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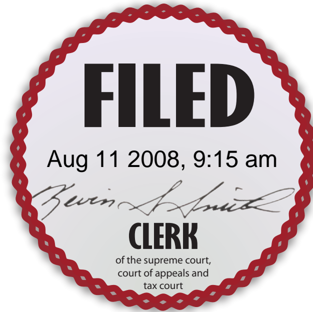

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IN THE
COURT OF APPEALS OF INDIANA

QUINCY E. WADE,)
)
Appellant-Defendant,)
)
vs.) No. 02A05-0801-CR-37
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0709-FB-143

August 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Quincy E. Wade was convicted after a jury trial of robbery[1] as a Class B felony and was sentenced to fifteen years executed. He appeals, raising the following two issues:

I. Whether sufficient evidence was presented to support his conviction for robbery as a Class B felony; and

II. Whether his sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On or about September 17, 2007, Wade called Patricia Dager and told her that he had "some really good" crack cocaine and asked her "to come party with him." *Tr*. at 92. Dager drove her husband's car to meet Wade at a gas station. She and Wade then drove to a house where they "partied" and got high. *Id*. at 94. At some point, Wade asked Dager if he could borrow her car keys to go get cigarettes, which she allowed him to do. When Dager later asked Wade for her car keys, he told her to "shut the f*** up." *Id*. at 95. Later, Dager told Wade several times that she wanted to take her car and go home, but he told her to shut her "f***ing mouth" or her "neck would be broke [sic] like a toothpick." *Id*.

The next day, Wade took Dager's bracelet in order to buy more drugs. He also told Dager that he wanted the rest of her jewelry, but she refused. That evening, Wade drove Dager around the area while he and two other people engaged in drug transactions. At some point, the other two people were dropped at a house, and after they left, Wade told Dager, "go ahead and run and see how far you'll . . . get in this neighborhood." *Id*. at 97. After a few more stops, Wade made a turn at an intersection, and Dager was able to open the car

[1] *See* IC 35-42-5-1.

door. She told Wade to give her the car keys and leave her alone. As Dager stood in the street yelling at Wade, she saw people in the neighborhood closing their doors and window blinds. She turned to run from Wade, but he chased her and grabbed her by the hair. He then dragged her back to the car while she continued to scream. Wade put Dager in a headlock, began beating her, and told her to "shut the f*** up" or he would kill her. *Id.* at 99. He punched her in the face, head, and abdomen and kicked her in the legs. When Wade punched Dager in the face, it caused her false teeth to be "jabbed up inside of [her] mouth, inside of [her] nose, [and] up inside of [her] gums." *Id.* at 100. Wade pushed her down onto the road and ripped her jewelry off of her. Among the jewelry Wade took from Dager were her wedding ring, a ring given to her from her parents, two other rings, a necklace, and a pair of diamond earrings.

A man who was driving through the area heard Dager screaming for help and looked in his rearview mirror. He observed Wade strike Dager, causing her to fall to the ground. The witness called the police and described what he had observed. He also saw Wade drive away in Dager's car. Later that afternoon, Wade pawned two of Dager's rings, and shortly thereafter, the police arrested Wade, who was still driving Dager's car.

The State charged Wade with robbery as a Class B felony, battery as a Class A misdemeanor, and theft as a Class D felony. A jury trial was held, and the jury found Wade guilty of all three counts. The trial court found that Counts II and III, battery and theft, merged into Count I, robbery, and sentenced Wade to fifteen years executed on the robbery conviction. Wade now appeals.

DISCUSSION AND DECISION

I. Sufficient Evidence

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at 523.

Wade argues that insufficient evidence was presented to support his conviction for robbery as a Class B felony. He specifically contends that the evidence supported the findings that he battered Dager and that he stole her jewelry, but that the battery and theft were two separate events and therefore separate crimes as opposed to the one crime of robbery as a Class B felony.

In order to convict Wade of robbery as a Class B felony, the State was required to prove that he knowingly or intentionally took property from another person or from the presence of another person by using or threatening the use of force or by putting the person in fear and that this act resulted in bodily injury to the person. *See* IC 35-42-5-1. "Bodily injury" means any impairment of physical condition, including physical pain. IC 35-41-1-4. Therefore, it is "sufficient that the victim experienced physical pain by [d]efendant's action," and "[i]t is not necessary that some physical trauma to the body be shown." *Lewis v. State*, 438 N.E.2d 289, 294 (Ind. 1982).

Here, the evidence presented showed that when Dager tried to run away from Wade, he chased after her and grabbed her by the hair to drag her back to the car. He then put her in a headlock and began to hit her in the face, head, and abdomen and to kick her in the legs. When he punched Dager in the face, he caused her false teeth to be pushed up into her gums causing injury to her mouth. Wade then pushed Dager to the ground and ripped her jewelry off of her. Dager testified that Wade's actions caused her pain. *Tr.* at 100. We conclude that this evidence was sufficient to support Wade's conviction for robbery as a Class B felony. Wade's argument that the evidence would have supported separate convictions for each of the lesser-included offenses of battery and theft does not obviate the fact that the evidence also was sufficient to support his conviction for robbery as a Class B felony.

II. Inappropriate Sentence

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

Wade argues that his fifteen-year executed sentence was inappropriate in light of the nature of the offense and his character. He contends that the nature of the offense was not sufficiently aggravating as to justify an enhanced sentence. Likewise, he claims that his character, specifically his criminal history, was not so egregious as to justify the sentence he received. We disagree.

As to the nature of the offense, after Dager accepted Wade's invitation to use drugs with him, he took possession of her car and refused to let her leave when she requested the keys from him. The next day, Wade took Dager's bracelet in order to obtain more drugs and told her that he wanted the rest of her jewelry, but she refused. Later, Wade drove Dager's car around to engage in drug deals and refused to allow Dager to leave. When she attempted to run away from him on foot, Wade grabbed her by the hair and dragged her back to the car. He then proceeded to punch her, kick her, push her down on the ground, and rip her jewelry off of her. Afterwards, he took Dager's car and went to a pawnshop, where he pawned some of her jewelry. The nature of his offense showed that Wade was involved in illegal drug activity, and when Dager wanted to leave and would not give him her jewelry to purchase more drugs, he violently forced her to stay and took the jewelry against Dager's will.

As to Wade's character, he has an extensive criminal history. The current offense is his sixteenth conviction. His involvement in criminal activity began in 1994 when he was adjudicated a delinquent for receiving/possession of stolen property, which would be a Class D felony if committed by an adult. As an adult, Wade has been convicted of resisting law enforcement twice, public intoxication, false reporting, invasion of privacy, theft, dealing in cocaine, possession of marijuana, possession of cocaine, battery, and various driving offenses. In addition, he has violated his probation several times, and was on probation at the time of his current offense, which resulted in another probation violation. Therefore, in light of the nature of the offense and Wade's character, we do not believe that his fifteen-year sentence was inappropriate.

Affirmed.

VAIDIK, J., and CRONE, J., concur.