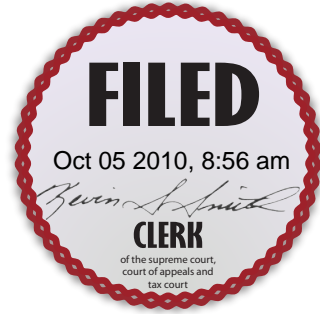


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KRISTOPHER G. RUNKLE,)

Appellant-Defendant,)

vs.)

No. 05A02-1004-CR-479

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE BLACKFORD CIRCUIT COURT
The Honorable Dean A. Young, Judge
Cause No. 05C01-0910-FC-61

October 5, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Kristopher G. Runkle (Runkle), appeals his conviction and sentence for residential entry, a Class D felony, Ind. Code § 35-43-2-1.5 and battery resulting in bodily injury, a Class A misdemeanor, I.C. § 35-42-2-1(a)(1)(A).

We affirm.

ISSUES

Runkle raises three issues on appeal, which we restate as follows:

- (1) Whether the State presented sufficient evidence to establish beyond a reasonable doubt that Runkle committed residential entry;
- (2) Whether the trial court abused its discretion when it imposed consecutive sentences; and
- (3) Whether Runkle's sentence is appropriate in light of the nature of the offense and his character.

FACTS AND PROCEDURAL HISTORY

At some point in 2009, Julie Thomas (Thomas) and Runkle were in a relationship and lived together at Thomas' apartment, located in Hartford City, Indiana. Their relationship had ended a couple of weeks prior to October 18, 2009. On October 18, 2009, Jimmy Cross (Cross) was visiting Thomas. At approximately 3:00 a.m., Thomas and Cross were laying on the floor watching a movie when they heard a bang on the back door. After Runkle broke through the back door of Thomas' apartment, he kicked her in the head. As Thomas reached for the phone to call for help, Runkle took the phone away from her, wrapped the phone cord

around her hands, slapped her in the face, and punched her with a closed fist, cutting the bridge of her nose. While attacking her, Runkle yelled vulgarities at Thomas and threatened to kill her. Runkle also took a metal box fan, held it by the handle, and slammed it down on Thomas' head and arms. He eventually stopped after she pleaded with him and he subsequently left the apartment.

On October 19, 2009, the State filed an Information charging Runkle with Count I, criminal confinement, a Class C felony, I.C. § 35-42-3-3; Count II, residential entry, a Class D felony, I.C. § 35-43-2-1.5; Count III, intimidation, a Class D felony, I.C. § 35-45-2-1(a)(1); Count IV-V, battery resulting in bodily injury, Class A misdemeanors, I.C. § 35-42-2-1(a)(1)(A); and Count VI, interference with the reporting of a crime, a Class A misdemeanor, I.C. § 35-45-2-5(1). On March 16, 2010, a jury trial was held. At the close of the evidence, the jury found Runkle guilty on Counts II and IV, and not guilty on the remaining Counts.

On April 12, 2010, the trial court conducted a sentencing hearing. After hearing testimony, the trial court sentenced Runkle to three years of imprisonment on Count II and one year of imprisonment on Count IV, with both sentences to be served consecutively.

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

DISCUSSION AND DECISION

I. Sufficiency of the evidence.

Runkle first contends that the State failed to prove beyond a reasonable doubt that he committed residential entry.¹ In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 213. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

In order to establish that Runkle committed residential entry, the State was required to prove that Runkle “knowingly or intentionally broke and entered the dwelling of another person.” I. C. § 35-43-2-1.5. In his brief, Runkle does not challenge the intentional breaking and entering elements of the charge; however, he contends that the State failed to present substantial evidence of probative value that he entered the “dwelling of another person.” Specifically, Runkle points us to Thomas’ testimony on cross-examination where she acknowledged that Runkle was free to come and go from her apartment. Also in support of his argument, Runkle references his own testimony, stating that he and Thomas were still in a relationship on October 18, 2009.

¹ Runkle does not challenge the sufficiency of the evidence for his conviction for battery.

Here, Thomas testified that Runkle no longer lived with her, that they no longer were in a relationship, and that Runkle had no key to her apartment. She stated that the back door was locked at around 3:00 a.m. on October 18, 2009 and that Runkle did not ask for permission to enter her residence. While Thomas did testify on cross-examination that Runkle was “free to come and go,” she clarified that statement in redirect to mean that he was welcome to stop by like any other guest. (Transcript p. 35). Furthermore, even though Thomas had sent correspondence to Runkle referencing the apartment as “our home” and mentioning “our bills,” the testimony is unclear as to what time period the letters referred to. (Tr. pp. 48-49). It is undisputed that at one time Runkle and Thomas lived together and shared the expenses for the residence and therefore, it is a reasonable inference that the letters could have referred to that time period. With respect to Runkle now asserting his own testimony as more credible than that of Thomas, we note that we cannot reweigh the evidence or judge the credibility of the witnesses. *Perez*, 872 N.E.2d at 212-13. Thus, we conclude that the State presented sufficient evidence beyond a reasonable doubt to establish that Runkle broke into the “dwelling of another person.”

II. *Consecutive Sentences*

Next, Runkle claims that the trial court erred in imposing consecutive sentences for this single episode of conduct. Although the State concedes that the residential entry and the battery constitute a single episode of conduct, the State asserts that the trial court properly imposed consecutive sentences in the instant cause pursuant to Indiana Code section 35-50-1-2(c).

Indiana Code section 35-50-1-2 limits a court's authority in imposing consecutive sentences in cases where the convictions are not for crimes of violence, as defined in I.C. § 35-50-1-2(a), and the convictions arise out of an episode of criminal conduct. If both of these circumstances exist, the total of the consecutive terms of imprisonment "to which the defendant is sentenced [] shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted." I.C. § 35-50-1-2(c). Although this statute explicitly addresses felonies, we have clarified that the statutory cap on consecutive sentences arising from an episode of criminal conduct also includes misdemeanor sentences. *Purdy v. State*, 727 N.E.2d 1091, 1093-94 (Ind. Ct. App. 2000), *trans. denied*. Because Runkle's convictions for residential entry and battery are not characterized as a crime of violence and both charges arose out of a single episode of criminal conduct, the trial court could impose consecutive sentences.

Runkle was convicted for a Class D felony and a Class A misdemeanor and therefore, the maximum sentence that could be imposed cannot be higher than the advisory sentence for a Class C felony, *i.e.*, four years. Here, the trial court imposed consecutive sentences of three years for residential entry and one year for battery, for an aggregate sentence of four years imprisonment. As such we conclude that the trial court did not abuse its discretion.

III. Sentence

Lastly, Runkle contends that his sentence was inappropriate in light of his character and the nature of the offense. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute 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. Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

With respect to the nature of the offense, we note that Runkle entered the apartment of a former girlfriend at 3 a.m. and brutally attacked her by kicking her in the head and face. He verbally threatened to kill Thomas and repeatedly called her a “bitch” and a “whore.” (Tr. p. 38).

Turning to Runkle’s character, we note his extensive criminal history and continued drug abuse. Runkle’s adult criminal history started in 1988 and over a twenty-two year period he has been convicted of twenty-two misdemeanors, four felonies, and had nine petitions to revoke his probation filed against him. His felony convictions include theft, possession of marijuana, and battery resulting in serious bodily injury. Also, Runkle was on parole when he committed the instant offense.

Runkle has used a variety of illegal drugs since the time he was in third grade and has abused alcohol, marijuana, Adderall, and methamphetamines. In fact, on the night of October 18, 2009, Runkle had been drinking beer and whiskey. After the attack and after he left Thomas’ house, he continued to drink, consuming six beers and three or four shots of whiskey.

The extensiveness of Runkle’s criminal history prompted the trial court to state that

And, [], you’re entire life has been one of hurting other people. You may be a very decent guy when you’re not [on] booze or drugs, but it appears that as, at a threshold, you can’t keep off of booze or drugs. So which means you can’t keep from hurting other people. And this [c]ourt would be grossly negligent,

grossly, grossly negligent to give you any consideration at all with respect to the sentence in this case.

(Tr. p. 233). Although Runkle now challenges the trial court's explicit refusal to give him any consideration during sentencing, in light of Runkle's criminal history, we do not find that the trial court abused its discretion. Therefore, we conclude that Runkle's four year aggregate sentence was appropriate in light of his character and nature of the offense.

CONCLUSION

Based on the foregoing, we conclude that (1) the State presented sufficient evidence to establish beyond a reasonable doubt that Runkle committed residential entry; (2) the trial court did not abuse its discretion by imposing consecutive sentences; and (3) the trial court properly sentenced Runkle.

Affirmed.

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