



## STATEMENT OF THE CASE

Appellant-Defendant, Heather D. Griffin (Griffin), appeals her sentence for conspiracy to commit robbery, a Class B felony, Ind. Code § 35-41-5-2 and burglary resulting in injury, a Class A felony, I.C. § 35-43-2-1(2)(A).

We affirm.

## ISSUES

Griffin raises one issue on appeal, which we restate as the following two issues:

- (1) Whether the trial court abused its discretion finding her history of substance abuse to be an aggravating factor and not finding remorse or undue hardship on her child as mitigating factors; and
- (2) Whether her sentence is appropriate in light of her character and the nature of her offense.

## FACTS AND PROCEDURAL HISTORY

On August 16, 2008, Candice Brown (Brown) drove Griffin, Kristina Randolph (Randolph), and Rhonda Griffin (Rhonda) to the home of 68-year-old Dwight Pendleton (Pendleton) with the plan to rob him at his home in rural Montgomery County, Indiana. In the car were also Griffin's six-year-old son, Brown's ten-year-old daughter, and the daughter's ten-year-old friend. Griffin was intoxicated with alcohol and pills, and she had smoked marijuana on the evening of the crime.

Griffin, Rhonda, and Randolph disguised themselves with hooded sweatshirts, sunglasses, and bandanas. Griffin was armed with a knife, and Randolph was armed with a

BB gun. Brown and the children remained in the van while Randolph, Griffin, and Rhonda knocked on Pendleton's door at approximately eleven o'clock in the evening. When Pendleton opened the door, the women demanded money, but Pendleton indicated that he only had two dollars in cash. One of the women said "shoot him," and Randolph pulled out a BB gun. (Transcript p. 38.) Pendleton attempted to disarm Randolph, but the BB gun discharged striking Pendleton on the top of his head. Pendleton also broke four ribs and injured his wrist before he was able to remove Randolph from his house.

Pendleton's girlfriend, Dawn Cummins (Cummins), was also in the home at the time of the robbery. During Pendleton's scuffle with Randolph, Rhonda struck Cummins in the eye, and Griffin cut Cummins' leg with a knife. The women then fled from Pendleton's home.

On August 29, 2008, the State filed an Information charging Griffin with: Count I, conspiracy to commit robbery, a Class B felony, I.C. § 35-41-5-2, 35-42-5-1; Count II, felony burglary resulting in injury, a Class A felony, I.C. § 35-43-2-1(2)(A); Count III, burglary, a Class B felony, I.C. § 35-43-2-1; Count IV, attempted robbery causing serious bodily injury, a Class A felony, I.C. § 35-41-5-1, 35-42-5-2; and Count V, felony battery resulting in serious bodily injury, a Class C felony, I.C. § 35-42-2-1(a)(3). On September 2, 2008, the State amended the Informational by filing a Habitual Offender charge.

On March 4, 2009, Griffin pled guilty to Count I, Class B felony conspiracy to commit robbery and Count II, Class A felony burglary resulting in injury, in exchange for the State's agreement to dismiss Counts III through VI. The plea agreement provided that any sentences

would be served concurrently, and the executed portion of the sentence would not exceed thirty-five years.

On April 13, 2009, during the sentencing hearing, the trial court found as aggravating factors: 1) Griffin's longstanding history of substance abuse; 2) her extensive history of criminal convictions; 3) Griffin was on parole when she committed the instant crime; 4) she is likely to reoffend; 5) the victim's age; and 6) the fact that there was more than one victim. The trial court found the fact that Griffin cooperated with authorities as the sole mitigating factor. The trial court sentenced Griffin to twenty years imprisonment on Count I, Class B felony conspiracy to commit robbery and forty years imprisonment on Count II, Class A felony burglary resulting in injury with ten years suspended, for a total of thirty years to be served in the Indiana Department of Correction. The court ordered the sentences to be served concurrently.

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

## DISCUSSION AND DECISION

### *I. Standard of Review*

Griffin contends that the trial court abused its discretion by sentencing her to an executed sentence of thirty years. As long as a sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 491, *clarified 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.* One way in which a

trial court may abuse its discretion is by entering a sentencing statement that explains the reasons for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. *Id.* at 490-91.

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion by failing to properly weigh such factors. *Id.* at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id.*

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id.* Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id.* Where a defendant asks us to exercise our appropriateness review, the burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). “Ultimately the length of the aggregate sentence and how it is to be served are the issues that matter.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other considerations that come to light in a given case. *Id.*

## II. *Aggravators and Mitigators*

Here, Griffin first argues that the trial court abused its discretion in considering her long history of substance abuse as an aggravating factor. Specifically, Griffin claims the substance abuse factor should not have been weighed by the trial court because she “is making sincere efforts to change her life in regard to substance abuse” and her substance abuse problem was “a product of herself being a victim of crimes.” (Appellant’s Br. p. 8).

The trial court found that Griffin has a “long standing history of drug and alcohol abuse dating back to age thirteen or fourteen with both alcohol and marijuana and gradually over time using more serious drugs, harder drugs including cocaine, Xanax and some opiate based prescription medications such as Percocet and oxycotin.” (Tr. p. 67). Griffin has been charged twice with possession of marijuana, charged twice with possession of controlled substances, and she has been convicted at least twice for operating a vehicle while intoxicated. In regards to Griffin’s statement that she is making efforts to change her life, we have previously held that when an addict is aware of their drug abuse problem, but does not take any positive steps to treat the addiction, it is proper to consider the abuse an aggravating factor. *Bryant v. State*, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004), *trans. denied*. The trial court found that even though Griffin began drug use at the age of thirteen, she only attended a drug treatment program briefly in 2001. Furthermore, the record shows Griffin was under the influence of drugs at the time she committed the crimes. Based on the foregoing, the record supports the trial court’s finding that Griffin’s long history of substance abuse was a proper aggravating factor.

Next, Griffin argues that the trial court abused its discretion in failing to consider as mitigating factors her remorse for committing the crime and the fact that she has a son. The only mitigating circumstance the trial court found was that Griffin cooperated with authorities.

Substantial deference must be given to a trial courts evaluation of remorse. *Corralez v. State*, 815 N.E .2d 1023, 1025 (Ind. Ct. App. 2004). The trial court, which has the ability to directly observe the defendant and listen to the tenor of his voice, is in the best position to determine whether the remorse is genuine. *Id.* The record reflects that in a written statement attached to the presentence investigation report, Griffin stated, “I’m so truely [sic] sorry for going to these people’s house.” (Appellant’s Br. p. 8). Without any further evidence, we cannot say that the trial court abused its discretion in not considering Griffin’s one remorseful statement as a mitigating circumstance.

Also, Griffin contends that the trial court abused its discretion by failing to find that the sentence would not cause an undue hardship on her son. In *Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999), our supreme court stated that absent special circumstances, trial courts are not required to find that imprisonment will result in undue hardship. Griffin did not produce any evidence to show that her incarceration would be an undue hardship on her son. As such, we conclude that the trial court did not abuse its discretion.

### III. *Appropriateness of the Sentence*

In addition, we find that Griffin’s sentence is appropriate in light of her character and the nature of the crime. With regards to Griffin’s character, we note that the trial court found

that she has a long standing history of drug and alcohol abuse, and she was intoxicated at the time of the crime. Griffin has a previous criminal record of two possession of marijuana charges, two possession of controlled substances charges, theft as a misdemeanor charge, theft as a felony charge, three driving while license suspended convictions, and at least two operating a vehicle while intoxicated convictions. Furthermore, she was on parole when she committed this offense, and she brought her six-year-old son along and left him in the car while the crimes were being committed.

Turning to the nature of the crime, we observe that Griffin cut an individual during the planned robbery of a 68-year-old man. During the robbery the victim was shot in the head with a BB gun, broke four ribs, and injured his wrist. For the foregoing reasons, Griffin has failed to show that her sentence is inappropriate in light of her character and the nature of the crime.

#### CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when sentencing Griffin and that her sentence is not inappropriate when the nature of her offenses and her character are considered.

Affirmed.

BAKER, C.J., and FRIEDLANDER, J., concur.