

Appellant-defendant Stafford D. Johnson appeals his convictions for Robbery,¹ a class C felony, and Criminal Confinement,² a class B felony, challenging the sufficiency of the evidence. Alternatively, Johnson maintains that the trial court abused its discretion in ordering him to serve consecutive sentences. Finding no error, we affirm the judgment of the trial court.

FACTS

On January 4, 2008, Kayla Rogers went skating with Johnson, Travis Mayberry, and several other individuals in Decatur. Thereafter, Rogers asked Mayberry and the others to take her to a friend's apartment. After knocking on the door of the residence and realizing that her friend was not home, Rogers saw Chad Cornett's truck arrive in the area.

As Cornett walked toward his residence, he noticed several men walking toward him. At some point, one of the men ordered Cornett to give them his money. The men started to beat him, and one of them stood in front of him with a gun. Following the beating, Cornett handed the men \$3 that he had in his pocket.

During the incident, Cornett's wife, Linda, heard voices outside. When she went to investigate, Linda observed one of the men pull her husband toward the house. Thereafter, Mayberry, Johnson, and another man exited Mayberry's vehicle. Mayberry was standing near the door of his truck and saw Johnson "slam" Cornett to the ground. Tr. p. 257, 260-61. When Cornett started to run, Mayberry grabbed him and brought him

¹ Ind. Code § 35-42-5-1(2).

² I.C. § 35-42-3-3.

back to the house. Thereafter, Mayberry went into Cornett's house and demanded Linda's telephone. Cornett told Linda to give the men "whatever they wanted." Id. at 318. After Mayberry searched Linda's purse, she handed him \$30 and a set of car keys. Mayberry then instructed Cornett that he was "coming with [him]" and started to force him toward the truck. Id. at 328. However, Cornett was able to break away and escape. After the incident, Johnson told Mayberry that he had punched Cornett several times with his fists and a weapon.

Cornett went to the hospital for treatment, and Decatur City Police Officer Jamie Tharp was dispatched to interview Cornett. Cornett's injuries included abrasions to the head and bruising and lacerations to his eye. The emergency room physician described Cornett's injuries as "gruesome," id. at 283, as the lower portion of Cornett's ear lobe was detached with the tear continuing to his inner ear. Cornett thought that his head was going "to explode," and he rated his pain level as a "ten out of 10." Id. at 369.

Cornett and his wife stated that one of the attackers—who was later identified as Mayberry—had tattoos on his neck. Cornett was also able to identify the vehicle that the men had driven. Officer Tharp shared the information that he had gathered in the investigation with Officer James Franze. After Officer Franze believed that he had located the vehicle described by Cornett, he went to a nearby residence in an effort to locate Mayberry. Officer Franze found Mayberry and arrested him because there was an outstanding warrant for his arrest.

As a result of the incident, Johnson was arrested and charged with two counts of robbery resulting in serious bodily injury, a class A felony, criminal confinement, a class

B felony, and battery resulting in serious bodily injury, a class C felony. The State subsequently amended the information and also charged Johnson with battery resulting in serious bodily injury, a class C felony, under count IV, and robbery, a class B felony, under Count V. The trial court also granted the State's motion to charge Johnson as an accomplice rather than as a principal.

Prior to Johnson's trial, Mayberry pleaded guilty to several charges and was sentenced to thirty years of incarceration. At Johnson's trial, which commenced on June 17, 2008, the trial court instructed the jury as to accomplice liability. Following the presentation of evidence, Johnson was found guilty of robbery resulting in serious bodily injury, a class A felony, robbery, a class C felony, criminal confinement, a class B felony, battery resulting in serious bodily injury, a class C felony as charged in count IV, and robbery, a class B felony, as charged in count V.

At the sentencing hearing, which commenced on August 4, 2008, the trial court vacated Johnson's convictions on counts IV and V in light of double jeopardy concerns. In imposing the sentence, the trial court discussed the aggravating nature of the offenses, including that the crimes included multiple victims and that a sawed-off shotgun had been used in the commission of the offenses. Tr. p. 457. With regard to Johnson's character, the trial court observed that although Johnson's criminal history was limited, he had a previous battery conviction in 2006. Id. at 412, 459. The trial court also considered Johnson's evidence of mental illness as a mitigating factor. Id. at 460-61. Thereafter, the trial court sentenced Johnson to thirty years for robbery resulting in serious bodily injury, a class A felony, four years for robbery, a class C felony, and ten

years for criminal confinement, a class B felony. The trial court ordered the sentences to run consecutively for an aggregate sentence of forty-four years. Johnson now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Johnson argues that the evidence was insufficient to support his convictions for the robbery of Linda or for the confinement of Cornett.³ Specifically, Johnson maintains that the “undisputed evidence” showed that Mayberry committed the offenses and the State failed to demonstrate that Johnson aided in the commission of these offenses. Appellant’s Br. p. 7.

In addressing Johnson’s claims, we neither reweigh the evidence nor judge the credibility of the witnesses. Gentry v. State, 835 N.E.2d 569, 572 (Ind. Ct. App. 2005). Rather, we consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. Id. Where there is substantial evidence of probative value to support the trial court’s judgment, it will not be disturbed. Id. The weight and credit afforded a witness’s testimony and the resolution of conflicts between their testimony and the inconsistencies within their own testimony is exclusively the function of the fact finder and one with which this court will not interfere. Ryle v. State, 549 N.E.2d 81, 83 (Ind. Ct. App. 1990).

As noted above, Johnson was convicted as an accomplice to the offenses. Under the theory of accomplice liability, Indiana Code section 35-41-2-4 provides that an

³ Johnson apparently does not challenge the sufficiency of the evidence for robbery resulting in serious bodily injury, a class A felony, with regard to Cornett.

individual who “aids, induces, or causes another person to commit an offense” is as culpable as the person who actually commits the offense. This statute does not set forth a separate crime but merely provides a separate basis of liability for the crime that is charged. Hampton v. State, 719 N.E.2d 803, 807 (Ind. 1999). Factors that are to be considered in determining accomplice liability include: (1) presence at the scene of the crime; (2) companionship with another engaged in a crime; (3) failure to oppose the commission of the crime; and (4) the course of conduct before, during, and after the crime occurred. Garland v. State, 719 N.E.2d 1236, 1237 (Ind. 1999). To sustain a conviction as an accomplice, there must be evidence of the defendant’s conduct or words, from which an inference of common design or purpose to effect the commission of a crime may be reasonably drawn. Peterson v. State, 699 N.E.2d 701, 706 (Ind. Ct. App. 1998).

In this case, the evidence demonstrated that Johnson was present at the scene, and he arrived and departed with the other men who were the actual principals in the commission of the offenses against Cornett and his wife. Tr. p. 191-95, 219. The beating of Cornett—with Johnson’s active participation—placed Linda in fear. Id. at 318-20, 323. After Cornett was beaten, he told Linda to give the men whatever they wanted. Id. at 358. Moreover, Johnson did not oppose the victimization of the Cornetts. Indeed, while Mayberry was inside the residence, Johnson was one of two individuals who held Cornett at gunpoint. Id. at 358-61. As a result, Johnson’s participation in detaining Cornett while Mayberry robbed Linda was sufficient for the jury to find him guilty as an accomplice.

Although Johnson maintains that there was only a “50% chance [that he] held the gun on Chad,” and that “[he] may not have even been at the scene,” appellant’s br. p. 10, those arguments amount to an improper request for us to reweigh the evidence. And contrary to Johnson’s claims, the record supports the conclusion that Johnson was a willing participant during the commission of the offenses. As a result, because there is substantial evidence of probative value supporting Johnson’s convictions, his challenge to the sufficiency of the evidence fails.

II. Sentencing

Although we have concluded that the evidence was sufficient to support Johnson’s convictions, Johnson claims in the alternative that the trial court abused its discretion in ordering consecutive sentences. Johnson asserts that because he had a less significant role in the incident, and his mental health history supports a reduction of the sentence, the trial court should have imposed concurrent rather than consecutive sentences.

We initially observe that sentencing decisions are 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 (2007). Consecutive sentences may be imposed “if aggravating circumstances warrant.” Lander v. State, 762 N.E.2d 1208, 1215 (Ind. 2002). When the trial court imposes consecutive sentences where not required by statute, we examine the record to insure that the court explained its reasons for selecting the sentence. Id. Before the trial court can impose a consecutive sentence, the trial court must articulate, explain, and evaluate the aggravating circumstances that support the sentence. Id. The trial court’s assessment of the proper weight of mitigating and aggravating circumstances is

entitled to deference on appeal and will be set aside only upon a showing of a manifest abuse of discretion. Patterson v. State, 846 N.E.2d 723, 727 (Ind. Ct. App. 2006). Additionally, our supreme court has observed that one valid aggravating circumstance adequately supports ordering consecutive sentences. Mathews v. State, 849 N.E.2d 578, 589 (Ind. 2006). Consecutive sentences are appropriate when there are multiple victims. Gleaves v. State, 859 N.E.2d 766, 771 (Ind. Ct. App. 2007).

In this case, the trial court did identify Johnson's mental health as a mitigating circumstance. However, even though Johnson was sentenced to the advisory term on each offense,⁴ the trial court identified Johnson's drug addiction, criminal history, and the fact that there were multiple victims in the case as aggravating circumstances. Tr. p. 457-60. Johnson's prior conviction for battery and his illegal use of drugs are reflective of his character and his willingness to become violent. And, as this court has acknowledged, the trial court can consider even a limited criminal history as an aggravating factor. Pagan v. State, 809 N.E.2d 915, 928 (Ind. Ct. App. 2004).

In light of these circumstances, we conclude that the trial court was justified in imposing consecutive sentences. See Lopez v. State, 869 N.E.2d 1254, 1259 (Ind. Ct. App. 2007) (holding that the trial court could base the imposition of consecutive sentences upon a free-standing aggravating factor), trans. denied. Thus, Johnson's claim fails and we decline to revise the sentence.

⁴ Pursuant to Indiana Code section 35-50-2-4, the advisory sentence for a class A felony is thirty years. The advisory sentence for a class B felony is ten years, I.C. § 35-50-2-5, and the advisory sentence for a class C felony is four years. I.C. § 35-50-2-6.

The judgment of the trial court is affirmed.

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