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FILED
Dec 13 2010, 9:45 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

ANTELMO JUAREZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A05-1006-CR-405
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0603-MR-3

December 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Antelmo Juarez appeals his conviction and sentence for murder. We affirm.

Issues

Juarez raises two issues, which we restate as:

I. whether the evidence is sufficient to sustain his conviction for murder; and

II. whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

Facts

On February 18, 2006, fifteen-year-old Juarez and his nineteen-year-old brother, Oscar Perez, were members of the Nortenos gang. That evening, as they were leaving their residence with some of their friends, Perez told Juarez to go back inside and get the gun, which was a SKS rifle. Juarez put the rifle into the back of a friend's Dodge Durango. At some point during the evening, Perez moved the rifle to another vehicle, which was an Acura.

The group later went to La Bamba, a club in Goshen. While they were in the club, the group of Nortenos got into a fight with a group of rival gang members, the Surenos. Security officers threw the Nortenos out of the club, and the Surenos followed them to the parking lot. The Surenos left the parking lot in a Chevrolet Malibu, while the Nortenos followed in the Durango and the Acura. The Durango pulled up beside the Malibu, and some Nortenos gang members shot paintballs at the Malibu. Juarez and Perez were passengers in the Acura, which was following the Malibu and the Durango.

After seeing that the altercation was continuing, Perez told Juarez to "hand me the gun real quick," and Juarez handed the rifle to Perez. Tr. p. 880. The Surenos became upset about the paintballs, and the driver of the Malibu rammed into the back of the Durango. Perez then rolled his window down and fired the rifle at the Malibu, killing fourteen-year-old Rogelio Reyes and wounding Saul Rodriguez.

The State charged Juarez as an adult with murder and criminal gang activity as a Class D felony.[1] A jury found Juarez guilty as charged. The trial court found the following aggravating factors: the retaliatory nature of the crime committed; the fact that Juarez gave multiple statements and did not accept responsibility for his criminal conduct until the day of sentencing; the fact that Juarez "has four (4) juvenile cases involving deadly weapons and this particular offense involved a deadly weapon"; and the fact that Juarez used methamphetamine since the age of 14 and used marijuana since the age of 12, "all of which indicate a contempt for the laws of this State." App. p. 130. The trial court noted that these factors "bear on [Juarez's] character." Id. Further, the trial court found additional aggravating factors based on the young age of the victim; the fact that another person was shot; the extreme danger for other persons traveling on the same road during the altercation; and the fact that Juarez was convicted of multiple cases. The trial court found Juarez's lack of an adult criminal history as a mitigator but noted that this mitigator was "tempered by the fact that [Juarez] is still a juvenile." Id. The trial court also found Juarez's family support and the fact that he was not the person who fired the

[1] The State also charged Perez with murder, attempted murder as Class A felony, and criminal gang activity as a Class D felony. A jury found Perez guilty as charged, and we affirmed on direct appeal. Perez v. State, 872 N.E.2d 208 (Ind. Ct. App. 2007), trans. denied.

weapon and had a somewhat lesser involvement in the crime than his brother as mitigating factors. The trial court found that the aggravating and mitigating circumstances balanced. The trial court imposed concurrent advisory sentences of fifty-five years for murder and one and one-half years for criminal gang activity. Juarez now appeals his murder conviction and sentence.

Analysis

I. Sufficiency of the Evidence

Juarez argues that the evidence is insufficient to sustain his conviction for murder. When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." Id. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. Id. It is well established that "circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt." Pratt v. State, 744 N.E.2d 434, 437 (Ind. 2001).

The State charged Juarez with murder as an accomplice. Thus, the State was required to prove that Juarez knowingly or intentionally aided, induced, or caused Perez to kill Reyes. See Ind. Code § 35-41-2-4. A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so. Ind. Code § 35-41-2-2(b). A person engages in conduct "intentionally" if, when he

engages in the conduct, it is his conscious objective to do so. Ind. Code § 35-41-2-2(a). In determining whether a person aided another in the commission of a crime, we consider the following four factors: (1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) a defendant's conduct before, during, and after the occurrence of the crime. Garland v. State, 788 N.E.2d 425, 431 (Ind. 2003).

According to Juarez, he did not know what Perez was going to do with the weapon, which may be true. However, handing an assault weapon to a person who has witnessed a dispute between his gang and a rival gang certainly bodes that bad things are likely to occur. The evidence presented at trial demonstrated that, as they were leaving for the evening, Juarez retrieved Perez's rifle for him. Later in the evening, after a fight with a rival gang at a club, the altercation continued with Juarez and Perez's Nortenos gang shooting paintballs at the Surenos gang's vehicle. The Surenos retaliated by ramming the back of one of the Nortenos gang's vehicles. Juarez and Perez were in another vehicle, and when Perez saw the altercation beginning, he told Juarez to hand him the gun. Juarez handed Perez the rifle, and Perez fired at the Surenos gang's vehicle, killing Reyes.

The State presented evidence on each of the four factors relevant to accomplice liability. In particular, Juarez was present at the scene, he was a brother and fellow-gang member of Perez, and he handed to weapon to Perez during the altercation. It was for the jury to decide whether Juarez knowingly or intentionally aided Perez in killing Reyes. Juarez's argument is merely a request that we reweigh the evidence, which we cannot do.

We conclude that, under these circumstances, the evidence was sufficient to sustain Juarez's conviction for murder.

II. Inappropriate Sentence

Juarez argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. He requests that we revise his sentence to the minimum sentence of forty-five years.

Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. When considering whether a sentence is inappropriate, we need not be "extremely" deferential to a trial court's sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The principal role of Rule 7(B) 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). We "should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." Id.

A review of the nature of the offense reveals that fifteen-year-old Juarez handed his nineteen-year-old brother, Perez, a rifle during an altercation between two rival gangs. Perez then used the rifle to shoot at the vehicle of the rival gang, resulting in the death of fourteen-year-old Reyes.

A review of the character of the offender reveals that, in 2003, Juarez was adjudicated a delinquent for acts that would be Class D felony assisting a criminal, Class B misdemeanor false informing, Class D felony pointing a firearm, and Class C felony aiding, causing, or inducing criminal recklessness while armed with a deadly weapon causing serious bodily injury. He was satisfactorily discharged from his probation in late 2004. Juarez admitted to drinking alcohol every weekend, using marijuana since the age of twelve, and using methamphetamine since the age of fourteen. He reported that he was under the influence of alcohol and drugs at the time of this offense. Juarez was also a member of the Nortenos gang, and he claimed to have been shot in the leg in October 2005.

In support of his request for a reduced sentence, Juarez emphasizes his youth, remorse, the influence of his older brother, and lack of parental supervision. However, the trial court took those factors and others into consideration when it imposed the advisory sentence here. Especially given Juarez's prior history of juvenile adjudications involving weapons, we conclude that the fifty-five-year advisory sentence imposed by the trial court is not inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

The evidence is sufficient to support Juarez's conviction for murder, and the advisory sentence is not inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.