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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

JAY RODIA
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

GARY R. ROM
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

GEORGE G. CASILLAS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A05-1006-CR-370

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly Brown, Judge
Cause No. 49G16-1003-FD-17109

February 2, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a bench trial, George G. Casillas was convicted of strangulation and domestic battery, Class D felonies, and he now appeals his two concurrent three-year sentences. He raises the sole issue of whether his aggregate sentence is inappropriate. Concluding it is not inappropriate, we affirm.

Facts and Procedural History

On March 5, 2010, Casillas was caring for his four-month-old daughter, who had a fever. He called her mother, Carolyn Gonzalez, to care for their daughter, and they met at a supermarket. Gonzalez seated their daughter in her car and Casillas then entered Gonzalez's car and drove the three to his friend's home. While still in the car, Casillas and Gonzalez began a serious discussion about their relationship and Casillas became visibly angry.

At one point during the discussion Casillas pressed on Gonzalez's throat with his fingers, thrusting her head against the passenger's side car window for "maybe a minute or two." Transcript at 16. Gonzalez felt pain and could not swallow. When Casillas removed his hand their child was crying and, after Gonzalez fed her, Casillas and Gonzalez resumed their discussion.

At another point during that discussion, Casillas became visibly angry again and, while their daughter was in Gonzalez's arms, Casillas grabbed Gonzalez's throat and "squeeze[ed] [her] neck really, really hard." Id. at 20. Gonzalez lost consciousness, and upon waking up, her arms and the back of her head "felt like they were asleep," she could not swallow, she felt pain in her throat, and their daughter was "screaming." Id. at 21.

Eventually Gonzalez called 911 and police arrested Casillas. Gonzalez's arms remained "asleep," id., for multiple weeks and her throat remained painful for multiple days.

Casillas was charged with strangulation, a Class D felony, domestic battery as a Class D felony, domestic battery as a Class A misdemeanor, battery as a Class A misdemeanor, and resisting law enforcement, a Class A misdemeanor. A bench trial was held, and the trial court dismissed the charge for resisting law enforcement but found Casillas guilty of all other charges. The trial court merged the three battery charges into the charge for domestic battery as a Class D felony, and following a sentencing hearing, sentenced him to three years for strangulation and three years for domestic battery as a Class D felony, to be served concurrently. Casillas now appeals his sentence.

Discussion and Decision

I. Standard of Review

This court has authority to revise a sentence "if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). In making this determination, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. Nevertheless, the defendant bears the burden to persuade this court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). "[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008).

II. Inappropriate Sentence

Casillas concedes “[t]he nature of the offenses [he] committed . . . are serious crimes in which Carolyn Gonzalez was battered and strangled in the presence of their baby daughter.” Brief of Appellant at 6. And yet, Casillas argues his sentence is inappropriate because Gonzales was not seriously or permanently injured. While the degree of a victim’s injury may to some degree influence our view of the appropriateness of a sentence, we find more compelling in this case his violent strangulation of the mother of his child until she lost consciousness, especially considering she was holding and in the process of feeding their four-month-old child.

Casillas also argues his mental health issues render the nature of his offenses less serious. He states that he suffers from depression, nervousness, and anxiety. See Pre-Sentence Report (“PSI”) at 13. Casillas testified that he “blacked out,” tr. at 36, he does not have any recollection of strangling Gonzalez, and that he was emotional and depressed on the day of the incident. We are unpersuaded that these conditions diminish the harmful nature of the offenses.

The trial court’s finding him guilty implicitly includes a factual finding that he committed these acts “knowingly or intentionally,” thereby satisfying the mental state requirement of strangulation, Ind. Code § 35-42-2-9, and aggravated battery, Ind. Code § 35-42-2-1.5. This indicates the trial court found his testimony regarding his alleged “black[] out,” tr. at 36, to be not credible. Casillas testified that he was emotional and depressed on the day of the incident, but even if he explicitly showed – which might not be completely implausible given the subject of their discussion – how his emotions or depression led to his conduct, this testimony without other evidence fails to persuade us

that his sentence is inappropriate given the brute violent nature of these offenses. He testified that he “loves [Gonzalez] so much [sobbing],” *id.* at 35, and yet he knowingly or intentionally restrained her breathing for an extended period with his bare hand twice; once while she held their baby daughter.

Further, regardless of his emotional condition at the time of the instant offenses, we conclude that his character, in particular, his pattern of violent behavior and disregard for the rule of law, does not make his sentences inappropriate. Casillas’s prior and current offenses evince an alarming trend of dangerous and violent behavior that has increased in severity.

In 1997, as a juvenile he committed battery, a Class A misdemeanor, and as an adult, he was convicted in 1999 of battery as a Class A misdemeanor. In 2000, he was convicted of aggravated battery, a Class B felony, for shooting a woman in the chest. In 2007, he was arrested after police arrived to find him in a scuffle outside his home with his mother and father. He allegedly punched his mother with a closed fist in the head, face, and body, and upon her retreating he followed her into the house to continue beating her. His mother suffered cuts, bruises, and bumps, and his father had a large gash on his forearm requiring stitches. This incident did not result in a conviction, as his parents recanted their statements. However, because we may consider relevant facts appearing in the record, *Roney*, 872 N.E.2d at 206, we find this to be yet another example of his savagely violent conduct.

In 2009, he was convicted of resisting law enforcement, a Class D felony. Also in 2009, the PSI describes another altercation between Casillas and Gonzalez, in which Casillas allegedly attempted to keep her from leaving her home by ripping off some of

her clothes resulting in red markings, bruising, and redness on her skin. She did not appear in court and the charges were dismissed. See id. (stating we may consider any factors appearing in the record). While incarcerated at various times between 2002 and 2010, he committed twenty-five incidents of misconduct. Casillas has violated probation, and committed the instant offenses while on parole for his 2000 aggravated battery, thereby violating the terms of his parole as well. We therefore conclude that his two concurrent three-year sentences are not inappropriate in light of the brute nature of his offenses and his violent and recklessly dangerous character.

Conclusion

Casillas's concurrent three-year sentences are not inappropriate in light of the nature of his offenses or his character, and are therefore affirmed.

Affirmed.

RILEY, J., and BROWN, J., concur.