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IN THE
COURT OF APPEALS OF INDIANA

ALLAN GUERRIER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A04-0909-CR-538
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable David D. Kiely, Judge
Cause No. 82D02-0904-FD-327

April 23, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Allan Guerrier appeals his sentence. We affirm.

Issues

I. Whether the trial court abused its discretion in failing to find provocation as a significant mitigator; and

II. Whether his sentence is inappropriate.

Facts and Procedural History

On April 18, 2009, Tim Deller, working as a confinement officer at the Vanderburgh County Jail, went to housing unit B-1 to obtain a signature from a particular inmate. During his stop at the B-1 housing unit, Deller started talking with an inmate at his cell door and noticed that Guerrier was in the next cell. While still conversing, Deller noticed Guerrier's cell door open and that Guerrier stood staring at him. Deller turned so that he could continue his conversation while keeping Guerrier in his view. Deller briefly turned his full attention to the inmate he was speaking with when Guerrier came at Deller, punching him in the face three times.

Deller was able to back up and eventually wrestle Guerrier to the ground. Guerrier resisted further by tucking his arms underneath himself. In order to handcuff Guerrier, a second officer helped Deller pull Guerrier's arms out and place them behind his back. Deller sustained injuries to his hand and lip.

On April 20, 2009, the State charged Guerrier with Battery, as a Class D felony.[1]

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[1] Ind. Code § 35-42-2-1(a)(2)(A).

After a trial, a jury found him guilty as charged. The trial court sentenced him to three years imprisonment.

Guerrier now appeals.

Discussion and Decision

I. Mitigating Factor

First, Guerrier argues that the trial court abused its discretion by failing to find provocation as a significant mitigator. Sentencing decisions rest within the 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 (Ind. 2007) (Anglemyer II). As long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. Id. An abuse of discretion occurs when the decision 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." Id. (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)). In Anglemyer, the Indiana Supreme Court noted examples of ways in which a trial court abuses its discretion:

> One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence-including a finding of aggravating and mitigating factors if any-but the record does not support the reasons, 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. Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.

Id. at 490-91.

"Although the trial court is obligated to receive and consider mitigating factors, the trial court is not obligated to accept the defendant's contentions as to what constitutes a mitigating circumstance or to give the proffered mitigating circumstances the same weight the defendant does." Wilkes v. State, 917 N.E.2d 675, 690 (Ind. 2009). Furthermore, a sentencing court is under no obligation to find mitigating factors at all. Ashby v. State, 904 N.E.2d 361, 363 (Ind. Ct. App. 2009). 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. Anglemyer II, 875 N.E.2d at 220-21.

Guerrier testified that his attack was provoked by the violence to which he had been subjected in prior instances at the Department of Correction during his prior nine years in prison and when he was at the Putnumville Correctional facility. However, these alleged incidents purportedly occurred at facilities other than the Vanderburgh County Jail, where Guerrier attacked Deller. Guerrier admitted that Deller had no involvement in the alleged incidents at the other facilities. Guerrier did allege a prior incident specific to Deller but Guerrier admitted that the incident was spurred when he "got into some kind of altercation" with another inmate and he did not file a grievance against Deller regarding the alleged incident. Trial transcript at 68. Guerrier has not demonstrated that this evidence supports finding provocation as a significant mitigating factor. Thus, the trial court did not abuse its discretion.

II. Appropriateness of Sentence

Finally, Guerrier contends that his three-year sentence is inappropriate. In Reid v. State, the Indiana Supreme Court noted the standard by which appellate courts independently review criminal sentences:

> Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate.

Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (quotation and citations omitted).

More recently, the court reiterated that "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to "leaven the outliers." Id. at 1225. "[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of 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.

Here, Guerrier was convicted of Battery, as a Class D felony. For a Class D felony, the sentencing ranging is six months to three years, with one and one-half years as the advisory. Ind. Code § 35-50-2-7. The trial court sentenced Guerrier to the maximum

sentence of three years.

As to the nature of the offense, Guerrier attacked a correctional facility officer while the officer was conversing with another inmate at the Vanderburgh County Jail. He hit the officer in the face three times. Despite Guerrier's allegation, there is no evidence in the record that indicates that Deller did anything to provoke the attack. Deller sustained injuries to his hand and lip as a result of the incident.

As to the character of the offender, Guerrier was serving his concurrent sentences for Dealing in Cocaine and Robbery at the time of the current offense. Prior to those offenses, Guerrier obtained a conviction for Carrying a Handgun without a Permit. In addition to these offenses on his criminal record, Guerrier also testified to being involved in altercations with other inmates during his incarceration. Finally, while he admitted hitting Deller, Guerrier never expressed remorse or took responsibility for his actions in attacking the correctional officer.

In light of the nature of the offense and the character of the offender, Guerrier has not persuaded this Court that his sentence is inappropriate.

Affirmed.

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