

Case Summary

Chaz Norton appeals his ten-year sentence for Class B felony aggravated battery.

We affirm.

Issues

Norton raises two issues, which we restate as:

- I. whether the trial court abused its discretion in sentencing him to ten years executed for Class B felony aggravated battery; and
- II. whether his ten-year executed sentence is appropriate in light of his character and the nature of the offense.

Facts

On July 2, 2007, Norton and three accomplices attacked Joseph McKee, who was riding a bicycle. Norton and the others pushed McKee from the bicycle and beat him—kicking him repeatedly in the head and stomping his head into the pavement. McKee suffered life-altering injuries including nearly a dozen facial lacerations, a fractured skull, and a severe brain injury that affects his ability to care for himself. Six days later, Norton used a board to threaten Carl Taylor, a pizza deliveryman, and then robbed him.

On July 16, 2007, the State charged Norton with Class B felony armed robbery for the incident with Taylor. On October 26, 2007, the State charged Norton with Class B felony aggravated battery for the attack on McKee. Norton was sixteen years old at the time of the crimes, but was waived to adult court. On January 4, 2008, Norton pled guilty to both charges. The plea agreement provided that the sentences were to be

concurrent, but otherwise determined by the trial court. The trial court held a sentencing hearing on March 24, 2008.

The trial court sentenced Norton to six years executed for the armed robbery. This sentence is the statutory minimum and Norton does not contest it on appeal. The trial court imposed a ten-year executed sentence for the aggravated battery, to run concurrently. This appeal followed.

Analysis

I. Abuse of Discretion

Norton's analysis contains numerous references to the abuse of discretion standard, without specifically setting out that standard or pinpointing an abuse of discretion in sentencing as an issue. Our court has recently reminded practitioners that inappropriate sentence and abuse of discretion claims are to be analyzed separately. See King v. State, No. 49A02-0802-CR-162, slip. op. at 1 (Ind. Ct. App. Oct. 3, 2008). We glean four abuse of discretion arguments by Norton.

In reviewing a sentence imposed under the current advisory scheme, we engage in a four-step process. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal only for an abuse of discretion. Id. Third, the weight given to those reasons—the aggravators and mitigators—is not subject to appellate review. Id. Fourth, the merits of a particular

sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B).
Id.

Norton argues that the trial court's sentencing statement is "sketchy at best." Appellant's Br. p. 13. The trial court issued oral and written sentencing statements. The oral statement pronounced at the close of the sentencing hearing did include reasons for imposing the chosen sentence and was not "sketchy" as alleged by Norton. In addition, the written statement lists the victim's injuries as an aggravating factor and Norton's age, lack of criminal history, and admission of guilt as mitigating factors. Because we examine both statements to discern the findings of the trial court, we conclude the sentencing statements here are sufficiently detailed. See McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007) (explaining that an oral statement should be examined alongside a written statement).

Norton next argues that the trial court improperly used an element of the crime as an aggravator when it found the seriousness of the injuries to be an aggravating element. The statutory elements of aggravated battery require that a defendant knowingly or intentionally inflict injury that creates a substantial risk of death or causes "serious permanent disfigurement" or "protracted loss or impairment of the function of a bodily member or organ." Ind. Code § 35-42-2-1.5. As it pronounced the sentence, the trial court reasoned that McKee had suffered nearly a dozen fractures and just one of those fractures would satisfy the elements for aggravated battery. The remaining fractures, the brain injury, his permanent disabilities, and the sheer brutality of the crime properly served as an aggravating factor.

Norton argues that the trial court improperly weighed the mitigating and aggravating factors in considering the sentence. On appeal, however, we do not reweigh such factors. See Anglemyer, 868 N.E.2d at 491.

Finally, Norton argues that the trial court overlooked his remorse as a mitigating factor. Prior to announcing the sentence, the trial court listened to Norton's statement of remorse for the crimes. The trial court was in the best position to judge the sincerity of Norton's statements that he was "honestly sorry for what happened." Tr. p. 75. It was within the trial court's discretion to assign Norton's statement little or no mitigating weight and just because the trial court did not assign some mitigating weight to the remorse does not mean it was wholly overlooked. "Without evidence of some impermissible consideration by the trial court, we will accept its determination as to remorse." Johnson v. State, 855 N.E.2d 1014, 1016-17 (Ind. Ct. App. 2006), trans. denied. The trial court did not abuse its discretion in sentencing Norton.

II. Appropriateness

Norton contends the ten-year executed sentence for the Class B felony aggravated battery is not appropriate considering the nature of the offense and his character. Indiana Appellate Rule 7(B) provides that we may revise a sentence if we find that it is inappropriate in light of the nature of the offense and the character of the offender. Although Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a

defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Specifically, Norton contends that the trial court should have suspended four years to probation so he would only have to serve six years. Our supreme court has instructed that we may review not only the length of a defendant’s sentence for appropriateness, but also the placement or how that sentence is to be served. Hole v. State, 851 N.E.2d 302, 304 n.4 (Ind. 2006). Our court has recently noted the difficulty of prevailing on such a claim: “the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate.” King, slip. op. at 2.

We cannot conclude that the ten-year sentence as imposed is inappropriate considering the nature of this crime and the character of the offender. Norton committed two violent crimes within seven days. We acknowledge that he did plead guilty to both offenses, but acceptance of responsibility does not give such a boost to his character to warrant an adjustment to the sentence.

The heinous nature of the aggravated battery against McKee is staggering. The attack was brutal and unprovoked. Norton repeatedly kicked McKee in the head and pounded McKee’s head into the pavement. McKee’s injuries were extremely serious and life-altering. He spent a month in the hospital and another six months in a rehabilitation facility recovering from the beating. McKee’s wife explained that she has quit her job to care for her husband and that she does nearly everything for him—including bathing, feeding, shaving, and dressing. A ten-year sentence without any suspended portion is

entirely appropriate given the nature of this crime. Norton has not convinced us that his ten-year executed sentence is inappropriate.

Conclusion

The trial court did not abuse its discretion in sentencing Norton and his ten-year executed sentence for the Class B felony aggravated battery is appropriate in light of the nature of the offense and his character. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.