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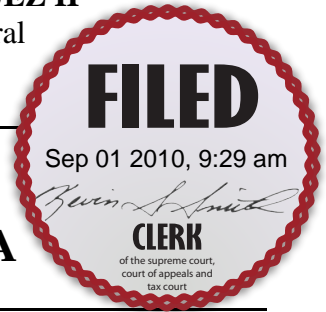
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**IN THE
COURT OF APPEALS OF INDIANA**

NATHAN R. COOK,)
)
Appellant-Defendant,)

vs.)

No. 49A02-1001-CR-36

STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 16
The Honorable Kimberly S. Brown, Judge
The Honorable Israel Cruz, Commissioner
Cause No. 49G16-0909-FD-77182

September 1, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Nathan R. Cook (Cook), appeals his sentence following a conviction for domestic battery, a Class D felony, Ind. Code § 35-42-2-1.3(b); and domestic battery, a Class A misdemeanor, I.C. § 35-42-2-1.3(a).

We affirm.

ISSUE

Cook raises two issues for our review, which we consolidate and restate as the following issue: Whether his sentence was appropriate when the nature of his offense and character are considered.

FACTS AND PROCEDURAL HISTORY

In August of 2009, Cook, his girlfriend, C.D., and their one-year old daughter lived in Marion County, Indiana. On August 27, 2009, Cook and C.D. had an argument over an MP3 player. Cook became irritated with C.D. because the MP3 player would not work. The argument escalated and C.D. tossed the MP3 player at Cook. As C.D. attempted to leave the room, Cook grabbed C.D. by her sweater and pulled her toward him. Cook then grabbed C.D. by the neck and slammed her into the wall leaving a cut on her chin. During the attack, Cook pinned their daughter between C.D. and the wall also causing a bruise on his daughter's face. When Cook let her go, C.D. ran into a different room. C.D. stated that Cook would not allow her to leave the residence or use the phone. Three days after the attack, C.D. contacted the police and reported the incident. Officer Joshua Kemmerling (Officer Kemmerling) of the Indianapolis Metropolitan Police Department responded to the

dispatch and met with C.D. Officer Kemmerling noticed C.D.'s injuries, as they were visible and her nervous demeanor. C.D. told Officer Kemmerling that her neck and head were bruised and her glasses were broken from Cook's grabbing and jerking her backwards by her sweater.

On September 2, 2009, the State filed an Information charging Cook with criminal confinement, strangulation, domestic battery, domestic battery, and battery, all Class D felonies and domestic battery, interference with reporting a crime, and battery, all Class A misdemeanors. On November 13, 2009, a jury found Cook guilty of domestic battery as a Class D felony and domestic battery as a Class A misdemeanor. On December 16, 2009, during the sentencing hearing, the trial court "dismissed" the Class A misdemeanor battery because of double jeopardy and sentenced Cook to "730 days at the Department of Corrections [sic]; 365 [] suspended; 365 days [] served at the Department of Corrections [sic]." (Transcript. p. 175).

Cook now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Cook contends that his two year sentence was inappropriate in light of the nature of the offense and his character.¹ Regardless of whether the trial court has sentenced the defendant within its discretion, we have the authority to independently review the appropriateness of a sentence authorized by statute through Indiana Appellate Rule 7(B).

¹ However, the Appellant, in his brief, contends that the three year sentence was inappropriate in light of the nature of the offense and his character. (Appellant's Br. p. 5).

King v. State, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). That rule permits us to revise a sentence 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. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007). “Ultimately the length of the aggregate sentence and how it is to be served are issues that matter.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). “The principal role of the appellate review should be to attempt to leaven the outliers, and identify some guiding principles for the trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived correct result in each case.” *Id.* at 1225. The defendant carries the burden to persuade us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Cook was found guilty of domestic battery as a Class D felony and domestic battery as a Class A misdemeanor. The trial court sentenced Cook to two years with one year suspended to probation on the Class D felony. (App. pp. 10-11). “A person who commits a Class D felony shall be imprisoned for a fixed term of between six months and three years, with the advisory sentence being one and one half years.” I.C. § 35-50-2-7(A). Cook argues that the sentence imposed by the trial court was inappropriate. Specifically, Cook contends that because there were no real injuries involved as a result of the alleged offense and his minimal criminal history, his sentence was inappropriate.

As for the nature of the offense, Cook injured C.D.’s head, neck, and chin when he grabbed her by the neck and slammed her into the wall. Cook committed this attack on C.D.

in the presence of his one-year old daughter who was in the arms of her mother. During the attack, Cook pinned his one-year old daughter between C.D. and the wall. His daughter was also injured during the attack receiving a bruise on her face.

As to Cook's character, we note Cook has once before been convicted of domestic battery and strangulation on the same victim. Specifically, he was convicted on January 6, 2009, for strangulation and battery on C.D., which was eight months before the current offense. As such, Cook was on probation when he committed the instant offense. Although Cook had a minimal criminal history prior to entering the relationship with C.D., it is clear that he has a propensity for violence against others. Moreover, Cook was recommended for domestic counseling classes to address this issue, but he only attended four or five classes in eight months. This behavior indicates that Cook was not serious about getting help so that he could "get his life back on track." (Pre-Sentence Investigation p. 6). Cook's behavior and actions clearly indicate his disregard for the law and a disinclination to reform his character. Therefore, we find that the trial court's sentence was appropriate in light of the character of Cook and the nature of the offense.

CONCLUSION

Based on the foregoing, we conclude that Cook's two year sentence was appropriate when considering the nature of the offense and character of the offender.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.