

Appellant-defendant James C. Gaskill appeals the eighteen-year sentence that was imposed following his conviction for Aggravated Battery,¹ a class B felony. Specifically, Gaskill argues that the trial court abused its discretion in sentencing him because it improperly identified an aggravating circumstance that was not supported by the record. Gaskill also maintains that the sentence is inappropriate in light of the nature of the offense and his character and that the trial court abused its discretion in ordering him to pay \$58,222.26 in restitution for the victim's medical and funeral expenses. Concluding that Gaskill was appropriately sentenced and finding that the trial court's restitution order was proper, we affirm the judgment of the trial court.

FACTS

On September 12, 2009, Gaskill went to Williamsport where Chad Wamsley was camping with some friends. At some point, Gaskill confronted Wamsley about an incident involving Gaskill's estranged wife. During the conversation, Wamsley admitted to having sex with Gaskill's wife that previous summer.

Gaskill punched Wamsley in the face, knocking him to the ground. According to several witnesses, Gaskill kicked Wamsley and continued to punch him. Wamsley put his hands over his face during the entire attack and did not defend himself. Witnesses reported that Gaskill kicked Wamsley one last time, began to walk away, and stated, "You heard him say he f****d my wife." Tr. p. 45-46; PSI at 27-28. Wamsley died as a result of his injuries.

¹ Ind. Code § 35-42-2-1.5(2).

On September 14, 2009, the State charged Gaskill with voluntary manslaughter, a class B felony, and aggravated battery, a class B felony. Thereafter, on July 1, 2010, Gaskill pleaded guilty to aggravated battery in exchange for the dismissal of the voluntary manslaughter charge.

At the sentencing hearing on August 5, 2010, the trial court identified Gaskill's actions of repeatedly "pummeling" Wamsley and kicking him in the head in light of the fact that Wamsley did not defend himself, as an aggravating factor. Appellant's App. p. 14. The trial court also found that Gaskill's criminal history, probation violation, indictment in federal court on a weapons charge while on bond, and various threats that he made to Wamsley's father following the incident, were aggravating circumstances. The trial court identified Gaskill's decision to plead guilty as the sole mitigating factor. Gaskill was then sentenced to eighteen years of incarceration with two years suspended to probation. He now appeals.

DISCUSSION AND DECISION

I. Abuse of Discretion

Gaskill contends that the trial court abused its discretion when sentencing him. Specifically, Gaskill argues that the trial court improperly identified his act of repeatedly hitting Wamsley and kicking him in the head as an aggravating circumstance. Gaskill maintains that the record did not support this factor.

Sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218. Where a

trial court imposes a sentence for a felony offense, it is required to issue a sentencing statement that includes a reasonably detailed recitation of the trial court's reasons for the sentence imposed. Id. A trial court's sentencing statement must: (1) identify significant aggravating and mitigating circumstances; (2) state the specific reason why each circumstance is aggravating or mitigating; and (3) demonstrate that the aggravating and mitigating circumstances have been weighed to determine that the aggravators outweigh the mitigators. Shaw v. State, 771 N.E.2d 85, 88 (Ind. Ct. App. 2002). A sentencing statement serves two primary purposes: (1) it guards against arbitrary and capricious sentencing, and (2) it provides an adequate basis for appellate review. Anglemyer, 868 N.E.2d at 490. The trial court's failure to enter a sentencing statement is an abuse of discretion. Id. On appeal, we will review both the written and oral sentencing statements to discern the findings of the trial court. Corbett v. State, 764 N.E.2d 622, 631 (Ind. 2002).

At the sentencing hearing, Gaskill testified that he "nudged Chad with [his] foot to see if, if he was asleep, if, you know, . . . if I knocked him out." Tr. p. 59. Notwithstanding this self-serving testimony and Gaskill's understatement of the violent and deadly episode, the probable cause affidavit stated that several witnesses saw Gaskill kick Wamsley. Moreover, although Gaskill acknowledged that several witnesses testified in their depositions that he kicked Wamsley, he claims that they lied. Id. at 45-46, 59. It was entirely within the trial court's province to reject Gaskill's self-serving testimony. Fultz v. State, 849 N.E.2d 616, 623 (Ind. Ct. App. 2006). Thus, we conclude that the trial

court properly exercised its discretion in identifying Gaskill's act of pummeling and kicking Wamsley as an aggravating factor. As a result, Gaskill's claim that his sentence must be set aside on this basis fails.

II. Inappropriate Sentence

Gaskill also claims that his sentence is inappropriate in light of the nature of the offense and his character. In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Gaskill pleaded guilty to aggravated battery, a class B felony, meaning that he faced a sentence of between six and twenty years, with the advisory sentence being ten years. Ind. Code § 35-50-2-5.

As for the nature of the offense, the record shows that Gaskill battered Wamsley to death. Although Wamsley did not fight back, Gaskill brutally and repeatedly punched and kicked him.

With regard to Gaskill's character, the record shows that his troubles with the legal system began in 2000. Gaskill has been convicted of operating a motor vehicle while intoxicated and possession of a controlled substance. Tr. p. 71. Gaskill has also violated probation and has continued to commit serious criminal offenses when he was out on bond in this case. Gaskill was also facing other drug possession charges and he had been indicted in federal court on weapons charges. Id. It reflects poorly on Gaskill's character that he has continued to commit crimes despite several opportunities to reform.

Moreover, the record establishes Gaskill's disrespect for our laws and his propensity to engage in criminal activity.

Additionally, while Gaskill acknowledged that he has a substance abuse problem and has undergone treatment in the past, he has not sought further assistance for his addictions. Gaskill explained to the trial court that it "was a whole lot less work to smoke dope or to do dope and get high than it is to commit yourself to the work and . . . going to treatment." Id. at 40.

Gaskill's poor character is further evidenced by his actions immediately after the crime and while out on bond. More specifically, Gaskill encouraged others to lie about the incident and he threatened Wamsley's father. Id. at 56-57, 72. Gaskill also bragged about the killing to his friends. PSI at 13.

When considering the nature of Gaskill's offense and his character, we conclude that he has failed to persuade us that his sentence was inappropriate. Thus, we decline to set aside Gaskill's sentence.

III. Restitution

Finally, Gaskill argues that the trial court abused its discretion in ordering him to pay restitution for Wamsley's medical and funeral expenses. Specifically, Gaskill contends that the trial court erred because it did not inquire into his ability to pay or fix the manner in which payment was to be made.

In resolving this issue, we initially observe that Indiana Code section 35-50-5-3 affords the trial court broad authority to order restitution to the victim of a felony or

misdemeanor. We will reverse the order of restitution only upon a finding of abuse of discretion. Ault v. State, 705 N.E.2d 1078, 1081 (Ind. Ct. App. 1999). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Palmer v. State, 704 N.E.2d 124, 127 (Ind. 1999). The purpose of a restitution order is to impress upon the convicted defendant the magnitude of the victim's loss and to defray costs to the victim because of the defendant's criminal actions. Henderson v. State, 848 N.E.2d 341, 346 (Ind. Ct. App. 2006).

A trial court is required to inquire into a defendant's ability to pay "when restitution is ordered as a condition of probation or a suspended sentence." Pearson v. State, 883 N.E.2d 770, 773 (Ind. 2008); Ind. Code § 35-38-2-2.3(a)(5). This prevents indigent defendants from being imprisoned because of a probation violation based on the defendant's failure to pay restitution. Jaramillo v. State, 803 N.E.2d 243, 250 (Ind. Ct. App. 2004). On the other hand, if an executed sentence is ordered and restitution is imposed, the trial court is not required to inquire into the defendant's ability to pay. Collins v. State, 676 N.E.2d 741, 744 (Ind. Ct. App. 1996). In other words, a trial court may order restitution as part of a defendant's sentence wholly apart from probation. Pearson v. State, 883 N.E.2d 770, 772-73 (Ind. 2008). In that situation, restitution is merely a monetary judgment, and the defendant cannot be imprisoned for nonpayment. Id. at 773.

In this case, the trial court ordered Gaskill to pay restitution as part of his executed sentence, and not as a requirement of probation. Tr. p. 73, Appellant's App. p. 13-16.

The trial court based the amount of restitution on the evidence that summarized the medical and funeral expenses that Wamsley's family incurred as a result of Gaskill's conduct. Tr. p. 68, Ex. 1. The restitution order constituted a monetary judgment and there is no indication that Gaskill could be imprisoned for nonpayment. And because Gaskill was not subject to incarceration if he did not pay, we cannot say that the trial court abuse its discretion when it did not fix the manner of the restitution payments. As a result, Gaskill's claims fail.

The judgment of the trial court is affirmed.

VAIDIK, J., and BARNES, J., concur.