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IN THE
COURT OF APPEALS OF INDIANA

STEVEN A. REYNOLDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A02-1003-CR-471
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William J. Hughes III, Judge
Cause No. 29D03-0911-CM-439

October 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Steven A. Reynolds appeals the sentence imposed following his convictions for two counts of battery, as Class A misdemeanors, after a bench trial. Reynolds presents two issues for review:

1. Whether the trial court abused its discretion when it imposed the maximum sentences.

2. Whether the sentences are inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of October 31, 2009, Reynolds had been drinking in Carmel and telephoned his father to ask for a ride home. Because Reynolds' father had to report early for work that day, Reynolds' mother and sister agreed to pick Reynolds up. Reyonolds' mother drove, and his sister accompanied her, to the area of 116th Street and Rangeline Road. They found Reynolds walking through an apartment complex.

Reynolds' sister was in the front passenger seat as they approached him in the car. Reynolds wanted to ride in the front seat, and the sister refused to move. An argument ensued, but the sister eventually moved to the back seat. The sister told Reynolds to "quit being a baby and get in the car." Transcript at 10. Reynolds then reached through the open front passenger window into the back seat and "bust [his sister] across the face" with "his whole hand." Id. at 10-11. The blow cut the sister's lip, stung, and caused bruising. Reynolds walked away.

The mother and sister went to Steak-n-Shake to get something to eat, and then they drove around looking for Reynolds again. They found him on Keystone Avenue. He entered the front passenger seat of his mother's car, saw the Steak-n-Shake bag, and asked "where his F'ing sandwich" was. Id. at 12. Reynolds then turned the radio up to "blaring." Id. His mother asked him to turn the radio down and finally turned it down herself. As they approached Gray Road on 146th Street, they observed two police cars with another car pulled over. Reynolds leaned out the window and yelled, "you F'ers, come and get me." Id. As the Reynolds car approached Allisonville Road, Reynolds' mother said she could not handle the radio anymore and turned it off. Reynolds "smacked her across the face while she was driving." Id. at 13. Reynolds' mother pulled the car over and telephoned police. When police arrived, they arrested Reynolds.

The State charged Reynolds with two counts of battery resulting in bodily injury, as Class A misdemeanors, and one count of intimidation, as a Class A misdemeanor. Following a bench trial, the court found him guilty of both battery counts as charged and not guilty of intimidation. The court proceeded immediately to sentencing.

Reynolds' mother and sister did not give victim impact statements. The State argued that the court had been

> dealing with this Defendant since he turned 18. This Court's given him numerous breaks. I think the first battery case I had with him, he had gotten like a 30-day sentence, he was going to go into the Army and there's been other cases with his family and I think that, he doesn't get anything from probation. He's not a probation candidate.

Id. at 35. Reynolds' counsel argued for an order that Reynolds have no contact with his family. Reynolds' father stated that a no contact order would be "difficult." Id. at 38.

Alternatively, Reynolds' counsel argued for one year in jail, noting that Reynolds was already serving a term in the Department of Correction with a scheduled release date of August 18, 2010. The court sentenced Reynolds to one year on each count, to be served consecutive to each other and to the sentence he was already serving. Reynolds now appeals.

DISCUSSION AND DECISION

Reynolds contends that the trial court abused its discretion when it imposed the maximum and consecutive sentences on each count. Specifically, he argues:

> The record is void of a recitation of [Reynolds'] criminal history which may have justified the imposition of such a harsh sentence. When considering the lack of injury to the victims and that the injuries took place close in proximity during one episode of conduct, it is clear that the court abused its discretion in sentencing [Reynolds]."

Appellant's Brief at 3. We cannot agree.

"[S]entencing 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 other grounds 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. (quotation omitted). Reynolds was convicted of two counts of battery, as Class A misdemeanors. A person convicted of a Class A misdemeanor may be imprisoned for a period of not more than one year. Ind. Code § 35-50-3-2. A defendant may be ordered to serve misdemeanor sentences consecutively.

Dunn v. State, 900 N.E.2d 1291, 1292 (Ind. Ct. App. 2009) (holding consecutive sentencing statute does not apply where sentencing is for misdemeanors only).

Again, Reynolds contends that the trial court "provided no basis for the maximum sentence on each count" and "failed to state whether it considered [his] criminal history." Appellant's Brief at 7. He also argues that the trial court did not "take into account the nearly non-existent injuries to the victims or the fact that both batteries were close in time and proximity as part of one event." Id.

To the extent Reynolds argues that the court should have made a record of the reasons for the sentence, Reynolds is incorrect. A court need not issue a sentencing statement in strictly misdemeanor cases. Stewart v. State, 754 N.E.2d 608, 612-13 (Ind. Ct. App. 2001). Thus, the trial court did not abuse its discretion by failing to enter a sentencing statement.

We next consider Reynolds' arguments regarding the factors the court may have or should have considered when imposing sentence. Reynolds argues that the court did not take into account the fact that the injuries were minor or the fact that both batteries occurred close in time and place to each other. With regard to the court's considerations, Reynolds is incorrect. The court observed at sentencing that the safety of the public and Reynolds' family were to be considered. And with regard to the nature of the offense, Reynolds oversimplifies the facts. Although the injuries he inflicted were not life-threatening, he ignores the circumstances surrounding the offenses. Reynolds had been drinking and phoned home in the middle of the night for a ride home. When his mother and sister came to his assistance, he responded by arguing about what seat in the car he

would occupy; initially refusing to go with them; hitting his sister across the face, causing a cut to her lip; loudly blaring the radio; catcalling police officers they passed on the road; and hitting his mother in the face while she was driving. The final straw, hitting his mother while she was driving, placed in danger the occupants of the Reynolds car as well as to other nearby motorists.

Moreover, the record shows that twenty-three-year-old Reynolds had a history in the sentencing court. The trial court had convicted Reynolds in November 2009,[1] and he was serving time for that conviction at the time of the present sentencing. Reynolds also had at least one other prior battery conviction.[2] Reynolds' criminal history, when combined with the circumstances surrounding the instant offenses, supports the imposition of the maximum sentence on each count.[3] Reynolds has not shown that the trial court abused its discretion when it imposed maximum consecutive sentences.

Appellate Rule 7(B)

Reynolds also contends that his sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana

[1] The court stated at sentencing that Reynolds had "[a] conviction out of [that] Court in November of 2009." Transcript at 36. The record before us does not disclose, nor do the parties discuss, the nature of that conviction.

[2] The State argued that Reynolds was not a candidate for probation because "he doesn't get anything from probation." Transcript at 35. But the State did not explain the number of times Reynolds had been on probation, for what offenses, or when in relation to the current offense. Thus, we do not consider Reynolds' vague history with regard to probation.

[3] Reynolds does not make a separate argument with citation to supporting relevant authority as to the imposition of consecutive sentences. Instead, his argument lumps the maximum and consecutive elements of his sentences together. Any argument regarding the imposition of consecutive sentences is arguably waived. Ind. Appellate Rule 46(A)(8)(a). Waiver notwithstanding, the imposition of consecutive sentences in this case is supported by our decision in Dunn, 900 N.E.2d at 1292 (holding the limitations on consecutive sentencing do not apply to strictly misdemeanor sentencing cases).

Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). "[A] defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review. Roush, 875 N.E.2d at 812.

The nature of the offenses is discussed above. Again, Reynolds telephoned home for a ride in the middle of the night after drinking. When his mother and sister arrived to take him home, he was belligerent, argumentative, reckless in shouting at police officers they passed, and struck his sister and mother. Further, he struck his mother across the face while she was driving. Although the injuries were not serious, his mother and sister suffered injuries nonetheless. On these facts we cannot say that the imposition of maximum consecutive sentences is inappropriate.

Reynolds' argument that his offense is not one of the worst, or "deplorable," Appellant's Brief at 8, is also unavailing. As we have stated, when we consider such an argument, we

> concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character.

Brown v. State, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), trans. denied. While the nature of Reynolds' offenses may not be the worst, neither can we say that Reynolds' sentences are inappropriate in light of his conduct.

Nor has Reynolds persuaded us with regard to his character. His sole argument in this regard is that there was "no review or in-depth recitation of [his] criminal history to establish [his] character." Appellant's Brief at 8. But, again, the court need not have made a sentencing statement. Further, the record shows that Reynolds had a prior conviction for battery, a conviction for intimidation for which he was currently serving a sentence, and prior cases involving his family. And, again, the batteries for which he received maximum consecutive sentences were inflicted on family members while they were coming to his assistance. Reynolds has not shown that his sentences are inappropriate in light of his character.

Affirmed.

BAKER, C.J., and MATHIAS, J., concur.