whether the sentence imposed following the revocation of his probation was an abuse of discretion.

Facts

In Cause Number 15C01-0709-CM-617 (“CM-617”), Steele pled guilty to Class A misdemeanor criminal recklessness and Class A misdemeanor domestic battery for intentionally hitting the vehicle of his pregnant girlfriend, S.S., and biting her on the hand. On March 5, 2008, the trial court sentenced Steele to two years with one year and 185 days suspended and the executed sentence to be served on home detention. The trial court ordered Steele to have no direct or indirect contact with S.S.

On March 15, 2008, ten days after Steele was sentenced in Cause Number CM-617, he hit S.S. while she was holding their baby, causing a laceration on S.S.’s forehead that required seven stitches. The next day, Steele’s father reported to the police that he

found drugs belonging to Steele, including Oxycodone, at the father's home. As a result of the two incidents, the State charged Steele under Cause Number 15D02-0803-FD-85 ("FD-85") with Class D felony domestic battery with a child present, Class D felony domestic battery with a prior conviction, Class A misdemeanor invasion of privacy, Class D felony possession of a controlled substance, Class A misdemeanor possession of paraphernalia, Class A misdemeanor possession of paraphernalia, and Class A misdemeanor possession of marijuana.

On December 30, 2008, Steele hit S.S.'s new boyfriend's truck, trying to run him off of the road. The State charged Steele with Class A misdemeanor failure to stop after an accident. The Probation Department filed a request for probation violation hearing, alleging that Steele had violated the terms of his probation in Cause Number CM-617 by committing the new offense of Class A misdemeanor failure to stop after an accident. At a hearing in July 2009, Steele admitted that he had violated his probation. The trial court revoked 500 days of Steele's probation and gave him credit for 480 days already served.

In Cause Number FD-85, Steele pled guilty to Class D felony domestic battery with a child present, Class D felony domestic battery with a prior conviction, and Class D felony possession of a controlled substance, and the State agreed to dismiss the remaining charges. At the sentencing hearing, the trial court found several aggravators, including Steele's criminal history, failure to follow court orders, the nature and the circumstances of the crime, and the fact that he committed the crime ten days after being sentenced for another battery against S.S. The trial court found no mitigating circumstances. The trial court sentenced Steele to three years with the last year on work release for each of the

domestic battery convictions and ordered those sentences to be concurrent. The trial court then sentenced him to one year suspended to probation for the possession of a controlled substance conviction, to be served consecutive to the sentences for the domestic battery convictions.

Analysis

I. Inappropriate Sentence

Steele argues that his sentence for Class D felony domestic battery with a child present, Class D felony domestic battery with a prior conviction, and Class D felony possession of a controlled substance is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. When considering whether a sentence is inappropriate, we need not be "extremely" deferential to a trial court's sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The principal role of Rule 7(B) review "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case."

Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). We “should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” Id.

A review of the nature of the offense reveals that Steele hit S.S. while she was holding their baby, causing a laceration on S.S.’s forehead that required seven stitches. The day after Steele hit S.S., Steele’s father reported to the police that he found drugs belonging to Steele, including Oxycodone, at the father’s home.

A review of the character of the offender reveals that twenty-year-old Steele has a juvenile and adult criminal history. As a juvenile, he was found to have committed acts that would have been possession of marijuana, intimidation, and minor consumption. As an adult, he has convictions for intimidation, criminal recklessness, and domestic battery. He has repeatedly violated his probation and home detention. Steele committed the instant offenses only ten days after being sentenced for intentionally hitting S.S.’s vehicle while she was pregnant and biting her on the hand. He had also been ordered to have no contact with S.S. only ten days prior to this incident. Even after his arrest for the incidents at issue here, Steele hit S.S.’s new boyfriend’s vehicle and tried to run him off the road. He was convicted of failure to stop after an accident for those actions.

Steele argues that his sentence is inappropriate because he wants to support his child, he pled guilty, and he is remorseful. However, given his criminal history, disregard of the trial court’s orders to have no contact with S.S., and repeated violation of his probation and home detention, we conclude that Steele’s sentence is not inappropriate in light of the nature of the offense and the character of the offender.

II. Probation Revocation Sentence

Steele argues that the sentence imposed following the revocation of his probation was an abuse of discretion. “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). “The trial court determines the conditions of probation and may revoke probation if the conditions are violated.” Id. (citing Ind. Code § 35-38-2-3). A trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard. Id. “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.” Id. Upon the revocation of probation, the trial court may: (1) continue the person on probation, with or without modifying or enlarging the conditions; (2) extend the person’s probationary period for not more than one year beyond the original probationary period; and (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. I.C. § 35-38-2-3(g).

According to Steele, the 500-day sentence was an abuse of discretion because he admitted that he violated his probation, his offense was not egregious, he wants to support his child, and he is remorseful. The trial court here was very concerned about Steele’s repeated actions against S.S. Despite the trial court’s orders to have no direct or indirect contact with S.S., Steele continued to have contact with her and ran into S.S.’s new boyfriend’s truck, trying to run him off of the road. Steele had also repeatedly violated his probation and home detention. Given Steele’s behavior, the trial court did

not abuse its discretion by ordering Steele to serve 500 days of his previously suspended sentence.

Conclusion

Steele has failed to show that his sentence for Class D felony domestic battery with a child present, Class D felony domestic battery with a prior conviction, and Class D felony possession of a controlled substance is inappropriate in light of the nature of the offense and the character of the offender. Further, the trial court did not abuse its discretion when it sentenced Steele following the revocation of his probation. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.