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NO. COA01-412

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STATE OF NORTH CAROLINA

v.

Robeson County
No. 99 CRS 3441

PIERRE JACOB MUENTNICH, JR.

Appeal by defendant from sentence entered 28 September 2000 by Judge James Floyd Ammons, Jr. in Robeson County Superior Court. Heard in the Court of Appeals 20 February 2002.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Clara D. King, for the State.

Robert E. Price, for defendant-appellant.

TYSON, Judge.

Pierre Jacob Muentnich, Jr. ("defendant") appeals the trial court's sentence following a jury verdict convicting defendant of felony child abuse inflicting serious injury. We find no error in defendant's sentencing.

I. Facts

_____Defendant moved into Crystal Nicole Britt's ("Crystal") trailer in August of 1998. The evidence at trial showed that on the morning of 16 February 1999, after Crystal left for work, defendant submerged Taylor Michelle Britt ("Taylor"), Crystal's twenty-two month old baby, into scalding water subjecting her to third-degree burns over eighty percent of her body. Crystal

testified that the baby's burns were so severe that Taylor ground her front bottom teeth to nubs as a reaction to the pain she was suffering, and that all of the baby's hair fell out.

When paramedics arrived at the trailer, Taylor was extremely red from the neck down and skin was peeling off of her feet. Greg Bounds, a paramedic on the scene, testified that defendant "just stared at what we were doing. I didn't see any emotion . . . I mean, any look of concern on his face." Taylor, unconscious from sedation, was flown by helicopter to UNC Hospital in Chapel Hill.

Numerous people testified at trial to the abysmal condition of Taylor's burns. Defendant testified at trial, and denied placing the child in the hot tub.

The jury returned a guilty verdict of felony child abuse inflicting serious injury. The trial court found six aggravating factors, three mitigating factors, and found that "any single finding in aggravation . . . would outweigh all of the mitigating factors found in this case and would justify the maximum punishment allowed." Defendant was sentenced under Level 1 because he did not have a prior criminal record. The presumptive sentence was twenty months minimum to twenty-five months maximum. The trial court sentenced defendant to thirty-one months minimum and forty-seven months maximum. Defendant appeals his sentence.

II. Issues

Defendant assigns fourteen errors. Defendant argues only four assignments of error. All errors assigned but not argued are deemed abandoned. N.C.R. App. P. 28(b)(2) (2001). Defendant argues

that: (1) the trial court abused its discretion in finding that any one of the aggravating factors outweigh the mitigating factors, (2) the aggravating factors were not supported by the evidence, (3) the aggravating factors were improper as they were indistinguishable from elements of the crime and that they lacked a proper sentencing purpose, and (4) the trial court's errors were sufficiently prejudicial to require remand for re-sentencing.

A. Aggravating Factors Outweigh Mitigating Factors

_____Defendant argues that the trial court's "impartiality . . . was impaired" and contends that comments that the trial court made about defendant may have affected the judge's objectivity. Defendant also contends that the trial court's comments suggested that it considered additional aggravating factors not permitted by law. The record reflects the following comments by the trial court about the case.

I just want to say to the -- both families, that this is a tragedy that this happened, that this jury has found that -- their -- this verdict that this man is a child abuser and a liar, and I do not disagree with them.

I apologize for saying this, but it's my belief that God has something in mind for your daughter. That's why she's still here I particularly regret that I can't give you any more time than I gave you. I hope you spend a lot of time thinking about what you've done, and change your way because some day you'll be out of prison.

The trial court's comments occurred after the imposition of the sentence. Defendant has failed to show that the trial court's comments were prejudicial, "which manifest inherent unfairness and injustice or conduct which offends the public sense of fair play."

State v. Pope, 257 N.C. 326, 335, 126 S.E.2d 126, 133 (1962). There is no evidence that the trial court used these comments as aggravating factors. This assignment of error is overruled.

B. Aggravating Factors Supported by the Evidence

_____Defendant summarily concludes that the evidence was insufficient to find the following aggravating factors: (1) the offense was especially heinous, atrocious or cruel, (2) the child at twenty-two months of age was completely helpless against the defendant claiming that the statute requires only that the victim be under sixteen years of age, and (3) that the defendant showed no remorse.

Defendant does not cite to any particular fact in the record other than a general statement that the evidence does not support the aggravating factors. We disagree.

After a thorough review of the gruesome facts in this case we conclude that the trial court's aggravating factors are overwhelmingly supported by the evidence. This assignment of error is overruled.

C. Factors Not Distinguished from Elements of Crime

Defendant correctly argues that aggravating factors must not be based upon findings necessary to prove the elements of the offence. *State v. Mickey*, 347 N.C. 508, 514, 495 S.E.2d 669, 673 (1998) (citing *State v. Hayes*, 323 N.C. 306, 312, 372 S.E.2d 704, 707-08 (1988)). Defendant contends that the following aggravating factors are elements of felony child abuse: (1) "especially heinous, atrocious or cruel," (2) "[t]hat the injury that was

inflicted on this child goes beyond the serious degree required by this statute, and is permanent and debilitating in addition to being a serious injury," (3) "[t]he court further finds that this child faces a life time of physical and psychological treatment and that her life is forever changed," and (4) "[t]he child experienced extreme physical pain and mental suffering." We disagree.

To be convicted of felony child abuse inflicting serious injury, a defendant must: (1) provide care to or supervision of a child less than sixteen years old, (2) intentionally inflict serious physical injury upon the child, or intentionally commit an assault upon the child, and (3) the child sustains serious physical injury. N.C. Gen. Stat. § 14-318.4(a) (2001).

"[O]nly one factor in aggravation is necessary to support a sentence greater than the presumptive term." *State v. Baucom*, 66 N.C. App. 298, 302, 311 S.E.2d 73, 75 (1984). We find that the aggravating factor that the crime was "especially heinous, atrocious or cruel" was not an element of the crime. We hold that sufficient evidence exists to support this factor, and this one aggravating factor alone was sufficient to justify the sentence outside the presumptive range, which was commensurate with the severity of Taylor's injuries. In light of our holding, we do not address defendant's remaining arguments under this assignment of error.

Defendant has failed to show, and we find no evidence in the record, that the trial court erred in sentencing defendant.

We find no error in defendant's sentence.

No error.

Judges WYNN and TIMMONS-GOODSON concur.

Report per rule 30(e).