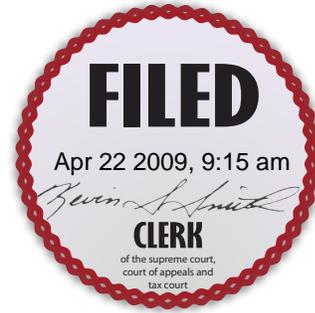


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

KRISTIN A. MULHOLLAND
Crown Point, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

BRANDON GREEN,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 45A03-0809-CR-445

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0803-FA-7

April 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Brandon Green appeals his sixty-year sentence for three counts of Class A felony robbery and one count of Class C felony robbery. We affirm.

Issues

Green raises one issue, which we restate as:

- I. whether the trial court properly ordered his three Class A felony robbery sentences to be served consecutively; and
- II. whether his sixty-year sentence is appropriate.

Facts

On October 28, 2007, Green and two other men robbed an elderly couple. During the robbery one of the victims was struck in the head causing some of his teeth to be knocked out. On November 6, 2007, while Green waited in the getaway car, one of his cohorts approached a man as he was entering his home. The man was struck in the head with a black metal object, causing him to sustain deep lacerations in his head and eye. During the incident, the man's keys, car, and wallet were stolen. On February 25, 2008, Green approached a woman as she returned home from the grocery store and took her purse. On February 27, 2008, Green and another man approached a woman in her backyard, took her keys, and struck her in the head, causing her to lose consciousness.

In March 2008, in four separate informations relating to these robberies, the State charged Green with three counts of Class A felony robbery, two counts of Class B felony

robbery,¹ one count of Class B felony carjacking, two counts of Class C felony battery, and one count of Class D felony theft. Green eventually pled guilty to three counts of Class A felony robbery and one count of Class C felony robbery. Pursuant to the plea agreement, the sentences for the Class A felonies were fixed at twenty years executed, the sentence for the Class C felony was fixed at six years executed, and the remaining charges were dismissed. The parties agreed that the trial court would determine whether the sentences should be served concurrently or consecutively.

On August 7, 2008, the trial court held a sentencing hearing. During the hearing, the trial court questioned Green regarding the extent of his participation in these crimes. Ultimately, as mitigating, the trial court considered Green's guilty plea and acceptance of responsibility and his mental health issues. As aggravating, the trial court considered the fact that three of the victims were over the age of sixty-five, Green's lengthy criminal history, and the multiple victims. The trial court concluded:

As it relates to concurrent versus consecutive sentencing, the Court finds that the aggravating factors heavily outweigh the mitigating factors. The Court further finds that the multiple-victim aggravator in and of itself outweighs the mitigating factors. The three victims being over the age of 65 aggravator in and of itself outweighs the mitigating factors.

* * * * *

You are a person that preys on the helpless, and, quite frankly, I don't believe that you didn't know your partners were not harming these individuals. I believe you knew; nevertheless, that doesn't affect the sentences that I give even

¹ One of these counts was reduced to a Class C felony charge of robbery to which Green eventually pled guilty.

if that turned out not to be true, because you engaged in a serious of robberies that you should not have been involved in.

Sentencing Tr. pp. 119-21. The trial court ordered the sentences on the three Class A felonies to be served consecutive to each other and concurrent to the Class C felony sentence, for a total sentence of sixty years. Green now appeals.

Analysis

I. Consecutive Sentences

Green argues that the trial court failed to consider his “lesser role in the crimes” as a mitigator when it imposed the consecutive sentences. Appellant’s Br. p. 7. We engage in a four-step process when evaluating a sentence.² 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.

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.”

² Because there is no argument to the contrary, we assume an Anglemyer-type analysis applies to our review of the imposition of consecutive sentences.

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.

On rehearing in Anglemyer v. State, 875 N.E.2d 218, 220-21 (Ind. 2007), our supreme court acknowledged, “an allegation 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.” Green has not established that the trial court overlooked a significant mitigator that was clearly supported by the record.

At the sentencing hearing, Green claimed that he was an active participant in only one of the robberies and that he did not actually injure anyone. Nearly sixteen pages of the transcript of the sentencing hearing contains an exchange between Green and the trial court regarding the extent of Green’s participation in the offenses. See Sentencing Tr. pp. 98-114. The trial court clearly did not believe Green’s self-serving statements when it described Green’s account of the crimes as “defying my logic.” Id. at 112. Ultimately, the trial court concluded, “I don’t believe that you didn’t know your partners were not harming these individuals.” Id. at 121. This assessment of Green’s participation in the offenses was well within trial court’s discretion.

Regardless, the trial court acknowledged, “I believe you knew; nevertheless, that doesn’t affect the sentences that I give you even if that turned out not to be true, because

you engaged in a series of robberies that you should not have been involved in.” Id. Thus, according to the trial court, even if it had believed Green, it did not consider his alleged minimal participation as a significant mitigator because it would have imposed the same sentence. Green has not established that the trial court abused its discretion in not considering his alleged lack of participation as a mitigator.

II. Appropriateness

Green also claims that his sixty-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. Green has not met this burden.

Regarding the nature of the offenses, Green to some extent participated in the robberies of four individuals on four separate occasions.³ Moreover, Green and his cohorts targeted unsuspecting elderly people at their own homes. Although Green claims that he was not the one who initiated or planned the violent crimes, at the sentencing hearing he admitted that he actively committed the Class C felony robbery. Nothing about the nature of these offenses warrants less than the sixty-year sentence. See Pittman

³ The stipulated factual basis clearly identifies a fifth victim—the wife of the man whose teeth were knocked out. However, it does not appear that any of Green’s four convictions relate to this victim.

v. State, 885 N.E.2d 1246, 1259 (Ind. 2008) (“Consecutive sentences reflect the significance of multiple victims.”).

As for Green’s character, we acknowledge that he pled guilty and apologized to for his actions. However, in exchange for his guilty plea, several serious charges were dismissed. His guilty plea also fixed the Class A felony sentences at the minimum sentence for a Class A felony—twenty years. Green even admitted that he pled guilty because it was his only chance to see his child at some point in the future. Sentencing Tr. p. 98. Thus, Green received a substantial benefit in exchange for his guilty plea.

Regarding his mental illness, the record indicates that Green had been diagnosed with ADHD and bipolar disorder at some point. Green stated, however, that he used drugs, including cocaine, ecstasy, and marijuana, instead of taking his medication. Using illegal drugs to treat diagnosed mental illness does not bode well for Green’s character.

Twenty-two-year-old Green also has a criminal history that includes at least a 1999 juvenile adjudication for misdemeanor assault, a 2002 juvenile adjudication for battery, a 2004 battery conviction, and a 2005 burglary conviction. The trial court also acknowledged that Green has had other involvement with the juvenile justice system. Although the extent of his criminal history is less than clear,⁴ Green has not shown an ability to lead a law-abiding life. Given the nature of these offenses and Green’s character, Green has not established that his sixty-year sentence inappropriate.

⁴ Our review of Green’s criminal history is based on the trial court’s recitation of such at the sentencing hearing.

Conclusion

Green has not established that the trial court abused its discretion by not considering his alleged minimal participation in the crimes as a mitigator or that his sentence is inappropriate. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.