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IN THE
COURT OF APPEALS OF INDIANA

PHILLIP WALKER, SR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A02-1101-CR-112
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Jr., Judge
Cause No. 34D01-0909-FA-875

October 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Phillip Walker, Sr., appeals from the sentence imposed following his convictions of Class C felony Battery[1] and Class D felony Cocaine Possession.[2] Walker contends that the trial court improperly found aggravating circumstances and improperly failed to find mitigating circumstances when sentencing him, that his sentence is inappropriately harsh, and that the trial court erred in imposing consecutive sentences. We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 9:00 p.m. on September 26, 2009, Kokomo Police Officer Brian Hunt stopped Walker's vehicle because of a broken headlight. Kokomo Police Officer Travis Williams observed the stop and stopped himself to assist. Officer Hunt approached the driver's side of Walker's vehicle and Officer Williams approached the passenger side. Officer Hunt asked Walker to stand behind the vehicle, and Officer Hunt soon learned from dispatch that Walker was subject to a body attachment.

When informed that he was subject to a body attachment, Walker became agitated and began walking away. Officer Hunt ordered Walker to stay behind Walker's vehicle, but he did not comply. When Walker attempted to flee, Officer Hunt took hold of his jacket while Officer Williams grabbed him around the waist. Walker pushed Officer Hunt, and all three men fell to the ground. Several times, Walker attempted to escape by pulling his knees under him and using his legs to lunge away from the officers, and he

[1] Ind. Code § 35-42-2-1 (2009).

[2] Ind. Code § 35-48-4-6 (2009).

landed on Officer Hunt's leg after one such attempt, breaking Officer Hunt's ankle. Officer Williams was then able to handcuff Walker, who was transported to jail and searched. The search uncovered 1.56 grams of crack cocaine that was found in Walker's shoe and sock.

A jury found Walker guilty of Class C felony battery resulting in serious bodily injury and Class D felony cocaine possession. On January 5, 2010, the trial court sentenced Walker to eight years of incarceration for battery and three for cocaine possession, both sentences to be served consecutively. The trial court found, as aggravating circumstances, Walker's criminal history, his failure to accept responsibility for Officer Hunt's injury, that he supports himself through illegal gambling, and that he was arrested for cocaine possession while out on bond in this cause number. The trial court found no mitigating circumstances.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion in Sentencing Walker

Under our current sentencing scheme, "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *modified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 2008). We review the sentence for an abuse of discretion. *Id*. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." *Id*.

A trial court abuses its discretion if it (1) fails "to enter a sentencing statement at all[,]" (2) enters "a sentencing statement that explains reasons for imposing a sentence–

including a finding of aggravating and mitigating factors if any–but the record does not support the reasons," (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration," or (4) considers reasons that "are improper as a matter of law." *Id*. at 490-91. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Id*. at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion. *Id*. We may review both oral and written statements in order to identify the findings of the trial court. *See McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007).

Walker contends that the trial court did not state which of his prior convictions it considered to be aggravating and only made a generalized comment regarding his criminal history. We do not believe that this was erroneous. All that is required is a reasonably detailed statement, and we think that the trial court's observations regarding Walker's criminal history suffice in this case, especially when we have access to his pre-sentence investigation report. We do not believe that a detailed statement listing every criminal conviction and whether it is found to be aggravating is required. The trial court did not abuse its discretion in finding aggravating circumstances.

Walker is also apparently arguing that his alleged drug addiction should have been found to be mitigating. Although the trial court has an obligation to consider all mitigating circumstances identified by a defendant, it is within the trial court's sound

discretion whether to find mitigating circumstances. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied*. We will not remand for reconsideration of alleged mitigating factors that have debatable nature, weight, and significance. *Id*. However, if the record clearly supports a significant mitigating circumstance not found by the trial court, we are left with the reasonable belief that the trial court improperly overlooked the circumstance. *Moyer v. State*, 796 N.E.2d 309, 313 (Ind. Ct. App. 2003).

Generally, appellate courts in Indiana have determined that a trial court does not abuse its discretion for failing to identify an addiction as mitigating when the mitigating evidence is not both significant and clearly supported by the record. *See, e.g.*, *James v. State*, 643 N.E.2d 321, 323 (Ind. 1994) (substance abuse); *Hape v. State*, 903 N.E.2d 977, 1002 (Ind. Ct. App. 2009) (substance abuse), *trans. denied*; *Bennett v. State*, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003) (alcohol), *trans. denied*. Here, Walker does not point to anything in the record to indicate that his alleged drug addiction should be considered mitigating. Indeed, the only indications that such an addiction exists are Walker's own self-serving statements. Even assuming, however, that Walker is a drug addict, the trial court did not abuse its discretion in refusing to find that circumstance to be mitigating.

II. Whether Walker's Sentence is Appropriate

We "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." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing

decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006) (citations and quotation marks omitted), *trans. denied*.

The nature of Walker's offenses was somewhat more egregious than typical, in our estimation. As charged, it seems that Walker's Class C felony battery charge could have been based on either the extreme pain caused to Officer Hunt or the permanent or protracted impairment of his ankle. *See* Ind. Code §§ 35-41-1-25 (2009); 35-42-2-1(A)(3). The facts of this case went far beyond what would have established either circumstance. Officer Hunt suffered a torn shoulder, his left ankle was broken in three places, and "every ligament and tendon [wa]s torn[.]" Tr. p. 283. Officer Hunt has had one surgery on his shoulder and three on his ankle and it has required the installation of fourteen screws and a plate. The permanent disability of Officer Hunt's ankle has been determined to be seven percent loss of function. Extreme pain can be of short duration, but approximately sixteen months after the incident, Officer Hunt testified that his foot was still sore each day, that permanent arthritis had already developed, and that he had to wear an ankle brace to prevent further injury. It is also worth noting that Officer's hunt's impairment is permanent, when proof of only protracted impairment is required.

As for Walker's character, we conclude that it also justifies an enhanced sentence. Walker has a somewhat lengthy criminal record, although its true scope is difficult to assess due to the age of some charges. The record indicates that Walker has misdemeanor convictions for operating after revocation in Wisconsin, false informing, domestic battery, and driving while suspended. Walker has two prior felony convictions,

for bail jumping in Wisconsin and Class D felony cocaine possession in Indiana. Charges for which dispositions are unclear are an Illinois charge of possession of a controlled substance and Wisconsin charges for operating a vehicle without the owner's consent, resisting an officer, and four charges of obstructing an officer. Despite his numerous convictions and other contacts with the criminal justice system, Walker has not reformed himself. It also does not speak well of Walker's character that he has consistently blamed Officer Hunt's injuries on Officer Williams, claiming that Officer Williams tackled him into Officer Hunt. Even if this were true, of course, the blame would still fall squarely on Walker, as the confrontation would not have occurred if not for his attempted flight. In light of the nature of Walker's offenses and his character, we conclude that he has failed to establish that his sentence in inappropriate.

III. Whether the Trial Court Erred in Imposing Consecutive Sentences

Indiana Code section 35-50-1-2 (2009) provides, in part, as follows:

> The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment … to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

Walker notes that neither of his convictions was for a crime of violence and also contends that they arose from a single episode of criminal conduct. Consequently, Walker argues, the maximum aggregate sentence he could have received was ten years of incarceration, not the eleven he did receive. *See* Ind. Code § 35-50-1-2(c). An "'episode of criminal conduct' means offenses or a connected series of offenses that are closely

related in time, place, and circumstance." Ind. Code § 35-50-1-2(b). Separate offenses are not part of a single "episode of criminal conduct" when a full account of each crime can be given without referring to the other offenses. *Tedlock v. State*, 656 N.E.2d 273, 276 (Ind. Ct. App. 1995).

Walker's crimes did not comprise a single episode of criminal conduct, even though he possessed cocaine at the time he battered Officer Hunt. "Possession is inherently a 'continuing offense,' which occurs from the time the defendant comes into possession of the contraband until the time he relinquishes control." *Deshazier v. State*, 877 N.E.2d 200, 212 (Ind. Ct. App. 2007), *trans. denied*. At some point prior to the battery, Walker came into possession of the cocaine, and the cocaine was not the reason that Walker was being taken into custody. A complete account of both crimes can be given without reference to the other. The trial court did not err in imposing consecutive sentences. *See id*. at 212-13 ("Although the marijuana was in Deshazier's jacket while he resisted the officers, we do not find this fact to bring his act of possession into the same episode of conduct as his resistance.").

The judgment of the trial court is affirmed.

ROBB, C.J., and BARNES, J., concur.