

STATEMENT OF THE CASE

Defendant-Appellant Arthur Balls appeals his conviction of Class C felony battery and his sentence that includes both eight years on the battery conviction and twelve years on the determination that he is a habitual offender. We affirm.

ISSUES

Balls raises two issues for our review, which we restate as:

- I. Whether there was sufficient evidence to rebut Balls' self-defense claim.
- II. Whether Balls' twenty-year sentence is inappropriate.

FACTS AND PROCEDURAL HISTORY

On August 16, 2008, Kelly Fairman, whose niece, Ashley Johnson, had requested help in moving out of the apartment she shared with Balls, went to the apartment to load Johnson's belongings into Fairman's truck. Fairman was accompanied by her boyfriend, Tony Mansfield, and her son, Robert.

Upon her arrival at the apartment, Fairman saw Johnson waiting on the front porch with her belongings stacked around her. Fairman noticed that a grill that she had loaned Johnson was not on the porch, and she asked Johnson where it was located. Johnson told her to ask Balls. Fairman went into the apartment and asked Balls about the grill, and Balls began to curse at her, repeatedly calling her a "b****." (Tr. at 30).

Mansfield, who was on the porch, heard the confrontation and entered the apartment. When Mansfield asked Balls why he was berating Fairman, Balls punched him in the jaw with a closed fist. The two began to wrestle and Mansfield eventually got

Balls in a choke hold. At Fairman's insistence, Mansfield released the choke hold. As Mansfield turned to look at Fairman, Balls pulled a sharp object appearing to be a razor blade or a knife out of his pocket and cut Mansfield on the face, neck, and hand. Mansfield, Fairman, and Johnson retreated from the apartment with Balls following and wielding the blade in the air. Mansfield, who had a four-inch cut across his face and a punctured hand, was treated in a hospital where he received twelve stitches in his face and five in his hand.

Balls was charged with and convicted of Class C felony battery. He was also found to be a habitual offender. The trial court sentenced Balls to eight years of incarceration on the battery conviction and twelve years on the habitual offender determination, for a total of twenty years. Balls now appeals.

DISCUSSION AND DECISION

I. SUFFICIENCY OF THE EVIDENCE

Balls contends that the State failed to rebut his claim that he was entitled to use deadly force to protect himself from Mansfield. He argues that the evidence shows that at the time he cut Mansfield he was in fear that Mansfield would again put him in a choke hold.

We will affirm the trial court if the probative evidence and reasonable inferences drawn therefrom "could have allowed a reasonable trier of fact to find the defendant not guilty beyond a reasonable doubt." *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001), *trans. denied*. A self-defense claim is treated as any other sufficiency of the evidence

claim; therefore, we will not reweigh the evidence or judge the credibility of the witnesses. *Carroll v. State*, 744 N.E.2d 432, 433 (Ind. 2001).

To establish a self-defense claim, a defendant must show that he was “without fault, in a place where he had a right to be, and was in reasonable fear of death or great bodily harm.” *Carroll, id.* The defense is not available if the defendant is the initial aggressor. *Id.* It is also unavailable if the defendant uses “more force than is reasonably necessary under the circumstances.” *Harmon v. State*, 849 N.E.2d 726, 730 (Ind. Ct. App. 2006). The State is required to disprove only one element of the self-defense claim. *Carroll*, 744 N.E.2d at 433.

In the present case, the evidence favorable to the verdict shows that Balls initiated the physical confrontation when he punched Mansfield in the jaw. Furthermore, the evidence favorable to the verdict shows that Balls used more force than reasonably necessary under the circumstances when he used a deadly weapon after Mansfield had voluntarily released him from the choke hold and had turned away from him. In addition, the evidence establishes that Balls, who supposedly feared for his life, pursued Mansfield as he retreated from the apartment to his vehicle. We decline Balls’ invitation to reweigh the evidence or to determine the credibility of the witnesses, and we conclude that the State presented sufficient evidence to disprove Balls’ self-defense claim.

II. SENTENCING

Balls contends that his twenty-year aggregate sentence is inappropriate. A sentence authorized by statute will not be revised unless the sentence is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate

Rule 7(B). In determining the appropriateness of a sentence, a court of review may consider any factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied*. The “nature of the offense” portion of the appropriateness review concerns the advisory sentence for the class of crimes to which the offense belongs; therefore, the advisory sentence is the starting point in the appellate court’s sentence review. *Anglemyer, clarified on rehearing*, 875 N.E.2d 218 (Ind. 2007). The “character of the offender” portion of the sentence review involves consideration of the aggravating and mitigating circumstances and general considerations. *Williams v. State*, 840 N.E.2d 433, 439-40 (Ind. Ct. App. 2006).

Here, even if the nature of the offense were not so grievous, standing alone, as to warrant the imposition of the enhanced sentence, Balls’ character more than offsets the nature of the offense. Balls’ juvenile record includes a true finding of criminal trespass, two findings of criminal conversion, and one true finding of disorderly conduct. As an adult, the 34-year-old Balls accumulated at least eight known convictions, not including the present conviction.¹ He was twice placed on probation, and he violated the terms of both probations. In addition, he accumulated nineteen citations for prisoner misconduct during his terms of incarceration. In short, Balls has shown no respect for the justice system and has failed to take advantage of the chances given to him. Because of Balls’ character, we conclude that the sentence is not inappropriate.

Affirmed.

CRONE, J., and BRADFORD, J., concur.

¹ The pre-sentence statement is unclear whether eight or nine convictions preceded the present conviction.