

STATEMENT OF THE CASE

Amanda Jarred appeals from the trial court's order denying her motion to suppress evidence. The State cross-appeals on a single issue, namely, whether the trial court imposed an illegal sentence.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 6, 2004, three men entered the Waffle and Steak restaurant at 2107 North Post Road in Indianapolis, where Jarred was working as a waitress, and took money from the restaurant's cash register and safe. Police apprehended the men shortly thereafter. During the ensuing investigation, Marion County Sheriff's Detective Mark Albert learned that one of the men arrested was the boyfriend of Jarred's sister. Detective Albert subsequently went to Jarred's residence to talk with Jarred.

Shortly before Detective Albert's arrival at her residence, Jarred took prescribed seizure medication. However, she agreed to go with Detective Albert to the police station, where Detective Albert read her Miranda rights. Detective Albert then presented Jarred with a waiver of rights form, which she initialed and signed. Jarred and Detective Albert discussed the events surrounding the robbery, and Jarred confessed that she helped the suspects develop and implement their plan to rob the restaurant. That discussion was recorded on audiotape.

Immediately following her confession, the State arrested Jarred and charged her with Robbery, as a Class B felony, and four counts of Criminal Confinement, each as a Class B felony. Jarred waived her right to a jury trial, and at the bench trial the State

sought to introduce her waiver of rights form and evidence of her confession. Jarred objected, and the trial court held a suppression hearing. The trial court denied Jarred's request for suppression of the evidence and found her guilty on the robbery count and on one count of criminal confinement. The trial court found Jarred not guilty on the remaining counts, and the court ordered her to serve concurrent eight-year sentences. The trial court also found that her convictions violated the terms of probation Jarred was serving on a prior offense, and the court ordered that remaining sentence executed. This appeal ensued.

DISCUSSION AND DECISION

Jarred claims the trial court erred in denying her motion to suppress the waiver of rights form and her statement to police. Specifically, Jarred contends that “[d]ue to the seizures and medications[, her] . . . statement to police was not knowing, intelligent or voluntary.” Appellant's Brief at 5. Our supreme court confronted a similar factual scenario in Bailey v. State, 763 N.E.2d 998, 1003 (Ind. 2002). In Bailey, the court stated:

Bailey claims he was unable to consent to the waiver [of his rights] and that his statements [made after the waiver was signed] were involuntary because he ingested prescription medications and had some degree of mental illness.

The U.S. Supreme Court has held that “coercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause of the Fourteenth Amendment.” Colorado v. Connelly, 479 U.S. 157, 167[] (1986). A defendant's statements are not voluntary when induced by violence, threats, promises or other improper influences. Crain v. State, 736 N.E.2d 1223, 1231 (Ind. 2000).

Both Officer Allender and Detective Wigley advised Bailey of his rights, and Bailey signed a written waiver. There is no evidence that Wigley coerced, threatened, promised, or in any other way improperly influenced Bailey. The trial court did not err in admitting the statements into evidence.

Id. (citations to the record omitted). Bailey controls the instant case.

Here, Jarred claims that her ingestion of prescription medications and her epileptic seizures adversely affected “her ability to understand her rights,” thereby rendering her unable to consent to the waiver and rendering her statements involuntary. Appellant’s Brief at 6-7. Jarred also suggests that the State had the burden of developing the record in her favor. However, “[i]f voluntariness of a statement is challenged on the basis that the defendant was under the influence of drugs, the defendant has the burden to introduce evidence from which it could be concluded that the amount and nature of the drug consumed would produce an involuntary statement.” Pruitt v. State, 834 N.E.2d 90, 115 (Ind. 2005). But Jarred did not submit any evidence other than her self-serving statements to support her allegations. Moreover, there is no evidence that Detective Albert coerced, threatened, promised, or in any other way improperly influenced Jarred. Detective Albert advised Jarred of her rights and she signed a written waiver. As such, the trial court did not err in admitting the form and statements into evidence.¹

Cross-Appeal

The State cross-appeals and contends that the trial court entered an illegal sentence. When reviewing the trial court’s sentencing decision, we will review only for abuse of discretion. Collins v. State, 835 N.E.2d 1010, 1017 (Ind. Ct. App. 2005). An abuse of discretion occurs when the decision is against the logic and effect of the facts and circumstances before the trial court. Id. We will review a trial court’s legal

¹ Further, any error that may have occurred was harmless. Two of the three men convicted of robbing the restaurant, along with Jarred’s sister, testified at Jarred’s trial that Jarred was involved in planning the robbery in exchange for a share of the stolen cash. Thus, the State has presented other overwhelming evidence of Jarred’s guilt. See Storey v. State, 830 N.E.2d 1011, 1021 (Ind. Ct. App. 2005).

conclusions, however, under a de novo standard of review. Id. “Generally, a failure to object to error in a proceeding, and thus preserve an issue on appeal, results in waiver. However, a court may remedy an unpreserved error when it determines the trial court committed fundamental error. An improper sentence constitutes fundamental error and cannot be ignored on review.” Id. (quoting Groves v. State, 823 N.E.2d 1229, 1231-32 (Ind. Ct. App. 2005)).

The State maintains that the trial court fundamentally erred in allegedly ordering the instant felony sentences to run concurrent with the probation revocation. Such an order, if supported by the record, would be contrary to Indiana law. Indiana Code Section 35-50-1-2(d) states, in relevant part:

If, after being arrested for one (1) crime, a person commits another crime[] before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime . . . the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

Here, although the trial court ordered the sentences on the robbery and criminal confinement counts to run concurrent with each other, there is no evidence in the record as to how those concurrent sentences were to run relative to the sentence imposed after Jarred’s probation was revoked. Further, the trial court explicitly recognized that Jarred’s sentences were to run consecutive to the executed sentence. After revoking Jarred’s probation at the sentencing hearing, the trial court stated, “I think the only legally aggravating circumstance [for the instant offenses] is that she was on probation, and I frankly think that that is dealt with in the fact that the sentences are mandatorily consecutive.” Transcript at 309.

We generally presume the trial court followed the law and made the proper considerations in reaching its decision. Copeland v. State, 802 N.E.2d 969, 973 (Ind. Ct. App. 2004). Here, the abstract of judgment showing the revocation of probation is not in the record. In the absence of contrary evidence, we presume the sentences on the robbery and criminal confinement convictions were ordered to run consecutive to the sentence imposed after the revocation of probation, as required by Indiana Code Section 35-50-1-2. The State has failed to demonstrate that the trial court erred.

Affirmed.

DARDEN, J., and FRIEDLANDER, J., concur.