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IN THE COURT OF APPEALS OF INDIANA

GOLD C. WASHINGTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-1105-CR-407
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Randy J. Williams, Judge
Cause No. 79D01-1012-FD-11

DECEMBER 5, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant Gold Cortez Washington appeals the sentence the trial court imposed upon his two convictions of battery on a child, both Class D felonies. Ind. Code § 35-42-2-1 (2009). We reverse and remand.

ISSUE

Washington raises one issue, which we restate as: whether the trial court abused its discretion in sentencing Washington.

FACTS AND PROCEDURAL HISTORY

On September 29, 2010, the Indiana Department of Child Services ("DCS") took protective custody of Washington's children, three-year-old I.H. and two-year-old A.H., after their home was determined to be unfit for children. A case manager discovered bruising and marks on the children's backs and thighs. I.H. and A.H. told the case manager that Washington hit them with a belt. During a subsequent interview with police, Washington said he hit each child with a belt after he woke up to find that the children had thrown shirts and other objects in the toilet and had scattered crackers in the house.

The State charged Washington with two counts of battery on a child. Washington pleaded guilty without a plea agreement. The trial court accepted Washington's guilty plea and sentenced him to two years and three months on each conviction, to be served consecutively for an aggregate sentence of four and a half years. The trial court further directed that Washington would serve three years in the Indiana Department of

Correction, one year in a community corrections program, and the remaining six months on supervised probation. This appeal followed.

DISCUSSION AND DECISION

Our Supreme Court has stated, "So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). The legislature prescribes penalties for crimes, and the trial court's discretion does not extend beyond the statutory limits. *Ratliff v. State*, 741 N.E.2d 424, 431 (Ind. Ct. App. 2000), *trans. denied*. Thus, a sentence that is contrary to or violative of a penalty mandated by statute is illegal in the sense that it is without statutory authorization. *Reed v. State*, 856 N.E.2d 1189, 1199 (Ind. 2006).

When sentencing a defendant for multiple convictions, a court must determine whether the terms of imprisonment shall be served concurrently or consecutively. Ind. Code § 35-50-1-2(c) (2008). When a court orders a defendant to serve consecutive sentences for felony convictions, the court must comply with the following mandate:

> [E]xcept for crimes of violence, the total of the consecutive terms of imprisonment . . . to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct 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.

Id. An "episode of criminal conduct" is defined as offenses or a series of offenses that are closely related in time, place, and circumstance. Ind. Code § 35-50-1-2(b). When asked to determine if offenses constitute an episode of criminal conduct, we consider

whether the offenses are "simultaneous and contemporaneous" in nature. *Reed*, 856 N.E.2d at 1200.

Here, Washington does not challenge the trial court's imposition of consecutive sentences upon his convictions. However, he contends, and the State concedes, that the offense of battery upon a child is not considered a "crime of violence" for the purposes of Indiana Code section 35-50-1-2(c). *See* Ind. Code § 35-50-1-2(a) (listing crimes of violence). Washington argues that his crimes constitute an episode of criminal conduct. Consequently, he concludes that pursuant to Indiana Code section 35-50-1-2(c), the total sentence for his convictions may not exceed four years, which is the advisory sentence for a Class C felony. Ind. Code § 35-50-2-6 (2005). If Washington is correct, his sentence of four and a half years is six months too long, in violation of statutory authority. The State asserts that Washington's offenses do not constitute an episode of criminal conduct because the record does not reveal that he committed the batteries contemporaneously.

In *Harris v. State*, 861 N.E.2d 1182, 1185 (Ind. 2007), Harris pleaded guilty to two counts of sexual misconduct with a minor, and the trial court imposed the maximum sentence for each conviction, to be served consecutively. On post-conviction relief, Harris argued that he received ineffective assistance of appellate counsel, claiming that counsel should have challenged his sentence under Indiana Code section 35-50-1-2(c). Our Supreme Court examined the circumstances of the offense and noted that Harris and a friend had invited the two victims to stay at their apartment for the night. Once the victims were in the apartment, Harris and his friend coerced the victims into sex. Harris

engaged in sexual intercourse with both victims, and the encounters occurred five minutes apart, in the same bed. Based upon those facts, our Supreme Court concluded that the offenses were a single episode of criminal conduct, and that Harris' counsel was ineffective for failing to raise that issue on appeal. *Id.* at 1189.

In this case, Washington told the police that "a few days" before DCS took the children into custody, he had awakened to discover that A.H. and I.H. had put shirts, makeup, and other objects in the toilet and that crackers were scattered in the house. Appellant's App. p. 10. The children's mother usually disciplined them, but in this case Washington "stepped in" and used a belt to strike A.H. three times and to strike I.H. four times. *Id.* In this case, as in *Harris*, the crimes occurred under the same circumstances, specifically that Washington awoke to discover that the children had made a mess and that he then struck them with a belt. One may reasonably infer that he committed both batteries shortly after discovering the children's misbehavior. Therefore, Washington's batteries upon his children constituted an episode of criminal conduct. *See Reed*, 856 N.E.2d at 1201 (determining that the defendant's attempted murder convictions were an episode of criminal conduct because the defendant fired several gunshots within a few seconds of one another at different police officers). Therefore, Washington's total sentence, which exceeds the statutory limit set forth in Indiana Code section 35-50-2-6 by six months, violates Indiana Code section 35-50-1-2(c). The trial court abused its discretion by imposing a sentence greater than that allowed by statute, and we must reverse and remand for resentencing.

CONCLUSION

For the reasons stated above, we reverse the judgment of the trial court and remand for further proceedings consistent with this opinion.

Reversed and remanded.

BAKER, J., and RILEY, J., concur.