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FILED
May 25 2011, 9:57 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

ANTHONY JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-1010-CR-1439
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-1002-FB-4

May 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Anthony Johnson pleaded guilty to Class C felony intimidation while drawing or using a deadly weapon[1] and Class D felony domestic battery in the presence of a child less than sixteen years of age.[2] The trial court sentenced him to seven years of imprisonment for the intimidation conviction and three years for the domestic battery conviction, to run consecutively, but suspended two years for an eight-year executed sentence. He raises only one issue on appeal: whether his sentence is inappropriate in light of the nature of his offenses and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

Johnson spent the evening of February 21, 2010 at a friend's home, drinking alcohol and playing "dice." *Appellant's App.* at 22. His wife, Pamela, was at home, in their Lafayette residence, along with the couple's daughters, one age seventeen and one age twenty, and the older daughter's four-month-old child. Just after midnight, Johnson, who was then intoxicated, returned home. Pamela, the two daughters, and infant grandchild were asleep in a bed, when Johnson entered the bedroom and ripped off the covers. Angry with his wife because she caused him bad luck during the dice game, he took her by the hair and "walked" her to the living room, where he held a razor to her throat and threatened to kill her. *Id*. He also threatened to kill anyone in the house who called the police. The older daughter grabbed her infant child and fled the home. Johnson followed her, but at some point got in a

[1] *See* Ind. Code § 35-45-2-1.

[2] *See* Ind. Code § 35-42-2-1.3.

car alone and drove away. Pamela called 911, police responded, and eventually located and apprehended Johnson. According to the police recordings, admitted as evidence, Johnson threatened officers and their families during the process of transporting and booking Johnson into the Tippecanoe County Jail.

The State filed eight felony counts as related to his conduct toward his wife, various family members, and a police officer: (I) Class B felony criminal confinement while armed with a deadly weapon; (II) Class C felony intimidation while drawing or using a deadly weapon; (III) Class D felony intimidation on a law enforcement officer; (IV) Class D felony intimidation by threatening to commit a forcible felony; (V) Class D felony intimidation by threatening to commit a forcible felony; (VI) Class D felony intimidation by threatening to commit a forcible felony; (VII) Class D felony domestic battery in the presence of a child less than sixteen years of age, and (VIII) Class D felony domestic battery while having a previous, unrelated conviction for domestic battery. Johnson requested a speedy trial, which was set for June 3, 2010.

On the first day of his jury trial, Johnson reached an agreement with the State to plead guilty to Count II, intimidation while drawing or using a deadly weapon, and Count VII, domestic battery in the presence of a child less than sixteen years of age.[3] The State agreed to dismiss the remaining six charges. The plea agreement required that Johnson's sentences run consecutively.

[3] Johnson decided to plead guilty when he learned that his family, who had previously intended to exercise what they believed to be their Fifth Amendment rights not to testify against him, would in fact be required to testify at his trial. *Tr*. at 47-48.

At the sentencing hearing, the trial court considered in mitigation that Johnson pleaded guilty and took responsibility for his crimes, but it also noted that Johnson received the benefit of reduced charges. Also in mitigation, the court considered that Johnson: expressed remorse; has a physical illness requiring medical attention; and offered to assist law enforcement with apprehending persons involved with trafficking drugs and firearms into Lafayette. The trial court considered as aggravating circumstances that Johnson: has a criminal history, including prior crimes against his wife; has repeatedly violated probation; has contacts with organized criminal gangs; and threatened to harm the victim and those present if they told anyone about his actions. Ultimately, the trial court sentenced Johnson to a term of seven years for Count II (intimidation) and three years for Count VII (domestic battery). The trial court ordered Johnson to serve the sentences consecutively, but suspended two years to supervised probation. Johnson now appeals.

DISCUSSION AND DECISION

Johnson's sentencing challenge is governed by Indiana Appellate Rule 7(B), which provides, in relevant part, "The 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." *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007) *clarified on reh'g*, 875 N.E.2d 218. Even if a trial court follows the appropriate procedure in arriving at its sentence, we maintain the constitutional power to revise a sentence we find inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

To assess the appropriateness of the sentence, we look first to the statutory range established for the class of the offense. *Washington v. State*, 940 N.E.2d 1220, 1222 (Ind. Ct. App. 2011), *trans. denied*. Here, for the Class C felony intimidation conviction, Johnson was sentenced to seven years, which is one year less than the statutory maximum for that class of felony. Ind. Code § 35-50-2-6. Johnson received the three-year statutory maximum sentence for the Class D domestic battery conviction. Ind. Code § 35-50-2-7.

We then look to the nature of the offense and the character of the offender. The nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation in it. *Washington*, 940 N.E.2d at 1222 (citing *Gauvin v. State*, 883 N.E.2d 99, 105 (Ind. 2008)). The character of the offender is found in what we learn of the offender's life and conduct. *Id*. (citing *Houser v. State*, 823 N.E.2d 693, 700 (Ind. 2005) (court reviewed defendant's childhood, history of drug abuse, diagnosis of mental illness, and extensive criminal history)).

In reviewing a sentence, we give due consideration to the trial court's decision and its more direct knowledge of the offense and the offender. *Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009) (stating, "[a]s in all sentencing, . . . we give considerable deference to the ruling of the trial court"), *cert. denied*, 131 S. Ct. 414 (2010). The burden is on the defendant to persuade us that the sentence of the trial court is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). A sentence revision under Indiana Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of his offenses and his character. *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct.

App. 2008). With these principles in mind, we turn to the nature of Johnson's offenses and his character.

As to the nature of Johnson's offenses in this case, he came home from a night of drinking and gambling, and jerked his wife out of bed, where she was sleeping with their daughters and an infant granddaughter. Accusing her of bringing him bad luck, he pulled her by the hair and walked her into another room and, in the presence of the others, he held a razor or knife to her throat and threatened to kill or cut her. He also made physical threats to all present that, if they called the police, he would harm them. Johnson's conduct was violent and, apparently, unprovoked.

Our review of Johnson's character reveals a significant criminal history. As an adult, Johnson has been convicted of three felonies, including intimidation while drawing or using a deadly weapon, which stemmed from intimidating his wife with a loaded handgun. His misdemeanor convictions include domestic battery. He has also had prior arrests involving his wife as the victim. *See Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) (finding that defendant's record of arrests may be relevant to trial court's assessment of defendant's character). As the trial court here observed, "This case presents a cycle of repeated domestic violence and we're back to the part of the cycle where the victim is pleading for leniency." *Tr*. at 88. Our review of the record before us also reveals that, on some occasions, Johnson failed to appear for court hearings, and he has repeatedly violated probation. In considering Johnson's character, we also note that while being transported and booked into jail, he yelled obscenities, racial epithets, and threats to law enforcement. In sum, Johnson's history of

convictions, charges, arrests, and probation violations illustrates not only a pattern of repetitive violence against his wife, but also a disregard for the law.

Johnson has failed to persuade us that his seven-year sentence for Class C felony intimidation to be served consecutively to the three-year sentence for Class D felony domestic battery, with two years suspended to probation, is inappropriate.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.