

Case Summary

Stephan D. Parks (“Parks”) challenges his forty-five-year sentence for Voluntary Manslaughter, a Class A felony,¹ presenting the sole issue of whether the trial court abused its sentencing discretion by failing to recognize his remorse as a mitigating circumstance. We affirm.

Facts and Procedural History

In 2009, Parks was dating Tenisha Phelps (“Phelps”), who had a child with Antoine Turner (“Turner”). On May 4, 2009, Turner arranged to meet with Phelps at her mother’s Indianapolis apartment so that Phelps could give written permission for Turner to obtain medical treatment for their child.

Upon his arrival at the apartment building, Turner located Phelps sitting in the passenger seat of Parks’ vehicle. Turner and Phelps began to engage in a heated argument. Meanwhile, Parks was playing a cell phone video game. Turner told Phelps, “tell your man to man up,” prompting Parks to begin to exit his vehicle. (State’s Ex. 45, pg. 105.) Turner then jumped into his vehicle and drove away. Parks followed Turner to his destination, where Turner exited his vehicle and said, “Wait a minute, I’ll be right back.” (State’s Ex. 45, pg. 106.) Parks left to take Phelps home but returned to the area where he had last seen Turner. As he drove in the area, Parks heard multiple shots which he attributed to Turner.

Phelps, having also heard gunshots in the area, called Parks to check on his safety.

¹ Ind. Code §§ 35-41-5-1, 35-42-1-3. He does not challenge his sentence for Attempted Voluntary Manslaughter.

Parks was also made aware that Phelps' mother's boyfriend had heard that Turner and a friend were armed with guns and looking for Phelps and Parks. After receiving this information, Parks went home and retrieved an AK-47 rifle from its hiding place in a dog pen.

Parks drove back to the intersection of Broadway and 33rd Streets, where Turner was standing. Parks stopped his vehicle, leaned out the window, and fired multiple shots at Turner. Three shots hit Turner, one in the shoulder and two in the groin. A bystander, David McGibboney ("McGibboney"), was struck in the calf of one leg. Both wounded men were hospitalized. Turner recovered but McGibboney died three days later.² On May 18, 2009, Parks was charged with Murder and Attempted Murder. At the conclusion of a bench trial, he was convicted of the lesser-included offenses of Voluntary Manslaughter and Attempted Voluntary Manslaughter. On May 13, 2010, the trial court sentenced Parks to consecutive terms of forty-five years imprisonment for Voluntary Manslaughter and thirty years for Attempted Voluntary Manslaughter. This appeal ensued.

Discussion and Decision

Upon conviction of a Class A felony, Parks faced a sentencing range of twenty years to fifty years, with the advisory sentence being thirty years. See Ind. Code § 35-50-2-4. Accordingly, Parks received a near-maximum sentence for Voluntary Manslaughter.

² McGibboney was a diabetic with a history of multiple strokes and a heart attack. He was unable to recover from complications caused by the flesh wound.

The trial court found as aggravating circumstances Parks' use of an automatic weapon at mid-day in an urban area, his destruction of evidence (the AK-47), and his criminal history. The trial court also found it aggravating that there were multiple victims. As to the offense against Turner, the trial court found as a mitigating circumstance that Turner facilitated the shooting. However, as to the offense against McGibboney, an innocent bystander, the trial court did not identify any mitigating circumstance. Parks argues that he should be resentenced upon this conviction because the trial court did not identify his expression of remorse as a mitigating circumstance.

“So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion.” Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007) (Anglemyer II). This includes the finding of an aggravating circumstance and the omission to find a proffered mitigating circumstance. Id. at 490-91. When imposing a sentence for a felony, the trial court must enter “a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence.” Id. at 491.

The trial court's reasons must be supported by the record and must not be improper as a matter of law. Id. However, a trial court's sentencing order may no longer be challenged as reflecting an improper weighing of sentencing factors. Id. A trial court abuses its discretion if its reasons and circumstances for imposing a particular sentence are 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. Hollin v. State, 877 N.E.2d 462, 464 (Ind. 2007).

An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant. Anglemyer II, 875 N.E.2d at 220-21. A trial court is in the best position to observe a defendant's demeanor and determine whether his remorse is genuine. See Golden v. State, 862 N.E.2d 1212, 1216 (Ind. Ct. App. 2007), trans. denied.

At the sentencing hearing, Parks gave the following statement:

I would like to speak to the victim's family and say my deepest apologies. It was never meant for anything to happen. I hope you all find in your all [sic] hearts to forgive me. Like I said in the beginning, I didn't start it. I seriously apologize for what happened to him.

(Tr. 206.) Even as Parks apologized, he attempted to deflect blame for his actions. In such circumstances, we cannot say that Parks' remorse is both significant and clearly supported by the record.³ Parks has shown no abuse of the trial court's sentencing discretion.

³ Parks has also claimed that his expression of remorse has significance as a mitigating circumstance because he expressed remorse early; his remorse was "evident even to the police detectives that obtained his statement just a few days after the shootings." Appellant's Brief at 12. During the police interview, one of the officers asked Parks, "Is that [learning that McGibboney had been shot] what made you feel horrible?" and Parks responded, "Yeah." (Ex. Vol. pg. 125.) One officer also observed, without a direct response from Parks, "You're kind of torn up about this – because I can see it." (Ex. Vol. pg. 125.) Although it would appear that Parks demonstrated regret sufficient to cause officer commentary during the police interview, Parks did not proffer the interview for consideration by the trial court at the sentencing hearing. The trial court cannot be said to have abused its discretion by failing to independently identify remorse forthcoming in a pretrial interview.

Affirmed.

NAJAM, J., and DARDEN, J., concur.