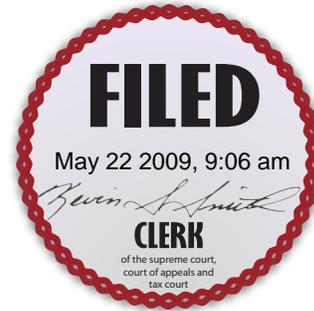


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

LARRY HORNE,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A05-0809-CR-519

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
Cause No. 49G16-0806-FD-146469

May 22, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Larry Horne (“Horne”) was convicted in Marion Superior Court of Class D felony criminal confinement, Class A misdemeanor domestic battery, Class A misdemeanor battery, and Class A misdemeanor resisting law enforcement. He was ordered to serve an aggregate sentence of 905 days, with 545 executed and 360 days suspended to probation. Horne appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On June 14, 2008, Horne was involved in a confrontation with several family members including his ex-wife, Maria, and his three daughters: Asanti, Kenyatta, and Lisa. The incident began after Horne, who was living in Maria’s home, refused to unlock the front door of the home for Asanti, Kenyatta, and Kenyatta’s seven-year-old son. Maria arrived shortly thereafter and unlocked the door. After Maria asked Horne why he had not unlocked the door, Horne started screaming and yelling. Maria told everyone to leave the house, and Horne stood up and continued to yell. After Asanti told Horne to “sit down and be quiet[,]” Horne chased everyone out the front door. Tr. p. 43.

Asanti and Maria attempted to hold the front door closed while Horne pushed against it. Horne was able to push through the screen door, and he punched Asanti in the face. He also dragged Asanti down the sidewalk toward the street. Asanti sustained injuries to her face, forearm, and knees. Horne also punched Maria three times causing injuries to her head and arm.

Two Indianapolis Metropolitan Police Department officers responded to the call concerning the altercation at Maria’s home. When they arrived, Horne was agitated and

he refused to come outside when asked. The officers went into the home and unsuccessfully attempted to place Horne in handcuffs. Horne was warned that he would be tazed if he refused to cooperate, and the officers eventually tazed Horne after he continued to resist their efforts to place him in handcuffs.

On June 15, 2008, Horne was charged with Class D felony criminal confinement for forcibly removing Asanti from the residence to the sidewalk and Class A misdemeanor battery for punching Asanti. He was also charged with Class A misdemeanor battery and Class A misdemeanor domestic battery for striking Maria. Finally, Horne was charged with Class A misdemeanor resisting law enforcement. After a bench trial, Horne was found guilty on all counts, but the court declined to enter judgment of conviction on the Class A misdemeanor battery count involving Maria.

Horne was sentenced on August 7, 2008. The court considered the following aggravating circumstances: Horne's prior criminal history, the lasting injuries to Asanti, and the fact that the offenses were witnessed by Horne's minor grandchildren. The court considered Horne's expression of remorse and that he suffers from Meniere's disease as mitigating. The court ordered Horne to serve an aggregate sentence of 905 days, 545 days executed¹ and 360 days suspended to probation. Of the executed time, the court ordered Horne to serve 365 days in the Department of Correction and 180 days in Community Corrections. Horne now appeals.

¹ At sentencing and in the Order of Commitment to Community Corrections, the trial court ordered Horne to serve 545 days executed. However, the abstract of judgment lists Horne's executed sentence as 550 days.

Discussion and Decision

Horne argues that his aggregate 905-day sentence is inappropriate in light of the nature of the offense and the character of the offender. Pursuant to Indiana Appellate Rule 7(B), our 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. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

A Class D felony conviction subjects the offender to a sentence in the range of six months to three years, with the advisory sentence being one and one-half years. Ind. Code § 35-50-2-7 (2004 & Supp. 2007). Horne was sentenced to 545 days executed and 180 days probation for the Class D felony criminal confinement conviction. A Class A misdemeanor conviction subjects the offender to a sentence of not more than one year. Ind. Code § 35-50-3-2 (2004 & Supp. 2007). Horne was ordered to serve a consecutive sentence of 180 days probation for his Class A misdemeanor resisting law enforcement conviction.²

With regard to the nature of the offense, Horne argues that his sentence is inappropriate because “the crime was not especially severe nor the injuries especially serious.” Appellant’s Br. at 7. Horne punched his daughter and dragged her down the sidewalk in front of his ex-wife’s residence. Asanti testified that she still feels pain in her

² Horne was also ordered to serve 365 days for his Class A misdemeanor battery and Class A misdemeanor domestic battery convictions. Those sentences were ordered to be served concurrent to Horne’s sentence for Class D felony criminal confinement.

face and teeth. He also struck his ex-wife three times. Also, as the trial court noted, these offenses occurred in the presence of Horne's minor grandchildren.

Concerning the character of the offender, Horne claims that his sentence is inappropriate because he suffers from Meniere's disease,³ he expressed remorse, and he has not been convicted of a crime since 1991. Horne acquired four felony convictions prior to 1991. From 1991 to the date of this incident, he appears to have led a law-abiding life, although criminal charges not resulting in convictions were filed against Horne in 2004 and 2006. The trial court also acknowledged Horne's expression of remorse, but questioned the credibility of that statement. Tr. p. 131. With regard to Horne's Meniere's disease diagnosis, for which there is scant evidence in the record, the court noted that Horne's habitual consumption of alcohol likely hinders Horne in dealing with the symptoms of that disease. Id. We agree with Horne's argument that he is not among the "worst offenders;" however, Horne also did not receive the maximum sentence for his offenses.

For all of these reasons, we conclude that Horne's 905-day aggregate sentence, with 360 days suspended to probation, is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

RILEY, J., and KIRSCH, J., concur.

³ Meniere's disease causes episodes of vertigo and periodic hearing loss. Tr. pp. 124-25.