

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Terry Michael Hall,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

February 23, 2024

Court of Appeals Case No.
23A-CR-1248

Appeal from the Kosciusko
Superior Court

The Honorable Karin A. McGrath,
Judge

Trial Court Cause No.
43D01-2012-F3-912

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Case Summary

- [1] After a jury convicted Terry Michael Hall (“Hall”) of two counts of Level 5 felony intimidation, the trial court sentenced Hall to five years for each conviction and ordered the sentences to run consecutively to each other, for an aggregate sentence of ten years.¹ Hall’s sole argument is that the trial court abused its discretion when it imposed consecutive terms of imprisonment that exceeded the maximum term allowed under INDIANA CODE § 35-50-1-2(d)(2) where his two intimidation convictions resulted from a single episode of criminal conduct. Concluding that Hall’s two intimidation convictions resulted from a single episode of criminal conduct and that the length of his aggregate sentence exceeds the maximum sentence permitted by INDIANA CODE § 35-50-1-2(d)(2), we reverse and remand with instructions for the trial court to resentence Hall in compliance with INDIANA CODE § 35-50-1-2(d)(2).
- [2] We reverse and remand with instructions.

Facts

- [3] The facts most favorable to the judgment reveal that on December 14, 2020, Anthony Mills (“Mills”) was visiting Hall’s sister, Patricia (“Patricia”), at her

¹ The jury also convicted Hall of Level 6 felony possession of methamphetamine, Level 6 felony criminal recklessness, Class A misdemeanor resisting law enforcement, and Class C misdemeanor possession of paraphernalia. The trial court sentenced Hall to one year for each of the Level 6 felony convictions, one year for the Class A misdemeanor conviction, and sixty days for the Class C misdemeanor conviction. Further, the trial court ordered those sentences to run concurrently with each other and currently with the ten-year sentence imposed for the two Level 5 felony convictions. Hall does not appeal these additional convictions or the sentences imposed thereon.

home. At some point in the evening, fifty-two-year-old Hall arrived at Patricia's home. Hall was angry and began waving around a shotgun and a revolver. Mills "[f]reaked out" and telephoned a friend, Donald Chadwick ("Chadwick"), to come and get him. (Tr. Vol. 2 at 76).

[4] Chadwick arrived at Patricia's home and telephoned Mills to let him know that he had arrived. When Mills did not answer his telephone call, Chadwick approached Patricia's house and knocked at the front door. Chadwick heard "commotion" coming from inside the house, but no one answered the door. (Tr. Vol. 2 at 70). Chadwick returned to his car, heard a gunshot come from inside Patricia's house, and telephoned 911.

[5] Kosciusko County Sheriff's Department Deputies Tyler Stringfellow ("Deputy Stringfellow"), Kyle Denton ("Deputy Denton") and Kreg Kuhn ("Deputy Kuhn") responded to a report of a shot fired. Deputy Denton knocked at the front door while Deputy Stringfellow looked into the home through a large front window. While the deputies were at the door, Mills came running out the door with his hands up. Mills told the deputies that he was "the victim in this" and that Hall was "under the influence of controlled substances and [was] crazy." (Tr. Vol. 2 at 90, 149).

[6] After escorting Mills to safety, the deputies resumed their attempts to talk to Hall. Deputy Stringfellow continued to watch Hall through the large front window and could see that Hall was armed. The deputies heard Hall yelling and screaming inside the house. Also, during the incident, "[t]here w[ere] a

couple times where a long gun was pointed in [Deputy Stringfellow's] direction along with a revolver style firearm.” (Tr. Vol. 2 at 93). Hall eventually stepped outside and then ran back into the house.

[7] Shortly thereafter, the deputies convinced Hall to come outside to the front yard to give Deputy Kuhn a flashlight. Deputy Kuhn grabbed Hall's wrist “and that's when the struggle began and then went to the ground.” (Tr. Vol. 2 at 94). The deputies arrested Hall, and Officer Stringfellow discovered a bag of methamphetamine and a glass smoking device in Hall's pocket.

[8] On December 16, 2020, the State charged Hall with, among other things, two counts of intimidation. One count was for intimidating Mills by threatening to unlawfully injure him, and the other count was for intimidating Officer Stringfellow by threatening to unlawfully injure him. The jury convicted Hall of both counts, and the trial court sentenced him to five (5) years for each conviction and ordered the sentences to run consecutively to each other for an aggregate sentence of ten (10) years.

[9] Hall now appeals his sentence.

Decision

[10] Hall argues that the trial court abused its discretion when it imposed consecutive terms of imprisonment that exceeded the maximum term allowed under INDIANA CODE § 35-50-1-2(d)(2). Specifically, he contends that the two intimidation convictions resulted from a single “episode of criminal conduct as defined under I.C. § 35-50-1-2.” (Hall's Br. 10). Therefore, according to Hall,

his total sentence was limited to seven years. *See* INDIANA CODE § 35-50-1-2(d)(2). We agree.

[11] It is generally within the trial court’s discretion whether to order sentences to be served consecutively or concurrently. *Fix v. State*, 186 N.E.3d 1134, 1142 (Ind. 2022). “But because our legislature is responsible for fixing criminal penalties, a trial court’s sentencing discretion must not exceed the limits prescribed by statute.” *Id.* INDIANA CODE § 35-50-1-2 provides that, except for crimes of violence,²

(d) [T]he total of the consecutive terms of imprisonment to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct may not exceed the following:

* * * * *

(2) If the most serious crime for which the defendant is sentenced is a Level 5 felony, the total of the consecutive terms of imprisonment may not exceed seven (7) years.

[12] An “episode of criminal conduct” means “offenses or a connected series of offenses that are closely related in time, place, and circumstance.” I.C. § 35-50-1-2(b). Whether certain offenses constitute a single episode of criminal conduct is “a fact-intensive inquiry” to be determined by the trial court. *Fix*, 186 N.E.3d at 1144. “For criminal actions to be considered a single episode of criminal

² The parties agree that INDIANA CODE § 35-50-1-2(a) does not define intimidation as a crime of violence.

conduct, it is not necessary that the victim of each action is the same.” *Yost v. State*, 150 N.E.3d 610, 614 (Ind. Ct. App. 2020). Further, “[w]hile the ability to recount each charge without referring to the other offers guidance on the question of whether a defendant’s conduct constitutes an episode of criminal conduct, we focus our analysis on the timing of the offenses and the simultaneous and contemporaneous nature of the crimes, if any.” *Fix*, 186 N.E.3d at 1144 (cleaned up).

[13] In the *Fix* case, Fix and a friend took several items of the victim’s property, left the victim’s house to “unload their plundered goods,” and returned forty-five minutes later “for a second round of looting.” *Id.* at 1137. “In the end, [Fix and his friend] made off with an estimated \$11,000 worth of [the victim]’s property[.]” *Id.* A jury convicted Fix of Level 2 felony burglary, Level 5 felony robbery, and Level 6 felony theft. The trial court sentenced Fix to thirty years for the Level 2 felony, six years for the Level 5 felony, and two and one-half years for the Level 6 felony. The court further ordered the sentences to run consecutively to each other for an aggregate sentence of thirty-eight and one-half years.

[14] On appeal, Fix argued that the length of his aggregate sentence exceeded the maximum aggregate sentence permitted by INDIANA CODE § 35-50-1-2. Our Indiana Supreme Court noted that pursuant to INDIANA CODE § 35-50-1-2, Level 2 felony burglary is a “crime of violence.” *Id.* (quoting I.C. § 35-50-1-2(a)(13)). Thus, our supreme court concluded that Fix’s sentence for that conviction fell outside the statutory restriction. *Fix*, 186 N.E.3d at 1143.

However, our supreme court further concluded that because the statute does not define Level 5 felony robbery and Level 6 felony theft as crimes of violence, the sentences for those convictions were included within the statutory restriction.

Id.

- [15] In determining whether Fix’s Level 5 felony robbery and Level 6 felony theft convictions resulted in an episode of criminal conduct, our supreme court noted that Fix had committed both offenses on the same night at the same location. *Id.* at 1144. In addition, our supreme court found it difficult to account for one charge without referring to the details of the other charge. *Id.* Our supreme court, therefore, concluded that the two convictions were “clearly connected in both place and circumstance.” *Id.* In addition, our supreme court further found that although the offenses were not precisely simultaneous or contemporaneous, they were sufficiently connected in time. *Id.* Based upon its fact-intensive inquiry, our supreme court concluded that Fix’s two offenses amounted to a single episode of criminal conduct and that, pursuant to INDIANA CODE § 35-50-1-2(d)(2), the total consecutive terms of imprisonment could not exceed seven years. *Id.* Accordingly, our supreme court reversed and remanded Fix’s case to the trial court with instructions “for the trial court to resentence Fix to consecutive terms of imprisonment for those two non-violent offenses not [to] exceed seven (7) years, . . . , capping his aggregate term for all offenses at thirty-seven years.” *Id.* at 1145 (cleaned up).

- [16] Here, our review of the record reveals that Hall committed both intimidation offenses on the same night at the same location. In addition, as in *Fix*, it is

difficult to account for one charge without referring to the details of the other charge. Thus, the two convictions were clearly connected in both place and circumstances. *See id.* at 1144. In addition, although Hall did not commit the two offenses contemporaneously or simultaneously, as in *Fix*, the two offenses were sufficiently connected in time. Based upon our fact-intensive inquiry, we conclude that Hall’s two intimidation convictions amounted to a single episode of criminal conduct. *See id;* *see also Purdy v. State*, 727 N.E.2d 1091, 1093 (Ind. Ct. App. 2000) (concluding that defendant’s assault of his girlfriend and subsequent acts of resisting arrest and battery of a police officer were a single episode of criminal conduct as they took place during “a relatively short period of time and all were related to his assault on [his girlfriend]”), *trans. denied*. Thus, pursuant to INDIANA CODE § 35-50-1-2(d)(2), the total consecutive terms of Hall’s imprisonment could not exceed seven years. Accordingly, we reverse and remand with instructions for the trial court to resentence Hall in compliance with INDIANA CODE § 35-50-1-2(d)(2).

[17] Reversed and remanded with instructions.

Tavitas, J., and Foley, J., concur.