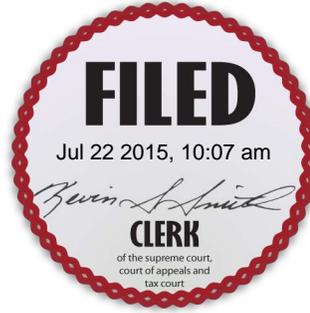


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Deadrian C. Boykins,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

July 22, 2015

Court of Appeals Case No.
02A05-1410-CR-510

Appeal from the Allen Superior
Court;

The Honorable Frances C. Gull,
Judge;

02D04-1312-FB-248

May, Judge.

[1] Deadrian C. Boykins appeals his conviction of and sentence for Class B felony aggravated battery.¹ As there was sufficient evidence to support his conviction and his twenty-year sentence is not inappropriate, we affirm.

Facts and Procedural History

[2] On December 25, 2013, Special Deputy Sheriff Quenton Greer was working in the H block of the Allen County Confinement Facility. Around 11:30 a.m. Deputy Greer was collecting lunch trays. Boykins snuck up behind Deputy Greer, grabbed a hard lunch tray, and hit Deputy Greer on the back of the head. Deputy Greer fell to the floor. He attempted to radio for assistance, but Boykins got on top of Deputy Greer and continuously punched him in the face. Deputy Greer attempted to kick Boykins away, but Boykins continued to punch Deputy Greer's face. Eventually, Deputy Greer was able to kick Boykins away from him and radioed for help. Boykins grabbed a nearby lunch tray and flung it, striking Deputy Greer on the head.

[3] Responding officers entered H block and found Deputy Greer lying in a pool of his own blood. Officer Alberson asked Deputy Greer who had attacked him, and Deputy Greer identified Boykins. As two officers secured Boykins, the jail's medical staff arrived. Nurse Farrell thought Deputy Greer was dead because of the amount of blood that was pouring out of Deputy Greer's face. The nurse placed gauze on Deputy Greer's nose and mouth but could not determine where the blood was coming from. Farrell did not want to move

¹ Ind. Code § 35-42-2-1.5 (1997).

Deputy Greer for fear that he may have a neck injury. Farrell noticed Deputy Greer was losing consciousness and she continued to talk to Deputy Greer to keep him awake until paramedics arrived. Once the paramedics arrived, they took Deputy Greer to a hospital. Deputy Greer had a severe cut under his right eye, severe swelling in both eyes and one cheek, and his nose had been displaced so that he could not breathe out of his right nostril.

- [4] Boykins was convicted after a bench trial of Class B felony aggravated battery and was sentenced to twenty years.

Discussion and Decision

Sufficiency of Evidence

- [5] When reviewing the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the trial court's decision. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, and not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when we are confronted with conflicting evidence, we consider it most favorably to the trial court's ruling. *Id.* We affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference reasonably may be drawn from it to support the trial court's decision. *Id.* at 147.

[6] To convict Boykins of Class B felony aggravated battery, the State had to prove he knowingly or intentionally inflicted injury on Deputy Greer that created a substantial risk of death or caused “protracted loss or impairment of the function of a bodily member.” Ind. Code § 35-42-2-1.5 (1997). Boykins argues he did not expose the Deputy to a substantial risk of death or cause a protracted loss or impairment of the function of a bodily member.

[7] However, Deputy Greer testified at trial that he continued to suffer from vision and hearing problems, persistent back pain, and increased sinus issues, all of which began after Boykins attack. That Deputy Greer continued to have problems with his eyes, ears, back and sinuses shows that he suffered protracted loss or impairment of a bodily member. *See Mann v. State*, 895 N.E.2d 119, 122 (Ind. Ct. App. 2008) (victim’s “muffled hearing” two months after the attack was protracted impairment that proved aggravated battery). Greer also had to have part of the cartilage from his ear removed to reconstruct his nose. *See Cornelius v. State*, 988 N.E.2d 280, 283 (Ind. Ct. App. 2013) (scar on victim’s face from a knife wound was sufficient disfigurement to support conviction of aggravated battery), *trans. denied*. There is sufficient evidence to support Boykin’s aggravated battery conviction.

Sentencing

[8] We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (citing Ind. Appellate Rule 7(B)). We consider not only

the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied*. The appellant bears the burden of demonstrating his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[9] When considering the nature of the offense, the advisory sentence is the starting point to determine the appropriateness of a sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 878 N.E.2d 218 (Ind. 2007). The sentencing range for a Class B felony when Boykins committed his crime was six to twenty years, and the advisory sentence was ten years. Ind. Code § 35-50-2-5 (2005).

[10] Boykins argues that although Deputy Greer was seriously injured, his crime was not a particularly egregious aggravated battery. However, the judge at the sentencing hearing described “the nature and circumstances of [Boykins’] offense to be particularly egregious.” (Sent. Tr. at 21.)² Boykins’ crime was senseless and brutal. He attacked Deputy Greer from behind using a hard plastic tray. Boykins beat Deputy Greer with fists, feet, and the tray, hitting Deputy Greer numerous times. The attack hospitalized Deputy Greer and caused him persistent and ongoing medical and physical problems. We cannot find Boykins’ sentence inappropriate based on the nature of his offense.

² The Indiana Rules of Appellate Procedure state transcripts will “be numbered consecutively regardless of the number of volumes the Transcript requires.” Ind. Appellate Rule 28. The transcripts in this case were not in one volume and, thus, did not comply with the appellate rule.

[11] When considering the character of the offender, one relevant fact is the defendant's criminal history. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The significance of a criminal history in assessing a defendant's character varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* Boykins had seven adjudications as a juvenile delinquent for acts that, if committed by an adult, would be battery, escape, disorderly conduct, and resisting law enforcement. Boykins was convicted as an adult of robbery and murder. Boykins was incarcerated for those offenses when he attacked Deputy Greer. Boykins stated that his age should be a mitigating factor but the trial court stated "clearly [you are] old enough to know right from wrong . . . to comport yourself to society's norms. You, however, choose not to." (Sent. Tr. at 19.)

[12] Based on the nature of Boykins' offense and his character, we cannot say his twenty-year sentence was inappropriate.

Conclusion

[13] There was sufficient evidence Boykins knowingly or intentionally inflicted injury on Deputy Greer that caused protracted loss or impairment of the function of a bodily member. Based on Boykins' offense and character, his twenty-year sentence was not inappropriate. We accordingly affirm.

[14] Affirmed.

Robb, J., and Mathias, J., concur.