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# IN THE
# COURT OF APPEALS OF INDIANA

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| RANDY L. REEDY, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 84A01-0901-CR-33 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Michael J. Lewis, Judge
Cause No. 84D06-0609-FA-2878

**August 21, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## Case Summary

Randy L. Reedy appeals his convictions and sentence for class B felony robbery resulting in bodily injury and class C felony battery resulting in serious bodily injury. We affirm.

## Issues

We reorder and restate the issues as follows:

I. Is Reedy entitled to relief on his double jeopardy claim?

II. Did the trial court abuse its discretion by failing to consider certain mitigating factors?

III. Is Reedy's twenty-four-year aggregate sentence inappropriate in light of the nature of the offenses and his character?

## Facts and Procedural History

Early in the morning on August 23, 2006, Reedy and Patsy Hoffman went to the home of sixty-four-year-old Kenny Hayne. Hoffman, an acquaintance of Hayne, knocked on the door. When Hayne opened the door, Reedy struck him and knocked him down. When Reedy and Hoffman entered the house, Hoffman repeatedly kicked Hayne in the head. Reedy took Hayne's television, and Hoffman later sold it for forty dollars. Hayne sustained multiple facial and skull fractures from the attack. He also suffered such severe brain damage that he was no longer able to care for himself. His mental capacity was reduced from that of a normal adult to that of an eight- to twelve-year-old child.

On August 29, 2006, the State charged Reedy with class A felony robbery resulting in serious bodily injury and class B felony aggravated battery. The trial court held a hearing on

November 3, 2008, at which Reedy entered an open plea agreement, pleading guilty to class B felony robbery resulting in bodily injury and class C felony battery resulting in serious bodily injury. As part of the agreement, the State agreed to dismiss a felony theft charge against Reedy.[1] The trial court accepted Reedy's guilty plea and sentenced him to consecutive terms of eighteen years for robbery and six years for battery. This appeal ensued. Additional facts will be provided as necessary.

## Discussion and Decision

### *I. Double Jeopardy*

Reedy contends that his convictions and consecutive sentences[2] for class B felony robbery and class C felony battery violate his constitutional protection against double jeopardy. Because Reedy pled guilty, he has waived his right to challenge his convictions on double jeopardy grounds. *See Lee v. State*, 816 N.E.2d 35, 40 (Ind. 2004) (stating "defendants who plead guilty to achieve favorable outcomes give up a plethora of substantive claims and procedural rights, such as challenges to convictions that would otherwise constitute double jeopardy").[3]

### *II. Mitigating Factors*

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[1] Reedy also had a pending felony theft charge in Spencer County.

[2] To the extent Reedy frames his double jeopardy challenge in terms of the trial court's imposition of consecutive sentences, we note that the trial court had the discretion to enter consecutive sentences in this case and that the twenty-four-year aggregate term was within the limits of the sentencing statute. Ind. Code § 35-50-1-2(c).

[3] Notwithstanding waiver by guilty plea, Reedy's brief does not provide any factual account of the acts committed against Hayne. Thus, he has failed to provide any factual support for his double jeopardy claim.

Next, Reedy asserts that the trial court abused its discretion by failing to consider certain mitigating factors. Sentencing decisions are left to the trial court's sound discretion and will be reversed only upon a showing of manifest abuse of discretion. *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 where 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." *Id*. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Id*. at 493.

Reedy contends that the trial court improperly overlooked five mitigating factors: his guilty plea, alternative forms of punishment, his mental state, his substance addiction, and his remorse. We disagree. Although a failure to find mitigating circumstances clearly supported by the record may imply that the trial court improperly overlooked them, the court is not obligated to explain why it has chosen not to find mitigating circumstances. *Roush v. State*, 875 N.E.2d 801, 811 (Ind. Ct. App. 2007). Likewise, the court is not obligated to accept the defendant's argument as to what constitutes a mitigating factor. *Hape v. State*, 903 N.E.2d 977, 1000 (Ind. Ct. App. 2009), *trans. denied*.

Here, the trial court clearly indicated that it had given consideration to all mitigators, addressing Reedy in part as follows:

> Okay. Mr. Reedy after also reviewing your pre-sentence report, *going through all the aggravators and mitigators*, you know you also, this is identical to Ms. Hoffman's. You were given a *significant benefit from that plea agreement*, this was knocked down from an A and B to a B and a C. You know, this is the

> longest period of your sobriety, but that's because it was *forced sobriety*, you've been in jail for two years. You know I know you're *apologetic* to this and that you took this plea agreement, *I find that there are no significant mitigators*, the biggest aggravator is the harm or injury to Mr., to the victim in this matter, Mr. Hayne. And your sentence is going to be identical to Ms. Hoffman's, Count 1, eighteen years in the Department of Corrections, Count 2, six years, for a total of twenty-four years. That will be, those will run consecutive, twenty-four years at the Department of Corrections. You're to, *I'll recommend the C.L.I.F.F. Program and also Anger Management*[.]

Tr. at 76-77 (emphases added).

To the extent Reedy argues that the trial court failed to assign proper weight to certain mitigators, we note that under the new sentencing scheme, trial courts are no longer required to weigh aggravating and mitigating factors when imposing a sentence. *Anglemyer*, 868 N.E.2d at 491. Thus, a trial court can no longer be said to have abused its discretion for failing to properly weigh such factors. *Id*. As such, the fact that Reedy disagrees with the weight assigned to certain mitigators is unavailing.

Reedy also argues that the five mitigators were significant and supported by the record. First, regarding his guilty plea, the significance of a guilty plea as a mitigating factor varies from case to case. *Francis v. State*, 817 N.E.2d 235, 238 n.3 (Ind. 2004). For example, a guilty plea does not rise to the level of significant mitigation where the defendant receives a substantial benefit in exchange for his plea. *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied* (2006). Here, the State charged Reedy with class A and B felonies, yet Reedy pled guilty to the class B and C felonies. By doing so, he decreased his maximum sentence exposure from seventy to twenty-eight years. A forty-two-year decrease in his sentence exposure constitutes a substantial benefit. Thus, the trial court acted within

its discretion in declining to consider his guilty plea a significant mitigating factor.

Next, Reedy claims that the trial court abused its discretion by failing to consider alternative forms of punishment. However, the record indicates that he was kicked out of a jail linkage program for fighting and kicked out of an intensive outpatient program on unspecified grounds. Appellant's App. Vol. II at 8.[4] Based on Reedy's failure to complete these programs, the trial court acted within its discretion in not considering alternative sentencing options.

Reedy also cites his mental health and substance abuse as significant mitigators overlooked by the trial court. When assessing whether a defendant's mental illness is a significant mitigating factor, trial courts should consider: (1) the extent to which the disorder or impairment affects the defendant's inability to control his behavior; (2) the defendant's overall functional limitations; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. *Ankney v. State*, 825 N.E.2d 965, 973 (Ind. Ct. App. 2005) (citing *Archer v. State*, 689 N.E.2d 678, 685 (Ind. 1997)), *trans. denied*. The nexus factor has also been applied in cases involving substance abuse. *See, e.g.*, *Mendoza v. State*, 869 N.E.546, 557 (Ind. Ct. App. 2007), *trans. denied* (finding that trial court acted within its discretion in rejecting proffered substance abuse mitigator where there was no evidence that defendant was under the influence at the time he committed the offense and no other nexus drawn between his substance abuse and

[4] We received two separately paginated volumes of the trial transcript in this case. We note, however, that Indiana Appellate Rule 28(A)(2) states, "The pages of the Transcript shall be numbered consecutively regardless of the number of volumes the Transcript requires."

commission of the crime). Here, the trial court considered Reedy's PSI and attachments, which contained numerous psychological and mental health assessments as well as a record of his long-term drug abuse. The trial court did not ignore his drug abuse; instead, the court referred to his incarceration as a term of "forced sobriety." Tr. at 77. Moreover, at the sentencing hearing, Reedy's counsel presented arguments regarding his mental health and drug abuse. Reedy does not demonstrate, and the record does not support, a nexus between either his substance abuse or mental impairments and his commission of the instant offenses. Thus, the trial court acted within its discretion in not finding these to be significant mitigating factors.

The last of Reedy's allegedly overlooked mitigators is his remorse. A sentencing court's determination regarding remorse is similar to a determination of credibility. *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002). A defendant's remorse, or lack thereof, often is better gauged by the trial judge who observes his apology and demeanor firsthand and determines his credibility. *Gibson v. State*, 856 N.E.2d 142, 148 (Ind. Ct. App. 2006). Without evidence of some impermissible consideration by the court, we accept its determination of credibility. *Pickens*, 767 N.E.2d at 535.

At sentencing, Reedy indicated his remorse as follows:

> [Y]ou know I've been incarcerated for over two years now and there's not a day that's went by that I haven't thought about what's happened and about the pain and suffering that the victim has went through, along with his family. I wasn't in the right state of mind at the time, I just can't apologize enough, there's just, there's just no way I can do it ever. It's, it's nothing, that's all, that's it.

Tr. at 76. The trial court responded by acknowledging Reedy's apology. *Id*. at 77. However,

the court determined that it was not a significant mitigating factor. The trial court was in a better position than we to determine whether Reedy's remorse was genuine or merely pragmatic. Accordingly, we find no abuse of discretion.

### *III. Appropriateness of Sentence*

Finally, Reedy challenges the appropriateness of his twenty-four-year aggregate sentence. On appeal, we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the reviewing court that his sentence meets the inappropriateness standard. *Anglemyer*, 868 N.E.2d at 494; *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

In addressing the nature of the crime, "the advisory sentence is the starting point the Legislature has selected as an appropriate sentence." *Anglemyer*, 868 N.E.2d at 494. Class B felony robbery carries an advisory sentence of ten years, with a range of six to twenty years. Ind. Code § 35-50-2-5. Class C felony battery carries an advisory sentence of four years, with a range of two to eight years. Ind. Code § 35-50-2-6. As mentioned, Reedy's brief does not include a factual account of events that occurred at Hayne's home. However, the record indicates that Reedy and Hoffman struck their elderly victim, barged into his house to rob him, and then brutally beat him, leaving him with skull and facial fractures and brain injury resulting in severe mental impairment. Thus, the extremely violent nature of Reedy's crimes justifies a lengthy sentence.

Reedy's extensive criminal history does not reflect well on his character. Although he was only twenty-nine, his twenty-three misdemeanor convictions, his felony theft charge, and his pending felony theft charge in Spencer County indicate that he is a frequent flyer in the criminal justice system. His record includes not only drug- and alcohol-related convictions, but also numerous criminal conversion convictions, as well as convictions for battery and intimidation. Thus, he has demonstrated a propensity to hurt people and steal their possessions. Moreover, his record of being kicked out of two sentencing alternative programs indicates that attempts at leniency have not rehabilitated him. In sum, Reedy has failed to meet his burden of persuading us that his sentence meets the inappropriateness standard. As such, we affirm his sentence.

Affirmed.

MAY, J., and BROWN, J., concur.