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**IN THE
COURT OF APPEALS OF INDIANA**

KENYA WRIGHT,)
)
Appellant-Defendant ,)
)
vs.) No. 49A02-0701-CR-56
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0511-FA-200972

December 3, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Kenya Wright (“Wright”) was convicted in Marion Superior Court of Class A felony attempted murder, Class D felony resisting law enforcement, and Class A misdemeanor carrying a handgun without a license and sentenced to a total of fifty-four years incarceration. Wright appeals and presents two issues, which we restate as:

- I. Whether there is sufficient evidence to support Wright’s convictions for attempted murder and carrying a handgun without a license; and
- II. Whether the trial court erred in imposing sentence.

We affirm.

Facts and Procedural History

On the night of November 20, 2005, Indianapolis Police Department Officer Michael Antonelli (“Officer Antonelli”) initiated a traffic stop of a car driven by Wright. After Wright pulled the car to a stop, the passenger of the car got out and began to walk away. Officer Antonelli got out of his patrol car and told the passenger to return. He also saw Wright reaching in to the back seat of the car, as if he was either trying to hide or retrieve something. Officer Antonelli ordered Wright to return his hands to the front of the car, and Wright complied. Wright did not have a driver’s license or other identification, and told Officer Antonelli that he did not know his social security number, which made Officer Antonelli suspicious that Wright was trying to conceal his identity. Wright also moved his right hand to his right thigh and leaned forward as if he were trying to hide something. Concerned for his safety, Officer Antonelli ordered Wright out of the car so that he could pat him down.

As Officer Antonelli began the pat-down, Wright broke away from him and ran away. Officer Antonelli gave chase and ordered Wright to stop. Officer Antonelli quickly tackled Wright, grabbing ahold of his jacket. The two struggled, with Wright flailing wildly and striking Officer Antonelli. Wright then slipped out of his jacket and ran away again. Officer Antonelli caught up with Wright between two nearby houses and tackled him. Wright continued to struggle, striking Officer Antonelli yet again. Officer Antonelli eventually got Wright to his feet and pushed him up against the side of the nearby house. Officer Antonelli placed his hands on Wright's shoulders, preparing to put him in handcuffs when Wright lifted his right arm. Officer Antonelli then saw out of the corner of his left eye "a shiny object" in Wright's hand, saw several muzzle flashes, and heard four or five gunshots.

Terrified, Officer Antonelli realized that Wright was shooting at him. He soon felt an intense pain in his head and was knocked to the ground. Officer Antonelli realized that he had been shot in the face after he touched his face and felt the injury caused by the bullet. The bullet entered the left side of Officer Antonelli's nose, traveled through the nose and the bottom part of the right eye, and destroyed his eyeball, orbit, and sinus cavities around the right eye and cheek. Blinded by the gunshot and choking on blood, Officer Antonelli radioed for help. Other police officers rushed to the scene and found Officer Antonelli, who was quickly transported to the hospital. Doctors at the hospital were able to save Officer Antonelli's life, but he underwent several reconstructive surgeries and had to be fitted with a prosthetic eyeball.

On November 21, 2005, the State charged Wright with Class A felony attempted murder, Class B felony aggravated battery, Class D felony resisting law enforcement, and Class A misdemeanor carrying a handgun without a license. On December 6, 2006, a jury found Wright guilty as charged. The trial court entered judgments of conviction on all counts except aggravated battery, which the trial court “merged” with the attempted murder conviction. At a hearing held on December 20, 2006, the trial court determined that the aggravating factors outweighed the mitigating factors and sentenced Wright to fifty years upon the attempted murder conviction, three years on the resisting law enforcement conviction, and one year on the carrying a handgun conviction. The trial court ordered all sentences to run consecutively, for an aggregate sentence of fifty-four years. Wright now appeals.

I. Sufficiency of the Evidence

Wright first challenges the sufficiency of the evidence supporting his convictions for attempted murder and carrying a handgun without a license. Upon review of claims of insufficient evidence we neither reweigh the evidence nor assess the credibility of the witnesses. Kien v. State, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), trans. denied. Instead, considering only the evidence most favorable to the verdict and reasonable inferences drawn therefrom, we will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. Id.

To convict Wright of attempted murder, the State was required to prove that Wright, acting with the specific intent to kill, engaged in conduct which constituted a

substantial step toward killing Officer Antonelli. See Ind. Code § 35-42-1-1(1) (2004 & Supp. 2007) (defining murder); Ind. Code § 35-41-5-1(a) (2004) (defining attempt); Patton v. State, 810 N.E.2d 690, 697 (Ind. 2004) (explaining rule that to be convicted of attempted murder, defendant must possess specific intent to kill).

Wright argues that there is insufficient evidence to support his convictions because he claims that no witness ever saw him with a gun and no physical evidence was ever found linking him to a gun. Therefore, he argues that there was no direct evidence that he, and not someone else, shot Officer Antonelli. We are unpersuaded.

It is well established that circumstantial evidence alone may support a conviction. Green v. State, 808 N.E.2d 137, 138 (Ind. Ct. App. 2004). Direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption. Jackson v. State, 758 N.E.2d 1030, 1036 (Ind. Ct. App. 2001). In contrast, circumstantial evidence immediately establishes collateral facts from which the main fact may be inferred. Id.

Here, there was direct evidence that as Officer Antonelli attempted to place Wright in handcuffs, he saw a shiny object in Wright's hand, saw the flashes of a gun being fired, heard a gun being fired, and felt the intense pain of being shot in the face. From this, the jury could readily conclude that the shiny object Officer Antonelli saw in Wright's hand was indeed a handgun and that it was Wright who shot Office Antonelli in the face. From this, the jury could also reasonably conclude that Wright intended to kill Officer Antonelli and that he engaged in conduct which constituted a substantial step towards the commission of murder. Booker v. State, 741 N.E.2d 748, 756 (Ind. Ct. App.

2000) (evidence sufficient to prove that defendant acted with specific intent to kill where defendant shot victim point-blank in the neck). Since there was no indication that Wright had a license to carry a handgun, the jury could also conclude from this evidence that Wright carried a handgun without a license. In short, Wright's challenges to the sufficiency of the evidence are without merit.

II. Sentencing

Wright claims that the trial court abused its discretion in imposing an aggregate sentence of fifty-four years. Sentencing decisions rest within the sound discretion of the trial court, and we review such decisions only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified upon reh'g, 875 N.E.2d 218. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it, or the reasonable, probable, and actual deductions to be drawn therefrom. Id. The Anglemyer court held that trial courts must enter a sentencing statement including reasonably detailed reasons or circumstances for imposing a particular sentence. Id. at 491. Although we may review the reasons given and the omission of reasons arguably supported by the record, the relative weight assigned to those reasons is not subject to appellate review. Id.

Here, the trial court found as aggravating circumstances that Wright had a criminal history, including a felony conviction for possession of a controlled substance. The trial court also found as aggravating that Wright had a history of juvenile arrests, which involved three separate instances of resisting law enforcement. Although these juvenile charges were conditionally discharged, Wright admitted to being involved in these

situations. The court further found as aggravating that at the time he committed the instant crimes, Wright was on probation and had an outstanding warrant for his arrest. In mitigation, the trial court found that long-term incarceration would impose a hardship upon Wright's dependants. The court also found that Wright had a difficult childhood and currently had the support of his family, but gave these factors little mitigating weight.

Upon appeal, Wright argues that the trial court erred in considering his juvenile history as part of his criminal history even though the juvenile charges were conditionally discharged. Although an arrest record may not be considered as part of a defendant's "criminal history," such may be considered as reflective of the defendant's character and indicative of the risk that he will commit other crimes in the future. Cox v. State, 780 N.E.2d 1150, 1157 (Ind. Ct. App. 2002) (citing Tunstill v. State, 568 N.E.2d 539, 544-45 (Ind. 1991)). We therefore cannot fault the trial court for considering Wright's juvenile arrests as aggravating. See McDonald v. State, 868 N.E.2d 1111, 1114 (Ind. 2007) (rejecting defendant's claim that trial court considered improper aggravators which included history of juvenile arrests).

The remainder of Wright's claims are essentially a request that we reconsider the trial court's weighing of the aggravating and mitigating circumstances. This is a task which in this case would not wish to undertake and, under Anglemyer, we may not undertake. See 868 N.E.2d at 491. Under the facts and circumstances before the trial court, including the senseless and traumatic shooting of Officer Antonelli, we cannot say that the trial court abused its discretion in sentencing Wright to fifty years for attempted

murder, three years for resisting law enforcement, and one year for carrying a handgun without a license.¹

Conclusion

There was sufficient evidence from which the jury could conclude that Wright was carrying a handgun without a license and that he shot Officer Antonelli with that handgun with the specific intent to kill. Moreover, the trial court did not abuse its discretion in sentencing Wright to an aggregate term of fifty-four years incarceration.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.

¹ Although Wright makes no direct challenge to his sentence under Indiana Appellate Rule 7(B), in light of the nature of Wright's character and the nature of his offense, we do not consider his sentence inappropriate.