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IN THE COURT OF APPEALS OF INDIANA

ROMIE L. JACKSON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

No. 33A01-0801-CR-29

APPEAL FROM THE HENRY CIRCUIT COURT
The Honorable Mary G. Willis, Judge
Cause No. 33C01-0606-MR-2

July 2, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Romie L. Jackson appeals from the sentence imposed following his guilty pleas to Murder,[1] a felony, and Class A felony Robbery.[2] We affirm.

FACTS AND PROCEDURAL HISTORY

On June 1, 2006, Jackson was housed at the New Castle Correctional Facility in Henry County, in the mental health range. As Jackson was walking down the hallway, he encountered Mareese Boyd, who told Jackson that he wanted to kill somebody. A short time later, Jackson agreed to Boyd's plan, and the duo settled on Roger Hewitt as their victim. After entering Hewitt's room, Boyd strangled him as Jackson held his legs. After Hewitt was dead, Jackson took a radio and some soup from his room.

Jackson eventually pled guilty but mentally ill to murder and Class A felony robbery pursuant to a written plea agreement. The agreement, *inter alia*, provided that, in exchange for Jackson's plea, the State would dismiss charges of Class A felony conspiracy to commit murder and Class A felony conspiracy to commit robbery and its request that Jackson's sentence be enhanced due to his alleged status as a habitual offender and that his sentences for murder and robbery would be served concurrently.

The trial court sentenced Jackson to sixty years of incarceration for murder and forty years for robbery, both sentences to be served concurrently. The trial court found, as aggravating circumstances, Jackson's "lengthy history of criminal or delinquent behavior" and that "the victim of the crime, a fellow inmate in the psychiatric ward of the Department of Corrections, was mentally or physically infirm." Appellant's App. p. 88.

[1] Ind. Code § 35-42-1-1 (2005).

[2] Ind. Code § 35-42-5-1 (2005).

The trial court found, as mitigating circumstances, Jackson's history of mental illness and that Jackson "has accepted responsibility for his actions and avoided the necessity and cost of a trial." Appellant's App. p. 88. The trial court found that the aggravating circumstances outweighed the mitigating.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion in Sentencing Jackson

Jackson contends that the trial court abused its discretion in sentencing him and that his sentence is inappropriate. Jackson's offenses were committed after the April 25, 2005, revisions to Indiana's sentencing scheme. Under this new scheme, "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). We review the sentence for an abuse of discretion. *Id*. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." *Id*. Jackson contends only that the trial court failed to give his mental illness and guilty plea sufficient mitigating weight. Under the new statutory scheme, however, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion. *Id*.

II. Whether Jackson's Sentence is Appropriate

We "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's

sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006) (citations and quotation marks omitted), *trans. denied*.

Jackson's offenses were the brutal slaying of a disabled fellow inmate, done apparently, at least in Jackson's case, on a whim and the theft of some of the victim's possessions after his death. We believe that Jackson's apparent motive, the acquisition of Hewitt's "commissary[,]" which consisted of "[s]oups and a radio[,]" highlights the senseless nature of the murder. Tr. p. 77. The nature of Jackson's offenses justifies an enhanced sentence.

As for Jackson's character, he is a repeat offender who has proven himself unwilling to reform himself despite several juvenile adjudications, criminal convictions, and periods of incarceration. As a juvenile, Jackson was found to have committed what would have been Class D felony theft and Class D felony cocaine possession if committed by an adult. As an adult, Jackson has convictions for Class A misdemeanor resisting law enforcement, two counts of Class A misdemeanor carrying a handgun without a permit, Class D felony receiving stolen property, three counts of Class C misdemeanor operating a vehicle without ever having received a license, two counts of Class D felony auto theft, Class A misdemeanor criminal conversion, and Class C felony auto theft. Jackson has served several periods of incarceration, including two terms in the Department of Correction. Jackson has twice violated the terms of probation, resulting in its revocation.

Moreover, we do not believe that Jackson's guilty plea speaks favorably of his character, as he received a substantial benefit in exchange. Had Jackson gone to trial, his sentences for murder and robbery could have been ordered to run consecutively,[3] and, had he been found to be a habitual offender, he would have received a mandatory thirty-year sentence enhancement. Ind. Code § 35-50-2-8(h) (2005).

Finally, while we acknowledge Jackson's significant history of mental illness, we cannot say that it renders his sentence inappropriate. "Documented mental illness, especially if it has some connection to the crime involved, must be given some, and sometimes considerable weight in mitigation." *Williams v. State*, 840 N.E.2d 433, 439 (Ind. Ct. App. 2006). Factors that bear on the mitigating weight to be afforded a mental illness include: "(1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime." *Id*. While Jackson's mental health issues appear to have begun when he was approximately seven years old, he has not established that they render him unable to control his actions or that they have a connection to Hewitt's murder. A psychologist who examined Jackson for competency opined that "[i]t does not appear, however, that Mr. Jackson was unable to appreciate the wrongfulness of his conduct at the time of his offense." Appellant's App. p. 25. As for overall limitations on function, there is some indication in the record of malingering. One of the psychiatrists

[3] Although Jackson could also have been convicted of the conspiracy to commit murder and robbery charges, the sentences for those convictions could not have been ordered to run consecutively to those for the underlying crimes, as no conspiracies are defined as crimes of violence. *See* Ind. Code § 35-50-1-2(a) (2005).

who evaluated Jackson for competence to stand trial opined that "his answers and lack of answers such a[s] about the role of Judge, witnesses etc. suggested a conscious effort to portray himself as more impaired." Appellant's App. p. 34. Jackson has failed to convince us that his mental illness deserves to be afforded more weight than the trial court already gave it. In light of the nature of Jackson's offenses and his character, his sixty-year aggregate sentence is appropriate.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.