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**IN THE
COURT OF APPEALS OF INDIANA**

SEAN K. ELLISON

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0702-CR-65

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable James E. Letsinger, Judge
Cause No. 45G02-9310-CF-263

July 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Sean K. Ellison belatedly appeals his fifty-year sentence for murder imposed in 1994 following his plea of guilty. Ellison argues that his sixty-five-year sentence from a different cause that was ordered to be served consecutively to his fifty-year sentence in this cause was manifestly unreasonable. Concluding that Ellison is precluded from challenging his sixty-five-year sentence in the other cause because we already affirmed that sentence on direct appeal from that cause and, further, that any challenge to the sentence in this cause is without merit because his fifty-year sentence for murder is not manifestly unreasonable, we affirm the judgment of the trial court.

Facts and Procedural History

On September 6, 1993, seventeen-year-old Ellison fired a handgun three times at his victim's face and took the victim's wallet. *See Ellison v. State*, 45A04-9409-CR-358, slip op. at 3 (Ind. Ct. App. June 23, 1995). The victim later died from two gunshot wounds to his head. *See id.* at 4. The State then charged Ellison with murder, a felony, and robbery, a class B felony, under cause number 45G02-9310-CF-261 ("Cause 261").

On September 28, 1993, Ellison "took a .22 caliber revolver, pointed it at the head of Kevin Stubblefield and fired several shots at close range, several of which struck Kevin Stubblefield in the head." Appellant's App. p. 26. Stubblefield died as a result of the gunshots to his head. The State charged Ellison with Murder, a felony,¹ under cause number 45G02-9310-CF-263 ("Cause 263"). Around that same time, the State also

¹ Ind. Code § 35-42-1-1.

charged Ellison with robbery, a class B felony, under cause number 45G02-9310-CF-264 (“Cause 264”).²

In March 1994, a jury found Ellison guilty of murder and robbery in Cause 261. Thereafter, in May 1994, Ellison entered into a written plea agreement in Cause 263. Ellison agreed to plead guilty to murder in exchange for the State’s agreement not to file a death penalty/life without parole count in Cause 263 and to dismiss the robbery charge in Cause 264. In his plea agreement, Ellison also stipulated to having a “simultaneous sentencing hearing” for Cause 261 and Cause 263 and agreed that, “pursuant to I.C. 35-50-1-2 and Indiana case law[,]” the trial court “ha[d] the discretion and authority to impose consecutive sentences” in Cause 261 and Cause 263. *Id.* at 24. Additionally, the parties agreed that sentencing in both causes was open to the trial court’s discretion.

On June 3, 1994, the trial court sentenced Ellison in both Cause 261 and Cause 263. During the sentencing hearing, the trial court noted that the risk that Ellison would commit another crime was “extremely high” based on the “number of serious felonies” that Ellison committed within a short period of time. *Tr.* p. 103. The trial court found the nature and circumstances of the crimes in both causes to be an aggravating circumstance. The trial court found Ellison’s young age of eighteen years to be a mitigating circumstance but found it to be “offset by his history of criminal activity and the fact that he was a member of the Vice Lords as a criminal gang.” *Id.* at 103-04. The trial court also noted that Ellison’s character was violent, dishonest, and manipulative. *Id.* at 103. For his convictions in Cause 261, the trial court sentenced Ellison to fifty years for his

² The record before us on appeal does not contain any facts leading to Ellison’s robbery charge under Cause 264.

murder conviction to be served consecutively to fifteen years for his robbery conviction, for an aggregate term of sixty-five years. For Ellison’s murder conviction in Cause 263, the trial court sentenced him to fifty years. The trial court ordered that the fifty-year sentence in Cause 263 be served consecutively to the sixty-five-year sentence in Cause 261.

Ellison then directly appealed his murder and robbery convictions and sentence from Cause 261, specifically challenging his sixty-five-year sentence as manifestly unreasonable. *See Ellison*, slip op. at 8-9. In June 1995, we issued a memorandum opinion and affirmed his sixty-five-year sentence. *Id.*

In January 2007, Ellison filed a motion for permission to file a belated appeal in Cause 263, which the trial court granted the same day. Ellison now appeals.

Discussion and Decision

Ellison argues that his sixty-five-year sentence—consisting of consecutive terms of fifty years for murder and fifteen years for robbery—from Cause 261 was manifestly unreasonable. The State counters that Ellison’s challenge to his sixty-five-year sentence from Cause 261 is not properly before us and is foreclosed—either by *res judicata* or waiver—due to the fact that Ellison already sought a direct appeal of that sentence. The State also argues that to the extent that Ellison could be found to be challenging his fifty-year sentence from Cause 263, he is not entitled to any relief.

First, we agree with the State that Ellison is precluded from challenging his sentence in Cause 261; however, we conclude that he is precluded based on the “law of the case” doctrine. “Pursuant to the law of the case doctrine, an appellate court’s decision

on a legal issue is binding upon the trial court and the appellate tribunal in any subsequent appeal in the same case and involving substantially similar facts.” *Cuto v. State*, 709 N.E.2d 356, 360 (Ind. Ct. App. 1999). Here, Ellison already challenged his sixty-five-year sentence from Cause 261 as manifestly unreasonable on direct appeal, and we affirmed his sentence. *See Ellison*, slip op. at 8-9. Thus, Ellison is precluded by the law of the case doctrine from challenging his sixty-five-year sentence from Cause 261.

Next, we agree with the State that—to the extent we construe Ellison’s argument that his sentence was manifestly unreasonable as applied to his fifty-year sentence from Cause 263—Ellison’s sentencing argument has no merit. At the time Ellison committed this crime of murder, the presumptive sentence for murder was forty years, to which twenty years could be added for aggravating circumstances and ten years subtracted for mitigating circumstances. *See Ind. Code § 35-50-2-3* (1993). Furthermore, at that time, we reviewed sentences under the manifestly unreasonable standard, which provided that we would not revise a sentence unless the sentence imposed is “manifestly unreasonable in light of the nature of the offense and the character of the offender.” *Zenthofer v. State*, 613 N.E.2d 31, 35 (Ind. 1993).

As to the nature of the offense of murder in Cause 263, the trial court noted:

This was an execution. [Ellison] inflicted death in this case and displayed a wanton, insensate and callus [sic] infliction of a deliberate execution. One wound indicating by the autopsy of a powder burn around the entrance would indicates [sic] how close the weapon was to the skin at the time the executing shot was fired.

Tr. p. 104-05. During the sentencing hearing, the State introduced the autopsy report and photographs that showed that Ellison shot Stubblefield at close range in the head and in

the hand, indicating a defensive wound. Our Indiana Supreme Court has held that a trial court may consider the nature and circumstances of the crime as well as the manner in which the crime is committed when determining what sentence to impose. *See Taylor v. State*, 695 N.E.2d 117, 120 (Ind. 1998). Furthermore, Ellison murdered Stubblefield a mere twenty-two days after he had murdered and robbed his victim in Cause 261. Injury to multiple victims constitutes a valid aggravating circumstance that a trial court may consider in imposing consecutive or enhanced sentences. *McCann v. State*, 749 N.E.2d 1116, 1120 (Ind. 2001).

As to Ellison's character, the trial court noted that Ellison was eighteen years old and a high school dropout and found his character to be "violent, dishonest and manipulative." Tr. p. 103. During the sentencing hearing, Ellison's co-defendant in both causes, Otha Crews, testified that Ellison was a member of the Vice Lords gang and that Ellison murdered Stubblefield because Ellison believed Stubblefield to be a member of the rival Folks gang based on the fact that Stubblefield was wearing his hat turned to the right. We have previously held that a trial court's consideration of the defendant's gang membership to be a proper aggravator where the underlying offense was the murder of a rival gang member. *See Groves v. State*, 787 N.E.2d 401 (Ind. Ct. App. 2003), *trans. denied*. Moreover, when Ellison made a statement during the sentencing hearing, he downplayed his responsibility for killing Stubblefield. Specifically, Ellison stated, "As far as the Stubblefield murder, I was in a predicament. It was like if I don't shoot, then I get shot. So, I ain't have [sic] another choice." *Id.* at 102.

Ellison suggests that his lack of contact with the criminal justice system as an adult renders his sentence manifestly unreasonable. We disagree. Ellison committed this murder in Cause 263 and the murder and robbery in Cause 261 when he was seventeen years old; thus, at the time of the crimes, he had not even reached the age that would have placed him in the adult criminal justice system. However, Ellison certainly entered the adult criminal justice system by committing murder and robbery and then a few weeks later committing the murder in this cause.

Given the nature and circumstances of this crime, Ellison's lack of remorse and gang membership, and the fact that he committed this offense of murder a few weeks after he had already murdered someone else, we conclude that Ellison's fifty-year consecutive sentence in this cause is not manifestly unreasonable. *See, e.g., Groves*, 787 N.E.2d at 410 (affirming the defendant's maximum sentence for murder based on the execution style and particularly callous nature of the killing, coupled with the defendant's complete lack of remorse, his allegiance to a gang code over societal restraints, his juvenile record, and the likelihood that he would kill again); *see also Light v. State*, 547 N.E.2d 1073, 1083 (Ind. 1989) (holding that the trial court's imposition of a maximum sentence for murder was not manifestly unreasonable given the nature of the offense and character of the offender), *reh'g denied*.

Affirmed.

ROBB, J., concurs.

SULLIVAN, J., concurs in result.