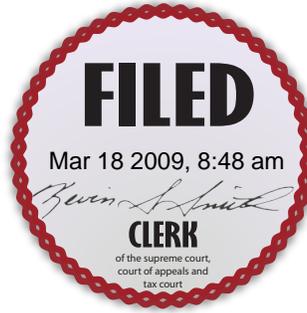


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MIKE DeWITT,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0809-CR-794

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Annie Christ-Garcia, Judge
Cause No. 49G17-0806-FD-146317

March 18, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Mike DeWitt appeals the sentence imposed by the trial court following DeWitt's convictions for Criminal Confinement,¹ a class D felony, Intimidation,² a class D felony, and Battery,³ a class A misdemeanor. DeWitt contends that the aggregate four-year sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character. Finding no error, we affirm.

FACTS

DeWitt had been in a relationship with Jolisa Quante until early June 2008, when they ended the relationship. On June 13, 2008, Quante returned to her Indianapolis home to find DeWitt hiding in her son's bedroom. When she opened up the bedroom door, DeWitt grabbed her by the neck and pushed her to the ground. He told her "not to fight him and to shut up or he would take her out[.]" Tr. p. 10. DeWitt told her that he "was going to kill himself and she had to watch[.]" Id. Quante asked DeWitt to stop holding her neck, so he let her up and led her into the kitchen, where he had suspended an extension cord from the ceiling. While in the kitchen, DeWitt showed Quante that he had unplugged her phones and locked the doors while she watched. He asked her if she was "ready" and made her "kiss him goodbye[.]" Id. at 12. DeWitt agreed to let Quante go to

¹ Ind. Code § 35-42-3-3.

² Ind. Code § 35-45-2-1.

³ I.C. § 35-42-2-1.

the bathroom. While she was in there, she heard a loud bang. She ran out the kitchen door to her neighbor's house, where she called 911.

On June 14, 2008, DeWitt was charged with class D felony criminal confinement, class D felony intimidation, and class A misdemeanor battery. At the conclusion of the July 23, 2008, bench trial, the trial court found DeWitt guilty as charged. On August 6, 2008, DeWitt was sentenced to serve 545 days for criminal confinement and 545 days for intimidation, to be served consecutively. The trial court also sentenced DeWitt to 365 days for battery but suspended the sentence to probation, to be served after DeWitt completed his term of incarceration.⁴ DeWitt now appeals.

DISCUSSION AND DECISION

DeWitt argues that the aggregate four-year sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character pursuant to Indiana Appellate Rule 7(B). 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).

The trial court imposed the advisory sentence of one and one-half years on each of DeWitt's two class D felony convictions. Ind. Code § 35-50-2-7. It imposed the

⁴ The abstract of judgment is somewhat confusing, inasmuch as it states that the sentences for intimidation and battery are both to run consecutively to the confinement sentence. In reading the transcript from the sentencing hearing, however, it is evident that the trial court intended the suspended battery sentence to be served after DeWitt completes his term of incarceration for confinement and intimidation. Tr. p. 44-45. DeWitt agrees that the trial court intended to impose three consecutive sentences, and we will proceed with this appeal under that assumption.

maximum one-year sentence for the class A misdemeanor conviction, I.C. § 35-50-3-2, but fully suspended the sentence to probation. DeWitt does not quarrel with the respective term of any of the three sentences; rather, he argues that it was inappropriate for the trial court to order the sentences to be served consecutively instead of concurrently.

Turning first to the nature of DeWitt's offenses, he entered Quante's house while she was not home and waited for her to return. While he was waiting, he unplugged her phones and hung an extension cord from the ceiling in the kitchen. He then hid in her son's bedroom. When she returned, he grabbed her by the neck, pushed her to the ground, and threatened her with harm if she refused to cooperate. He told her he intended to kill himself while she watched and made her kiss him goodbye. She watched him lock her doors and heard a loud bang while she was in the bathroom.

As a result of this incident, Quante is afraid to be in her house after dark. She has to have friends come and stay at her house while she and her son are sleeping. Her son often thinks he sees DeWitt in the house and is scared of noises. Quante no longer feels secure in her home. We cannot disagree with the trial court's characterization of the nature and circumstances of these offenses as "torturous" to Quante. Tr. p. 43.

Turning to DeWitt's character, he was adjudicated a delinquent for burglary when he was a juvenile. As an adult, he has been convicted of class A misdemeanor criminal conversion and has been arrested on a number of other occasions. He admitted that he used methamphetamine for the first time on the night he committed the instant offenses.

His ostensible statements of remorse at the sentencing hearing focused more on the impact that his crimes have had on his life rather than the effects of the crime on Quante's life. Under these circumstances, we find the trial court's decision to order the three sentences to be served consecutively was not inappropriate in light of the nature of the offenses and DeWitt's character.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.