

Case Summary

Eddie Tillman appeals his eight-year sentence for Class C felony reckless homicide. We affirm.

Issues

Tillman raises four issues, which we consolidate and restate as:

- I. whether the trial court abused its discretion in sentencing him; and
- II. whether his sentence is appropriate.

Facts

Tillman has two adult children with Rosalyn Brown. On May 11, 2007, Tillman helped Brown move in with Josephine Breaziel. In the late night hours of May 11, 2007, and the early morning hours of May 12, 2007, Tillman, Brown, Breaziel, and a man known only as Robert sat in Breaziel's bedroom and drank alcohol and smoked crack cocaine.¹ At one point, Breaziel and Tillman left either to purchase additional cocaine or to sell Tillman's cocaine.

In the alley near Breaziel's house, Tillman and Breaziel were involved in a knife fight. During the fight Breaziel suffered nine sharp force injuries—including stab wounds and cutting wounds—on her face and head. Four of the stab wounds were administered with so much force they penetrated Breaziel's skull. One of those wounds was four inches deep, penetrating both Breaziel's skull and brain. These fatal injuries allowed blood into her respiratory tract causing asphyxiation or “strangulation on blood.”

¹ At trial, Tillman denied using cocaine.

Tr. p. 427. Breaziel's nose was broken and she had bruises on her temples. At some point Breaziel was dragged by her feet from the alley to a neighboring backyard. Breaziel's shirt was bunched up exposing her breasts. Breaziel's body was covered with a mattress that had been in the alley and was discovered the next day. By the time her body was found, it was infested with maggots. Her shoes, glasses, purse, and the knife, with the blade bent, were found in the area.

After the fight, Tillman went to Wisconsin for two weeks to visit his brother. He briefly returned to Indianapolis and was informed of Breaziel's death by his daughter. Tillman then moved to Louisville, Kentucky, where he was eventually located by police in December 2007.

On December 5, 2007, the State charged Tillman with murder. A jury convicted Tillman of the lesser included offense of Class C felony reckless homicide. In issuing Tillman's sentence, the trial court stated:

Court has heard the evidence presented during the course of this trial. I've carefully read the pre-sentence investigation report. And have listened carefully to the testimony that has been presented during this case.

Without even considering Mr. Tillman, I think that the tragedy that has been dealt to both families, those of the family of Mr. Tillman and of course the family of Josephine, is absolutely incredible. I listened to the family members of Mr. Tillman and how they perceived their loved one. And I, and I feel very deeply for them, and the tragedy that they are living through. I think Mr. Tillman will have to get up with this horrible act every day for the remainder of his life, as will his family. And that is a terrible loss to them.

I speak secondly but not of less emphasis to the family of Josephine. Losing a loved one as a result of a long illness, advanced age, automobile accident, disease is terribly difficult. Some of those instances you live through the pain

and suffering of the loved one. But to lose someone as a result of such a vicious, brutal, senseless act, I don't think that anybody in this court room can understand that and to feel, and feel the pain of this, of this family. And I don't think that this family has had the time to feel the full extent of this loss. A woman who was obviously beloved by many people. Not only her family, but also by other people; who, through testimony was a kind person. And who was young with many years ahead of her. And as so aptly expressed, Mary, and Tamiko, and Michelle, this killing is unreal. Unreal.

Mitigating circumstances: Remorse. Of course Mr. Tillman is remorseful. But that remorse is like a drip, little tiny drip in the bucket of the flood of pain that has been handed over to his family and that of Josephine. Unlikely to happen again? God help us if it were to happen again. Who knows based on how he was loved by his brothers, the youngest brother who was raised by Mr. Tillman. They didn't know Mr. Tillman in the context of what he has done to this woman. Who can say what Mr. Tillman is capable of when he is capable of doing what he did to this lady, and leaving her in the condition in which she was later found.

I find that perhaps the minimal criminal history and the relatively unsuccessful completion of his supervision by the Probation Department over twenty years ago perhaps is an aggravating factor. But I think that the circumstances of this crime are so horrendous, are so aggravating, are so terrifically horrible that they substantially, substantially and substantially outweigh any possible mitigator. This jury and this Court and these poor families sat here for three days, and listened to what this man did to this lady. I don't think there's any possible sentence other than the maximum sentence.

Tr. pp. 626-28. The trial court sentenced Tillman to eight years. Tillman now appeals.

Analysis

I. Abuse of Discretion

Tillman argues that the trial court abused its discretion when it sentenced him. We engage in a four-step process when evaluating a sentence. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, the trial court must issue a sentencing statement that

includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

Even if a trial court abuses its discretion by not issuing a reasonably detailed sentencing statement or in its findings or non-findings of aggravators and mitigators, we may choose to review the appropriateness of a sentence under Rule 7(B) instead of remanding to the trial court. See Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007). Further, as we recently reiterated, “inappropriate sentence and abuse of discretion claims are to be analyzed separately.” King v. State, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008).

An abuse of discretion in identifying or not identifying aggravators and mitigators occurs if it is “clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” Anglemyer, 868 N.E.2d at 490 (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)). Additionally, an abuse of discretion occurs if the record does not support the reasons given for imposing a sentence, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

Tillman first argues that the trial court improperly considered the impact of the crime on the families as an aggravator. Our supreme court has previously acknowledged

that under normal circumstances the impact of the crime on the family is not a valid aggravator. Bacher v. State, 686 N.E.2d 791, 801 (Ind. 1997) (“We appreciate the terrible loss of a loved one. But because such impact on family members accompanies almost every murder, we believe it is encompassed within the range of impact which the presumptive sentence is designed to punish.”). Assuming this is still an invalid aggravator for purposes of the advisory sentencing scheme, we cannot say the trial court considered the impact on the family as an aggravator in this case.

Here, the trial court merely acknowledged the impact of the crime on both Breaziel’s and Tillman’s families. It did so before it announced what it considered as aggravators and mitigators. Nothing in Bacher stands for the proposition that a trial court may not recognize the impact of a crime on the family of those involved at the sentencing hearing prior to issuing a sentence. Tillman has not established that the trial court abused its discretion by acknowledging the impact on Breaziel’s and Tillman’s families before issuing the sentence.

Tillman also argues that the trial court abused its discretion by not issuing a reasonably detailed sentencing statement. He claims that the trial court did not adequately articulate why this crime was worse than other reckless homicides. Tillman likens the sentencing statement in his case to the one in Smith v. State, 872 N.E.2d 169 (Ind. Ct. App. 2007), trans. denied. In that case the trial court found, “the offense itself, it’s a very aggravating offense what the defendant did in this case whether he was the shooter or not.” Smith, 872 N.E.2d at 178. We remanded for clarification because the

trial court did not explain why that crime was worse than a typical burglary as a Class A felony. Id. at 178-79.

Here, however, the trial court specifically stated, “I think that the circumstances of the crime are so horrendous, are so aggravating, are so terrifically horrible that they substantially, substantially and substantially outweigh any possible mitigator.” Tr. p. 628. This description goes beyond what Tillman claims “are terms that could generically describe almost any homicide.” Appellant’s Br. p. 13. When reading the trial court’s assessment of the aggravators and mitigators a whole, we can easily conclude that the trial court was quite disturbed by the manner in which the offense was committed and manner in which Breaziel’s body was found. Tillman has not established that the trial court’s sentencing statement was not sufficiently detailed.

Tillman next claims that because “his criminal history is quite old and contains relatively benign offenses, the trial court abused its discretion in considering it an aggravator rather than a mitigator.” Appellant’s Br. p. 14. Tillman recognizes our supreme court’s decision in Buchanan v. State, 767 N.E.2d 967, 972 (Ind. 2002), in which the court observed:

The chronological remoteness of a defendant’s prior criminal history should be taken into account. However, “we will not say that remoteness in time, to whatever degree, renders a prior conviction irrelevant.” The remoteness of prior criminal history does not preclude the trial court from considering it as an aggravating circumstance.

The trial court could view the remoteness of the defendant’s prior criminal history as a mitigating circumstance, or on the other hand, it could find the remoteness to not affect the consideration of the criminal

history as an aggravating circumstance. Either opinion by a trial court would be within the ambit of its discretion.

Tillman argues that the rationale in Buchanan does not apply because his criminal history was not as serious as Buchanan's.

We believe that Buchanan is inapposite to this case post-Anglemyer. Tillman does not suggest that there is no record of his criminal history. Instead, he essentially argues that the trial court improperly gave aggravating weight to his criminal history. It is well-settled that “[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse.” Anglemyer, 868 N.E.2d at 491. Because the record supports a finding that Tillman has a criminal history, we will not reconsider the trial court's decision to assign aggravating weight to it.

As for Tillman's suggestion that the trial court abused its discretion by not considering his remote criminal history as mitigating, this claim also fails. On rehearing, the Anglemyer court clarified “that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant.” Anglemyer v. State, 875 N.E.2d 218, 220-21 (Ind. 2007). Because it is undisputed that Tillman has a criminal history, albeit remote, we cannot conclude that the trial court overlooked significant mitigating evidence. This is especially true here, where the trial court considered Tillman's criminal history in the context of the aggravators. Tillman has not established that the trial court abused its discretion by not considering his remote criminal history as mitigating.

II. Appropriateness

Tillman also argues that his eight-year sentence is inappropriate in light of the nature of the offense and the character of the offender. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id. Tillman has not met this burden.

As for the nature of the offense, we disagree with Tillman’s assertion that this particular homicide is not horribly worse than another. Although there is conflicting evidence, by Tillman’s own testimony, he and Breaziel were in the alley because she was going to sell his cocaine and keep any profit for herself. For some reason, the two struggled. During her struggle with Tillman, Breaziel suffered nine sharp force injuries to her face and head. Four of the stab wounds were the result of so much force that they broke the bones of Breaziel’s skull and possibly bent the blade of the knife. One of the stab wounds penetrated Breaziel’s brain. Because of her injuries, blood got into Breaziel’s respiratory tract asphyxiating her over a period of three to seven minutes. At some point, Breaziel’s body was dragged from the alley to a neighboring yard, and her body was covered with a mattress. The trial court correctly described this crime as horrendous.

As for Tillman's character, although he was remorseful and his criminal history is remote, this offense arose out of Tillman's involvement with illegal drugs—either the buying or selling of cocaine. Moreover, Tillman made no effort to help Breaziel after the struggle. Further, it appears that Tillman evaded responsibility for his role in Breaziel's death by leaving for Wisconsin shortly after the incident, and then briefly returned to Indianapolis, where he had lived for thirty years, before moving to Louisville.

Nothing about the nature of the offense or the character of the offender warrants the imposition of less than the maximum eight-year sentence. Tillman has not established that his sentence is inappropriate.

Conclusion

Tillman has not established that the trial court abused its discretion in sentencing him or that his sentence is inappropriate. We affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.