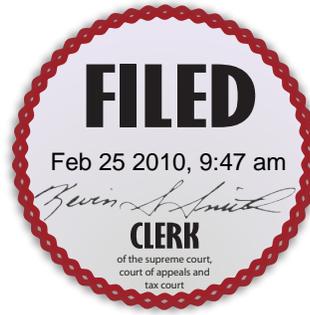


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DENNIS LANE,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 71A04-0911-CR-643

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable J. Jerome Frese, Judge
Cause No. 71D04-0103-CF-115

February 25, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Dennis Lane appeals his sentences for rape as a class B felony,¹ robbery as a class B felony,² burglary as a class B felony,³ criminal confinement as a class B felony,⁴ and auto theft as a class D felony.⁵ Lane raises one issue, which we revise and restate as whether the trial court exhibited personal bias toward Lane in sentencing him.⁶ We affirm.

The relevant facts follow. On March 12, 2001, Lane entered the home of seventy-seven-year-old G.P. and raped her in the presence of her husband. On March 13, 2001, Lane broke into the home of D.B. armed with a handgun and a knife. Lane took cash from D.B. and tied her up. Lane also took D.B.'s automobile.

On March 23, 2001, the State charged Lane with: (1) Count I, rape as a class A felony; (2) Count II, robbery as a class B felony; (3) Count III, burglary as a class B

¹ Ind. Code § 35-42-4-1 (Supp. 1998).

² Ind. Code § 35-42-5-1 (1998).

³ Ind. Code § 35-43-2-1 (Supp. 1999).

⁴ Ind. Code § 35-42-3-3 (1998) (subsequently amended by Pub. L. No. 59-2002, § 2 (eff. July 1, 2002); Pub. L. No. 70-2006, § 1 (eff. July 1, 2006)).

⁵ Ind. Code § 35-43-4-2.5(b) (1998).

⁶ Lane phrases the issue as “[w]hether the [trial court] abused its discretion at Sentencing.” Appellant’s Brief at 1. Lane correctly points out that his offenses were committed in March of 2001, which was well before the April 25, 2005 revisions to the sentencing statutes. Indeed, Lane acknowledges that the trial court identified at least four aggravating circumstances and only one mitigating circumstance, as well as that the trial court found that “[t]he one mitigating factor did not outweigh the aggravating factors found” Appellant’s Brief at 7. Also, Lane acknowledges that “[a]ll it takes is one aggravator to be found by the [trial court] to justify a consecutive sentence.” *Id.* (citing *Taylor v. State*, 710 N.E.2d 921, 925 (Ind. 1999)). However, Lane does not develop the argument that the trial court abused its discretion regarding the aggravators and mitigators, and thus we do not address the issue. *See McCarthy v. State*, 751 N.E.2d 753, 754 n.3 (Ind. Ct. App. 2001) (noting that, where the defendant does not develop an argument regarding the trial court’s balancing of aggravators and mitigators, we need not address the issue), trans. denied.

felony; (4) Count IV, criminal confinement as a class B felony; (5) Count V, criminal confinement as a class B felony; (6) Count VI, auto theft as a class D felony; (7) Count VII, robbery as a class B felony; (8) Count VIII, burglary as a class B felony; (9) Count IX, criminal confinement as a class B felony; and (10) Count X, auto theft as a class D felony.

On September 16, 2002, shortly before jury selection was to begin, Lane informed the trial court that he wished to plead guilty to Count VII, robbery as a class B felony, Count VIII, burglary as a class B felony, Count IX, criminal confinement as a class B felony, and Count X, auto theft as a class D felony, which pertained to the events which took place on March 13, 2001. Lane's plea for Counts VII-X was entered without a plea agreement.

The following day, Lane appeared before the trial court on the remaining counts which pertained to the events which took place on March 12, 2001. Shortly before a jury was to be empanelled, the trial court was told that Lane and the State had entered into a plea agreement. According to the agreement, Lane agreed to plead guilty to a lesser included offense of Count I, rape as a class B felony, and the State agreed to dismiss Counts II-VI. The trial court took Lane's motion to plead guilty according to the agreement under advisement.

On December 16, 2002, the court held a sentencing hearing on all counts. The court accepted Lane's pleas to Counts I and VII-X, and the court dismissed Counts II-VI pursuant to the plea agreement. The court then found the following aggravating factors:

(1) Lane had “a long and enduring criminal history,” including three convictions for theft and three convictions for burglary; (2) Lane was in need of correctional treatment “that can only be provided by commitment to a penal facility;” (3) the fact that the victims were over the age of sixty-five; (4) the fact that Lane put one of the victims “at risk of transmission of sexual diseases;” and (5) the particular circumstances of Lane’s rape of one of the victims. Sentencing Transcript at 44-45. The court recognized in mitigation that Lane’s imprisonment would “result in undue hardship to [Lane’s] dependents” Id. at 45. The court found that “[t]he aggravators far outweigh the mitigator.” Id. at 46. The court then sentenced Lane to twenty years on Count I, rape as a class B felony, twenty years on Count VII, robbery as a class B felony, twenty years on Count VIII, burglary as a class B felony, twenty years on Count IX, criminal confinement as a class B felony, and three years on Count X, auto theft as a class D felony. The court ordered that the sentences be served consecutively. Thus, Lane received an aggregate sentence of eighty-three years in the Indiana Department of Correction.

After handing down Lane’s sentence, the trial court turned to “another matter” involving Lane and directed the following statements to the State:

THE COURT: There are three pending felony cases, B Robberies. This Court is very well aware that the defendant has sought to withdraw his plea in this case. This Court is very well aware that the defendant offered his pleas when a jury was ready, and the trial was to begin.

A great deal of time has passed since then. This Court is further aware that the victims in this case are not in the greatest of health, and they are not young.

This Court based on seventeen years of experience on the bench is very well aware that persons who plead guilty later seek to attack those pleas by post-conviction relief petitions. This Court is further well aware that those petitions and appeals from any adverse rulings therefrom consume lengthy periods of time.

This Court is also aware that courts of review have been known to set aside post-conviction relief rulings by courts below and ordered the remand of a case for trial.

In view of the practical circumstances in this case, this Court believes that – and while I do not for a minute think a post-conviction relief – at least based on what I think I know of the case, I don't see how it would be successful. But if it were, then we have the problem of evidence that is getting older and older in this case as well as other cases.

I need the State to tell me whether you are pursuing these other cases.

[Prosecutor]: As far as I know from my standpoint, we are.

THE COURT: Good. Good to know it. We will set some trial dates

Id. at 49-50.

On October 13, 2009, Lane filed his belated notice of appeal after receiving permission from this court to do so.

The sole issue is whether the trial court exhibited personal bias in sentencing Lane. “The law presumes that a judge is unbiased and unprejudiced.” Timberlake v. State, 753 N.E.2d 591, 610 (Ind. 2001), reh’g denied, cert. denied, 537 U.S. 839, 123 S. Ct. 162 (2001). “Personal bias stems from an extrajudicial source meaning a source separate from the evidence and argument presented at the proceedings.” Bahm v. State, 789 N.E.2d 50, 54 (Ind. Ct. App. 2003), clarified on reh’g by 794 N.E.2d 444 (Ind. Ct. App.

2003), trans. denied. “Adverse rulings on judicial matters do not indicate a personal bias or prejudice, nor typically do statements at sentencing hearings.” Id. at 55. Furthermore, “merely asserting bias and prejudice does not make it so.” Massey v. State, 803 N.E.2d 1133, 1138-1139 (Ind. Ct. App. 2004). In order to rebut the presumption of nonbias or prejudice, Lane must establish “from the judge’s conduct actual bias or prejudice that places [Lane] in jeopardy.” Id. “Such bias and prejudice exists only where there is an undisputed claim or where the judge expressed an opinion of the controversy over which the judge was presiding.” Id.

Lane argues that the trial court displayed apparent bias “when it made inquiry about [Lane’s] remaining active cases immediately after sentencing.” Appellant’s Brief at 8. Specifically, Lane points to a statement by the trial court, which was after “the State replied [that] it was pursuing each case, the Court replied ‘Good’ ‘Good to know it!!^[7]” Appellant’s Brief at 8. Lane argues that “[t]his response from the [trial court] tells [Lane] the Court was sending him a personal message when he was sentenced to the maximum sentence for each count on a consecutive basis.” Id. Lane argues that “[f]or that reason he believes he is entitled to be resentenced to erase the error he feels the Court committed when it became personally involved.” Id.

Lane fails to present a cogent argument as to how the trial court exhibited any bias or how any such bias placed him in jeopardy. Lane refers to the statement by the trial

⁷ The sentencing transcript does not contain the two exclamation points inserted by Lane in his brief.

court after the court issued its sentence to Lane, and argues only that “the Court was sending him a personal message when [Lane] was sentenced to the maximum sentence for each count on a consecutive basis.” However, this does not explain how the trial court’s statement shows bias or prejudice.⁸ Failure to put forth a cogent argument acts as a waiver of the issue on appeal. Davenport v. State, 734 N.E.2d 622, 623-624 (Ind. Ct. App. 2000), trans. denied. Consequently, Lane has waived his argument. See, e.g., Cooper v. State, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant’s contention was waived because it was “supported neither by cogent argument nor citation to authority”); Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument).

For the foregoing reasons, we affirm Lane’s eighty-three year sentence for rape as a class B felony, robbery as a class B felony, burglary as a class B felony, criminal confinement as a class B felony, and auto theft as a class D felony.

Affirmed.

MATHIAS, J., and BARNES, J., concur.

⁸ Lane cites to Nybo v. State, 799 N.E.2d 1146 (Ind. Ct. App. 2003), for the proposition that Lane “is entitled to be resentenced to erase the error [Lane] feels the [trial court] committed when it became personally involved.” Appellant’s Brief at 8. In Nybo, we held that, pursuant to Appellate Rule 7(B), the defendant’s sentence was inappropriate because “the trial court relied heavily upon [the defendant’s] testimony which had been given under a grant of use immunity and its own personal belief . . . in reaching the conclusion that the State had been too lenient in charging [the defendant] to justify its imposition of the maximum sentence” 799 N.E.2d at 1152. We do not find Nybo instructive here.