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ATTORNEY FOR APPELLANT:

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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL D. WEBB,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 82A03-1011-CR-599
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Pigman, Judge
Cause No. 82D02-1006-FD-562

July 5, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Michael D. Webb ("Webb") pleaded guilty in Vanderburgh Superior Court to two counts of resisting law enforcement and was sentenced to consecutive terms of eighteen months. Webb presents two issues on appeal, which we restate as: (1) whether the trial court abused its discretion in sentencing him to consecutive sentences, and (2) whether his sentence is inappropriate.

We affirm.

Facts and Procedural History

In the early morning hours of June 5, 2010, Indiana State Police Trooper Lucas Zeien ("Trooper Zeien")[1] was on patrol in Evansville, Indiana when he received word that police in Henderson, Kentucky were in pursuit of an individual in a vehicle who had attempted to run over a police officer who was investigating a complaint that a man was exposing himself. Henderson police reported that the suspect, later determined to be Webb, was driving northbound on U.S. 41 toward Evansville. Trooper Zeien saw Webb's vehicle and followed it as it got on Interstate I-164 headed east. Trooper Zeien attempted to pull the vehicle over, but Webb continued to flee at speeds of up to 110 miles per hour.

Webb then suddenly slammed on his brakes, causing Trooper Zeien to take evasive action to avoid colliding with Webb's vehicle. Webb then crossed the median and started travelling southbound, eventually exiting the highway onto a city street. On the city streets, Webb ran at least one red light while going upwards of ninety miles per

[1] As Webb pleaded guilty, we glean the relevant facts from Trooper Zeien's probable cause affidavit.

hour. The police were eventually able to deflate Webb's front tires using "stop sticks," but Webb still did not stop. Webb cut through a gas station parking lot, lost control of his vehicle, and went into the parking lot of a nearby elementary school. There, Webb hit a tree, wrecked his vehicle, and fled on foot. Officers ultimately apprehended Webb in a nearby hotel.

On June 7, 2010, the State charged Webb with two counts of resisting law enforcement. The first count alleged that Webb did "knowingly or intentionally flee from [Trooper] Zeien, a law enforcement officer, after said officer identified himself by visible or audible means and visibly or audibly ordered [Webb] to stop and in committing said act [Webb] used a vehicle[.]" Appellant's App. p. 7; see also Ind. Code § 35-44-3-3(a)(3), (b)(1)(A) (2004). The second count alleged that Webb did "knowingly or intentionally forcibly resist, obstruct, or interfere with [Trooper] Zeien, a law enforcement officer, . . . while said officer was lawfully engaged in his duties as a law enforcement officer" and that in committing this crime Webb "operated a vehicle in such a manner that it created a substantial risk of bodily injury to [Trooper] Zeien[.]" Appellant's App. p. 7; see also I.C. § 35-44-3-3(a)(1), (b)(1)(B).

On September 29, 2010, Webb pleaded guilty as charged without a plea agreement. On October 27, 2010, the trial court held a sentencing hearing. After reviewing the presentence investigation report, the trial court accepted Webb's plea and sentenced him to the advisory sentence of eighteen months. Webb asked the court to order that the sentences be served concurrently, but the trial court ordered that the sentences be served consecutively. Webb now appeals.

I. Sentencing Discretion

Webb first contends that the trial court abused its discretion in ordering that his sentences be served consecutively. The decision to impose consecutive sentences lies within the discretion of the trial court, but the court is required to state its reasons for imposing consecutive sentences. Owens v. State, 916 N.E.2d 913, 917 (Ind. Ct. App. 2009) (citing Echols v. State, 722 N.E.2d 805, 808 (Ind. 2000)). The trial court must find at least one aggravating circumstance before imposing consecutive sentences. Id. (citing Sanquenetti v. State, 727 N.E.2d 437, 442 (Ind. 2000)).

Here, Webb does not argue that the trial court erred in identifying aggravating factors that would support the imposition of consecutive sentences. Instead, he argues that the trial court was obligated to impose concurrent sentences because the resisting law enforcement statute cannot be interpreted to allow "multiple felonies stemming from the same chase involving the same officer." Appellant's Br. p. 5. In support of his argument, Webb cites Miller v. State, 726 N.E.2d 349 (Ind. Ct. App. 2000), trans. granted, summarily aff'd in relevant part, 753 N.E.2d 1284 (Ind. 2001), and Touchstone v. State, 618 N.E.2d 48 (Ind. Ct. App. 1993).

In both of those cases, we held that a defendant could not be convicted of more than one count of resisting law enforcement when the charges stemmed from one incident even though there were multiple law enforcement officers involved. Miller, 726 N.E.2d at 352; Touchstone, 618 N.E.2d at 49; see also Armstead v. State, 549 N.E.2d 400, 402 (Ind. Ct. App. 1990) (holding that a defendant could not be convicted of multiple counts

of resisting law enforcement against multiple officers when the charges stemmed from a single incident).

Here, however, Webb pleaded guilty to two counts of resisting law enforcement. By doing so, he waived his right to challenge the validity of his convictions on direct appeal. It is well settled that a person who pleads guilty is not permitted to challenge the propriety of that conviction on direct appeal. Collins v. State, 817 N.E.2d 230, 231 (Ind. 2004) (citing Tumulty v. State, 666 N.E.2d 394, 395 (Ind. 1996)). A person who pleads guilty is entitled to contest on direct appeal the merits of a trial court's sentencing decision where the trial court has exercised sentencing discretion, i.e., where the sentence is not fixed by the plea agreement. Id.

Webb does not directly claim that he is challenging the propriety of his convictions and instead couches his argument in terms of the trial court's sentencing discretion. But his current argument is little more than an attempt to challenge the propriety of his convictions under the rubric of a claim of abuse of discretion in sentencing. That is, the thrust of his argument is that the trial court abused its discretion in imposing consecutive sentences because he should not have been convicted of more than one count of resisting law enforcement. Because he pleaded guilty, however, Webb may not now challenge the validity of his plea, either directly or indirectly.

Of course, Webb could challenge the merits of the trial court's sentencing discretion in deciding to impose consecutive sentences. See Tumulty, 666 N.E.2d at 395. However, Webb makes no argument that the trial court relied on improper aggravating factors or overlooked any significant mitigating factor that would have rendered the trial

court's decision on consecutive sentences an abuse of discretion.[2] Therefore, we are unable to conclude that the trial court abused its discretion when it ordered Webb's sentences to be served consecutively.[3]

II. Appellate Rule 7(B)

Webb also claims that his sentence is inappropriate. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence otherwise 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." Although we have the power to review and revise sentences, "[t]he principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). Since the advisory sentence is the starting point our General Assembly has selected as an appropriate sentence for the crime committed, the defendant bears a heavy burden in persuading us that his sentence is inappropriate when the trial court imposes the advisory sentence. Golden v. State, 862 N.E.2d 1212, 1216 (Ind. Ct. App. 2007), trans. denied.

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[2] Webb also makes no reference to either double jeopardy or Indiana Code section 35-50-1-2 (2004), the "episode of criminal conduct" statute.

[3] We also note that any errors in sentencing do not require remand for resentencing if the sentence imposed is not inappropriate. See Mendoza v. State, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (citing Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007)), trans. denied. As discussed below, Webb's sentence is not inappropriate.

Here, the nature of Webb's crimes supports the trial court's sentencing decision. Webb, driving his grandmother's truck, led the police on a multi-state high-speed chase. Webb reached speeds in excess of 100 miles per hour on the highway, braked his car hard, and almost caused a collision with a pursuing officer. He then crossed the median and continued the chase onto city streets, where he achieved speeds of approximately ninety miles per hour. He ran through intersections and even through a parking lot, finally crashing near an elementary school. Even then, Webb did not give up, but fled on foot. Moreover, Webb had a prior criminal history, which by his own admission included a conviction for Class C felony sexual misconduct with a minor, and he was on parole at the time he committed the instant offense.

After giving due consideration to the trial court's sentencing discretion, and in light of the nature of the offense and the character of the offender, we cannot say that Webb has met his burden of demonstrating that the trial court's decision to impose an aggregate sentence of three years was inappropriate.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.