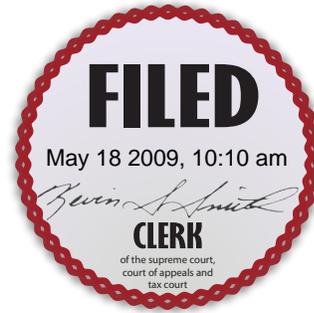


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JESSICA VASQUEZ,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0810-CR-931

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
The Honorable Stanley E. Kroh, Commissioner
Cause No. 49G03-0805-FB-100460

May 18, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Jessica Vasquez appeals the twenty-year sentence that was imposed following her conviction for Aggravated Battery,¹ a class B felony. Specifically, Vasquez argues that she must be resentenced because the trial court abused its discretion in admitting a videotape of a television newscast into evidence at the sentencing hearing that showed sheriff's deputies escorting her to or from the jail.

Vasquez also claims that the trial court abused its discretion in sentencing her because it placed too much weight on her criminal history as an aggravating factor and not enough mitigating weight on her decision to plead guilty. Finally, Vasquez contends that the twenty-year sentence was inappropriate in light of the nature of the offense and her character. Finding no error, we affirm the judgment of the trial court.

FACTS

On April 30, 2008, eighty-one-year-old Evelyn Page was driving north on Meridian Street in Indianapolis, when Vasquez—who was nineteen years old—abruptly stopped her vehicle in front of Page's automobile. After Page stopped, Vasquez exited her vehicle, began yelling, and accused Page of "cut[ting] her off." Appellant's App. p. 21. Vasquez approached Page's vehicle, reached inside, and attempted to grab Page's keys. Vasquez then punched Page in the eye, pulled her from the vehicle, and threw her

¹ Ind. Code § 35-42-2-1.5.

to the ground. Vasquez continued to kick and beat Page until several bystanders intervened. After attacking Page, Vasquez returned to her vehicle—which contained at least two small children—and sped away from the scene. Vasquez ran at least one stop sign as she drove away.

As a result of the incident, one of Page’s legs was broken in three places. She suffered a total of fourteen fractures, has gaps in her knees that may not ever be filled in, and presently walks with a cane. Page spent a week in the hospital and nearly three months in a rehabilitation facility, where she was confined to her bed for twenty-four hours a day. At times, Page had to be “tied” to her bed. Tr. p. 46-47, 58.

Page has had one surgery to repair the fractures. During that surgery, a six-inch metal plate was installed in her leg, and screws and pins were placed in her knees. Page must also undergo at least two additional surgeries to repair her leg, and amputation is still a possibility. Page also uses a bone stimulator each day to prepare her knee for replacement.

Page’s daughter, Rebecca Laylord, traveled to Indiana from Arizona on six occasions to care for her mother. Laylord also hired a therapist to assist Page when she was not able to assist.

On May 1, 2008, Vasquez was charged with aggravated battery, a class B felony. Thereafter, Vasquez filed a third-party request for production of documents seeking “videotape and audiotape copies of any news footage” from Indianapolis television station WRTV regarding its reporting of the incident. The tape shows Marion County

Deputy Sheriffs escorting Vasquez to or from the jail approximately twelve hours after the incident.² WRTV moved to quash the request, which the trial court subsequently granted.

On August 15, 2008, Vasquez agreed to plead guilty as charged. A written plea agreement stated that “all terms, including placement, shall be open to argument.” Tr. p. 7, 12-16. At the sentencing hearing that commenced on September 12, 2008, police Detective Wendall Daniel testified that he had interviewed Vasquez following the attack. Detective Daniel testified that Vasquez was “non-caring” and she insisted that she had done “nothing wrong.” *Id.* at 54. Although Vasquez admitted beating Page, she told Detective Daniel that her cousins had taught her “how to fight,” and that she was “the victim in this case.” *Id.* at 55.

The State then moved to admit the WRTV newscast and footage of Vasquez into evidence. The State argued that the tape was relevant to show Vasquez’s demeanor after her arrest. In particular, the deputy prosecutor stated:

Your Honor, I believe, based on the detective’s statements, [Vasquez’s] demeanor was very similar to what is viewed on this tape, and it stayed constant throughout. I believe it’s completely relevant. Although [Vasquez] is crying in here today, that was not the demeanor that she had the night that this occurred—the day that this occurred. And I feel that it is relevant for sentencing purposes.

Id. at 61. The trial judge stated that he had reviewed the videotape and admitted it over Vasquez’s objection on relevancy grounds. Thereafter, the trial court identified the

² The news footage aired by WRTV was preserved in the public domain and is accessible at <http://www.youtube.com/watch?v=xtpQWXUSKlw> (last visited May 17, 2009).

following aggravating factors: (1) Vasquez's criminal history; and (2) the "egregious" facts of the this case, which included Page's age. Id. at 79-81. The trial court also found the following mitigating circumstances: (1) Vasquez's decision to plead guilty; (2) Vasquez's remorse and apology to Page; (3) the hardship that incarceration will have on Vasquez's child; (4) Vasquez's poor "upbringing;" and (5) Vasquez's age, although the trial court determined that this mitigator was "tempered" by five previous findings of juvenile delinquency. Id. at 77-79. The trial court sentenced Vasquez to an executed sentence of twenty years of incarceration. When imposing the sentence, the trial court noted that its decision was "uninfluenced" by the WRTV news footage. Id. at 62, 81. Vasquez now appeals.

DISCUSSION AND DECISION

I. Video Footage

Vasquez argues that her sentence must be set aside because the trial court improperly admitted the videotape from WRTV into evidence at the sentencing hearing. Specifically, Vasquez contends that she was prejudiced by the admission of the tape and "fundamental fairness dictates that the Court should not consider evidence proffered by the State where access was previously denied to the Defendant." Appellant's Br. p. 9.

In resolving this issue, we note that the strict rules of evidence are not applicable at sentencing and the discovery rules are irrelevant at that point of the proceedings. Sales v. State, 562 N.E.2d 43, 47 (Ind. Ct. App. 1990). In Williams v. New York, the United

States Supreme Court explained the difference between guilt-finding and sentencing procedures:

In addition to the historical basis for different evidentiary rules governing trial and sentencing procedures there are sound practical reasons for the distinction. In a trial before verdict the issue is whether a defendant is guilty of having engaged in certain criminal conduct of which he has been specifically accused. Rules of evidence have been fashioned for criminal trials which narrowly confine the trial contest to evidence that is strictly relevant to the particular offense charged. These rules rest in part on a necessity to prevent a time consuming and confusing trial of collateral issues. They were also designed to prevent tribunals concerned solely with the issue of guilt of a particular offense from being influenced to convict for that offense by evidence that the defendant had habitually engaged in other misconduct. A sentencing judge, however, is not confined to the narrow issue of guilt. His task within fixed statutory or constitutional limits is to determine the type and extent of punishment after the issue of guilt has been determined. Highly relevant-if not essential-to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics. And modern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial.

337 U.S. 241, 246-47 (1949).

In light of the above, Vasquez's claim of a discovery violation at the sentencing hearing is misplaced because the discovery rules, which were created to ensure fairness at the guilt stage of trial, do not apply at sentencing. Sales, 562 N.E.2d at 47. Moreover, as noted above, the trial court specifically stated that its decision was not influenced by the contents of the videotape. And, contrary to Vasquez's claim that resentencing is required because she was precluded from reviewing the "video evidence through discovery,"

appellant's br. p. 8, Vasquez was aware of the tape's contents because she referred to that footage in her direct testimony at the sentencing hearing. Tr. p. 29.

Finally, notwithstanding the trial court's statement that it did not consider the videotape when deciding what sentence to impose, we believe that the tape showing Vasquez's demeanor shortly after the attack was relevant in determining her character for the purpose of reaching a proper sentence. For all of these reasons, Vasquez's claim fails.

II. Sentencing

A. Abuse of Discretion

Vasquez claims that the trial court abused its discretion in sentencing her. In particular, Vasquez maintains that the trial court afforded too much weight to her criminal history and not enough weight to her decision to plead guilty in deciding what sentence to impose. Thus, Vasquez argues that she must be resentenced.

We initially observe that sentencing decisions rest 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. An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. Id.

With respect to Vasquez's claim that the trial court abused its discretion when it improperly weighed the aggravating and mitigating circumstances that it identified, our Supreme Court's decision in Anglemyer precludes us from engaging in such review. Id.

at 491. Thus, Vasquez's argument that the trial court abused its discretion in this regard fails.

B. Inappropriate Sentence

Vasquez also argues that her sentence is inappropriate in light of the nature of the offense and her character pursuant to Indiana Appellate Rule 7(B). In particular, Vasquez argues that the circumstances of the crime and her character do not warrant the maximum sentence for this offense.³

When reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of the offense, the record shows that during a mere traffic dispute, Vasquez approached eighty-one-year-old Page, punched her in the eye, pulled her from her from the vehicle, and viciously beat her. As a result, Page's leg was broken in three places, and she sustained a total of fourteen bone fractures. Appellant's App. p. 18-21. Vasquez did not stop hitting and kicking Page until several bystanders intervened. Id. Moreover, Vasquez inflicted the injuries in front of two small children who were in her care. Following the beating, Vasquez fled the scene and drove off at a high rate of speed despite having two small children in her vehicle. Tr. p. 56.

³ The maximum sentence for a class B felony is twenty years. Ind. Code § 35-50-2-5.

As discussed above, Page had one surgery prior to the sentencing hearing. At that time, doctors installed a six-inch metal plate in Page's leg, and screws and pins in her knees. Those items may have to remain in Page's knees for the rest of her life. Id. at 35-36, 40. The surgeons also advised Page that although she may have to undergo two additional surgeries to repair her leg, amputation remains a possibility. Id. at 43, 47, 50. The evidence also showed that Page was hospitalized and remained at a rehabilitation facility for nearly three months. Id. at 46-47, 58. Page has been on pain medication since the attack, her mobility is still limited, and walking causes her severe pain because moving her legs causes stiffening and swelling. Id. at 40-41, 50. In short, Vasquez's attack has caused Page severe pain, has all but deprived her of her liberty, and has devastated Page's family.

As for Vasquez's character, the record shows that she has been arrested six times and has accumulated five true findings as a juvenile delinquent. P.S.I. at 3-4. One of those true findings would have been a battery had the offense been committed by an adult. Moreover, Vasquez failed home detention on two occasions and has violated the terms of her probation. Id. at 3-4. In essence, Vasquez's juvenile adjudications indicate a history of violence and her resistance to leading a law abiding life. Although Vasquez has been provided with numerous chances at rehabilitation, they have been to no avail.

Vasquez also showed little remorse for her actions immediately following the attack, and she continued to endanger the lives of others around her as she sped away from the scene. When a police detective questioned Vasquez regarding the incident, she

blamed Page, told the detective that she knew how to fight and described how she was trained to take “someone’s leg out from them.” Tr. p. 54.

When considering the nature of the offense and the character of the offender, we conclude that Vasquez has not convinced us that the twenty-year sentence is inappropriate.

The judgment of the trial court is affirmed.

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