

Case Summary

Andrew Dugger appeals his convictions and sentence for Class B felony possession of a dangerous device or material by a prisoner and Class C felony battery. We affirm.

Issues

The restated issues before us are:

- I. whether there is sufficient evidence to support Dugger's convictions; and
- II. whether his sentence is inappropriate.

Facts

On March 2, 2007, Dugger was an inmate at the Pendleton Correctional Facility. On that date, Dugger was in a disciplinary/segregation unit cell, which he occupied by himself. The front of the cell was covered with Plexiglas to prevent inmates from reaching through the bars. Correctional officers would pass food and mail to inmates through a small, padlocked slot in the front of the cell.

At approximately 4:00 a.m. on that date, correctional officer Mike Curry delivered breakfast to Dugger's cell. When Officer Curry tried to pass the food through the slot, Dugger slashed Officer Curry's arm with what Officer Curry described as a metallic, rectangular object. Dugger later stated that he had used a razor blade that he had found, and which he flushed down the toilet after cutting Officer Curry. The cut on Officer Curry's arm required eighteen stitches to close.

On March 19, 2007, the State charged Dugger with Class B felony possession of a dangerous device or material by a prisoner and Class C felony battery. The caption of the charging information alleged that the battery had resulted in serious bodily injury, while the body of the information alleged that the battery had been committed with a deadly weapon and made no mention of serious bodily injury. In December 2007, the trial court found Dugger incompetent to stand trial. Dugger was determined by Logansport State Hospital to have regained competency in August 2008; Dugger later challenged that determination unsuccessfully. On May 21, 2010, Dugger was found guilty as charged following a bench trial. The trial court sentenced Dugger to twenty years for the Class B felony conviction and eight years for the Class C felony conviction, to run concurrently. Dugger now appeals.

Analysis

I. Sufficiency of the Evidence

Dugger challenges the sufficiency of the evidence for both of his convictions. When reviewing the sufficiency of the evidence to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses, and respect the fact-finder's exclusive province to weigh conflicting evidence. Jackson v. State, 925 N.E.2d 369, 375 (Ind. 2010). We consider only the probative evidence and reasonable inferences therefrom that support the conviction. Id. We will affirm if the probative evidence and reasonable inferences from that evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

In order to convict Dugger of Class B felony possession of a dangerous device or material by a prisoner, the State was required to prove that he possessed a deadly weapon.¹ See Ind. Code § 35-44-3-9.5. To convict Dugger of Class C felony battery, the State was required to prove either that he caused serious bodily injury or that he committed the battery by means of a deadly weapon. See I.C. § 35-42-2-1(a)(3). Dugger argues both that there is insufficient evidence of serious bodily injury and that the razor blade was not a deadly weapon.²

Included within the definition of “deadly weapon” is any “weapon, . . . equipment, . . . or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.” I.C. § 35-41-1-8(a)(2). “Serious bodily injury,” in turn, is “bodily injury that creates a substantial risk of death or that causes: (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus.” I.C. § 35-41-1-25. Generally, “[w]hether sufficient evidence exists to establish a weapon is deadly is determined by looking to whether the weapon had the actual ability to inflict serious injury under the fact situation and whether the defendant had the apparent ability to injure the victim seriously through

¹ The offense is a Class C felony if the device or other material is readily capable of causing bodily injury, but does not qualify as a deadly weapon.

² We note the discrepancy in the charging information for battery, with respect to apparently alleging both that Dugger caused serious bodily injury and that he committed the battery with a deadly weapon. Dugger does not argue that this discrepancy precluded the State from proving the Class C felony battery charge in reliance upon the use of a deadly weapon; we will limit our analysis to that issue.

use of the object during the crime.” Frey v. State, 580 N.E.2d 362, 364 (Ind. Ct. App. 1991), trans. denied.

In Robinson v. State, 543 N.E.2d 1119, 1120 (Ind. 1989), our supreme court held there was sufficient evidence that a “utility knife” or box-cutter, i.e. a razor-type blade that retracted into a handle, was a deadly weapon. The court noted that the knife had caused a severe laceration to the victim’s ear, which could have been life-threatening if the cut had been delivered to the throat instead. Dugger attempts to distinguish the box-cutter in Robinson from the razor blade he used to cut Officer Curry. He notes that a bare razor blade lacks a handle, which potentially could make it more difficult to use in inflicting a severe wound than a razor blade with a handle, like a box-cutter. Dugger also claims that the wound he actually inflicted upon Officer Curry was not serious, and because of the Plexiglas barrier between him and Officer Curry, he would have been unable to cut Officer Curry’s throat with the blade.

We conclude Dugger’s arguments are an invitation to reweigh the evidence, which we must decline. A razor blade, either with or without a handle, is a dangerous instrument, and certainly could be used not only to cut a person’s throat, but also the exposed arteries on a person’s wrists, like Officer Curry’s when he attempted to pass food to Dugger through the slot. Even if the wound Officer Curry received did not qualify as a “serious bodily injury,” that did not preclude the trial court from finding that such injury could have occurred had Dugger cut a more vulnerable part of Officer Curry’s arm. See Timm v. State, 644 N.E.2d 1235, 1238-39 (Ind. 1994) (holding that,

even if attack with plastic flashlight did not result in serious bodily injury to victim, jury reasonably could have found that flashlight constituted a deadly weapon).

Moreover, we do not believe the fact that it might have been impossible here for Dugger to actually cut Officer Curry's throat rendered the razor blade anything less than a deadly weapon. A razor blade "could ordinarily be used" to cause serious bodily injury, even if it could not have here, which satisfies the statutory definition of a deadly weapon. I.C. § 35-41-1-8(a)(2) (emphasis added). There is sufficient evidence that the razor blade was a deadly weapon, so as to support Dugger's convictions for both Class B felony possession of a dangerous device or material by a prisoner and Class C felony battery.

II. Sentence

Dugger also contends that his aggregate twenty-year sentence is inappropriate under Indiana Appellate Rule 7(B) in light of his character and the nature of the offense. Although 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.

The principal role of Rule 7(B) review "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement

of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). We “should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” Id. Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case. Id. at 1224. We also note that Dugger seems to assert that he received a maximum sentence. He did not, because the trial court ordered the eight-year sentence for the C felony to run concurrently to the twenty-year sentence for the B felony, rather than consecutively.

Dugger devotes almost the entirety of his sentencing argument to claiming that his purported mental illness warrants a reduction of his sentence. He partially frames this argument as a claim that the trial court, although it acknowledged Dugger’s mental health in its oral sentencing statement, did not give enough mitigating weight to that issue. We observe, however, that the relative weight given to aggravators and mitigators is not subject to appellate review. J.S. v. State, 928 N.E.2d 576, 579 (Ind. 2010).

We will address Dugger’s claim of mental illness solely to assess the weight it should be given in evaluating his character for purposes of Rule 7(B). See Marlett v. State, 878 N.E.2d 860, 865 (Ind. Ct. App. 2007), trans. denied. Courts should be highly discerning when assessing a claim that mental illness warrants mitigating weight. Id. “Factors to consider in weighing a mental health issue include the extent of the inability

to control behavior, the overall limit on function, the duration of the illness, and the nexus between the illness and the crime.” Id. at 866.

It is true that Dugger initially was found incompetent to stand trial for these crimes. Dugger told doctors examining him that he has an “alter ego” named Seth who carries out the crimes attributed to Dugger and that he also has hallucinations of monsters. Dugger also indicated that he had no understanding of the charges against him, and no understanding of how the criminal justice system operates. One of the doctors who initially examined Dugger’s competency to stand trial opined that the symptoms he was describing suggested dissociative identity disorder (i.e., multiple personalities), schizophrenia, depression, and anxiety. This doctor was apparently reluctant to declare Dugger incompetent to stand trial, however, stating, “I have a suspicion that Mr. Dugger is malingering and fabricating most of his mental illness complaints.” App. II p. 30. The only basis for the incompetency finding was that Dugger refused to cooperate with his attorney and was likely to “act out in court.” Id. at 31.

Shortly after Dugger was sent to Logansport State Hospital, a forensic psychiatrist there declared him competent to stand trial, noting that he had observed no symptoms of dissociative disorder or schizophrenia, nor any panic or anxiety attacks. Dugger continued to feign complete ignorance of the criminal proceedings against him. The psychiatrist opined, however:

In spite of his concerted effort to appear completely incompetent and unable to think or do anything in regard to his legal defense, it is the opinion of this writer and of all the

[Logansport State Hospital psychiatric staff] that Mr. Dugger is completely and entirely competent to return to court to stand trial.

Id. at 28.

After Dugger challenged this finding of regained competency, he was again evaluated by two mental health professionals. One of the professionals flatly stated, “Mr. Andrew Dugger is trying to appear mentally ill. . . . He is malingering.” Id. at 19. The other professional had evaluated Dugger at the time of his initial incompetency finding, but he now stated Dugger “was not as convincing. He had methodically exaggerated his symptoms.” Id. at 21. This professional also diagnosed Dugger as malingering and believed he was competent to stand trial.

In sum, there is scant evidence in the record that Dugger suffers from an uncontrollable, or difficult to control, mental illness that limits his functioning. To the contrary, there is substantial evidence that Dugger was fabricating mental illness symptoms in an effort to avoid trial on the current charges. If anything, the evidence regarding Dugger’s purported mental illness could weigh negatively against him, not positively. Certainly, nothing about this evidence warrants a reduction in his sentence.

Regarding Dugger’s character more generally, we find no evidence of any positive character traits. Dugger first became involved with the criminal justice system in 1992 as a juvenile at the age of fourteen for truancy. This led to a number of other delinquency adjudications for matters such as running away, incorrigibility, auto theft, resisting law enforcement, and criminal conversion. Dugger’s adult criminal history began in 1996 at

the age of nineteen, with a conviction for theft and two violations of probation related to that conviction. He also has adult convictions for two counts of Class B felony armed robbery, Class A misdemeanor possession of marijuana, and a misdemeanor theft conviction from Texas. We also believe it is fair to presume that Dugger was a less than ideal prisoner, as he was housed in a segregated disciplinary unit when he committed these offenses. Dugger has had nearly constant interaction with the criminal justice system for almost twenty years and has demonstrated that he is unable to abide by the law even while incarcerated in the disciplinary unit of a state prison.

As for the nature of the offenses, Dugger used a razor blade to cut open the arm of a prison guard who simply was trying to give him his breakfast. There is no evidence Officer Curry was deliberately antagonizing Dugger in any way, either at that particular time or at any time in the past. The attack was entirely unprovoked. Given Dugger's character and the nature of the offenses, we cannot conclude that his aggregate twenty-year sentence is inappropriate.

Conclusion

There is sufficient evidence to support Dugger's convictions, and his sentence is not inappropriate. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.