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IN THE
COURT OF APPEALS OF INDIANA

ROSSANDO L. McLELLAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-1008-CR-416
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause Nos. 02D04-1002-FD-129; 02D04-1002-FD-130; 02D04-1002-FD-131

May 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Rossando McLellan appeals following his convictions for three counts of Class D felony Theft.[1] On appeal, McLellan challenges the aggregate six-year sentence imposed by the trial court. McLellan also argues that his actions should have been considered to be a single episode of criminal conduct. We affirm.

FACTS AND PROCEDURAL HISTORY

On January 31, 2010, McLellan stole the cash register from a Doc Ricker's gas station in Allen County. On February 1, 2010, McLellan stole the cash register from a different Doc Ricker's gas station in Allen County. On February 2, 2010, McLellan stole the cash drawer from a New Haven Quick Stop gas station in Allen County.

On February 10, 2010, the State charged McLellan under three separate cause numbers. In Cause Number 02D04-1002-FD-129 ("Cause No. 129") the State charged McLellan with one count of Class D felony theft and one count of resisting law enforcement, as a Class A misdemeanor. In Cause Number 02D04-1002-FD-130 ("Cause No. 130") the State charged the defendant with Class D felony theft. In Cause Number 02D04-1002-FD-131 ("Cause No. 131") the State charged McLellan with Class D felony theft. A jury trial was set for all three causes on June 22, 2010. On June 22, 2010, McLellan pled guilty to all three theft charges, and the State dismissed the charge of resisting law enforcement. After a sentencing hearing held on July 26, 2010, the trial court sentenced McLellan to one and one-half years of incarceration in Cause No. 129,

[1] Ind. Code § 35-43-4-2(a) (2009).

one and one-half years in Cause No. 130, and three years in Cause No. 131, all sentences to be served consecutively.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion in Ordering the Sentences to be Carried Out Consecutively

McLellan contends that the trial court abused its discretion in ordering the sentences to be carried out consecutively. An abuse of discretion occurs if the court finds that 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." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). "[A] trial court can impose consecutive sentences if warranted by the aggravating circumstances" under Ind. Code § 35-50-1-2. *Monroe v. State*, 886 N.E.2d 578, 579 (Ind. 2009). A "single aggravating factor is sufficient to justify the imposition of consecutive sentences." *Forgery v. State*, 886 N.E.2d 16, 23 (Ind. Ct. App. 2008).

"When the trial court exercises its discretionary authority to impose enhanced and/or consecutive sentences, the trial court must enter, on the record, a statement which 1) identifies all of the significant mitigating and aggravating circumstances; 2) states the specific reason why each circumstance is considered to be mitigating or aggravating; and 3) shows that the court evaluated and balanced the mitigating circumstances against the aggravating circumstances in order to determine if the aggravating circumstances offset the mitigating circumstances." *Becker v. State*, 695 N.E.2d 968, 974 (Ind. Ct. App. 1998).

When the record indicates that the trial court engaged in the evaluative process but that the reasoning was not sufficiently articulated, there is no reason to remand for a more specific sentencing statement because the process was fulfilled. *Id.* However, there is a need for the trial court to "state unequivocally what circumstances justify the sentence in order that the reviewing court can determine the reasonableness … of the sentenced imposed." *Id.*

The trial court adequately engaged in the required evaluative process. The consequence of the evaluative process was a reasonable deduction for ordering the sentences to be carried out consecutively. When ordering the sentence imposed in Cause No. 130 to run consecutively to that imposed in Cause No. 129, the trial court found the aggravating circumstances to be McLellan's prior criminal history and that prior attempts at rehabilitation had failed. The trial court identified the same aggravating circumstances when ordering that the sentence imposed in Cause No. 131 be served consecutive to the other two. The trial court found McLellan's drug addiction to be mitigating. The trial court, however, found that the aggravating circumstances outweighed the mitigating circumstance and that all three sentences should therefore be served consecutively. These statements are enough to show that the trial court adequately engaged in the

evaluative process, which equated to a reasonable deduction for ordering the sentences to be carried out consecutively.[2]

II. Whether the Trial Court Erred in Failing to Treat the Thefts as Part of a Single Episode of Criminal Conduct

McLellan also contends that the thefts should be considered as having arisen out of a single episode of criminal conduct. As a general rule, if a crime stems from a single episode of criminal conduct, then the consecutive terms of imprisonment may not aggregate to an amount higher than that of the advisory sentence for the felony one class higher than the most serious crime. Ind. Code § 35-50-1-2. If found that the thefts arise out of a single episode of criminal conduct, McLellan could, at most, be sentenced to four years imprisonment. Ind. Code § 35-5-2-6.

We conclude that the thefts committed were three separate crimes, which were not simultaneous or contemporaneous in nature as to constitute a single episode of criminal conduct, as McLellan alleges. When a full account of a crime can be given without referring to the other offense, the offenses are not a single "episode of criminal conduct." *Tedlock v. State*, 656 N.E.2d 273, 276 (Ind. Ct. App. 1995). In *Smith v. State*, 770 N.E.2d 290, 294 (Ind. 2002), this court held that where the defendant's forgery occurred at

[2] McLellan also argues that because the same mitigating and aggravating factors were present for each of the thefts, if a sentence of one and one-half years is an appropriate sentence for two of the thefts, then it is an appropriate sentence for the third theft. However, based on the aggravating circumstances in this case, it would have been just as appropriate to sentence McLellan to the maximum of nine years imprisonment with three years for each theft. With McLellan's eight previous misdemeanors and eleven felony convictions, it has been made clear that attempts at rehabilitation have failed. We are confident that if remanded, the trial judge would come to the conclusion of imprisonment for a total of at least six years. Consequently, even if the trial court's original sentencing was in error, it is harmless error.

separate times throughout the day, at separate places, and with separate amounts of money, the conduct was not a single episode of forgery. Simply because the crimes shared the same motive, McLellan's desire to obtain drugs, does not mean the three thefts, occurring at three separate gas stations, on three separate days, with three separate amounts of money, constituted a single episode of criminal conduct. The trial court properly treated the thefts as not being part of a single episode of criminal conduct.

The judgment of the trial court is affirmed.

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