

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.

ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

BRYAN E. BARRETT
Shelbyville, Indiana

STEVE CARTER
Attorney General of Indiana

ARTURO RODRIGUEZ, II
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

PATRICK A. BENNETT,)
)
Appellant-Defendant,)
)
 vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 70A05-0705-CR-244

APPEAL FROM THE RUSH SUPERIOR COURT
The Honorable David E. Northam, Judge
Cause No. 70D01-0606-FC-195

August 27, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Patrick Bennett appeals his sentence following his convictions for eight counts of Forgery, each a Class C felony; Driving While Suspended, a Class A misdemeanor; False Informing, as a Class B misdemeanor; and Possession of Paraphernalia, as a Class B misdemeanor, after a jury trial. He presents a single issue for our review, namely, whether the trial court erred when it ordered the sentence for one of his convictions to run consecutive to the other concurrent sentences.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 19, 2006, Officer Craig Tucker of the Rushville Police Department conducted a traffic stop after observing a van with a malfunctioning headlight and an expired license plate. The driver of the van, Bennett, initially identified himself as Perry Bennett, and two passengers identified themselves. After Officer Tucker confirmed that the van's license plate was expired, he arranged to have it towed. During an inventory search of the van at the scene, Officer Tucker discovered drug paraphernalia, and Bennett admitted that he abused oxycontin. Officer Tucker cited Bennett for possession of paraphernalia, but released him.

After towing the van to the Rush County Sheriff Department garage, a further inventory search uncovered a wallet containing what appeared to be counterfeit identification cards and counterfeit checks. Officer Tucker then found Bennett and the two passengers and arrested them on suspicion of forgery. Bennett ultimately admitted to

officers that his real name was Patrick Bennett, not Perry Bennett. But he denied knowledge of the suspected counterfeit items found in the van.

In investigating Bennett, Officer Tucker discovered a surveillance video showing Bennett cashing a forged check on June 17, 2006, at Bob-O-Link Liquors in Rushville. After obtaining a warrant to search Bennett's home, officers found a computer containing images of checks, driver's licenses, and identification cards. The State charged Bennett with eight counts of forgery, driving while suspended, false informing, and possession of paraphernalia.

A jury found Bennett guilty as charged, and the trial court entered judgment of conviction accordingly. At sentencing, the trial court identified a single aggravator, namely, Bennett's criminal history, and the court did not identify any mitigators. The trial court imposed sentence as follows: eight years for each of the forgery convictions; one year for each A misdemeanor conviction; and 180 days for the B misdemeanor conviction. The trial court ordered each sentence to run concurrently, with the exception of the sentence imposed for the forgery conviction regarding the incident on June 17, which the court ordered to run consecutive to the remaining sentences. Bennett's total aggregate sentence is sixteen years. This appeal ensued.

DISCUSSION AND DECISION

Bennett contends that the trial court erred when it sentenced him. In particular, he maintains that the incidents underlying his convictions constitute a single episode of criminal conduct. As such, he asserts that, under Indiana Code Section 35-50-1-2,¹ the

¹ That statute provides in relevant part: "except for crimes of violence, the total of the consecutive terms of imprisonment . . . to which the defendant is sentenced for felony convictions arising

total of the consecutive terms of imprisonment cannot exceed ten years. We cannot agree.

This court has addressed the issue of what constitutes an episode of criminal conduct under Indiana Code Section 35-50-1-2 on many occasions. In Newman v. State, 690 N.E.2d 735, 737 (Ind. Ct. App. 1998), we stated the following with regard to the definition of “episode:”

[T]he singleness of a criminal episode should be based on whether the alleged conduct was so closely related in time, place and circumstances that a complete account of one charge cannot be related without referring to details of the other charge.

“Episode” means “an occurrence or connected series of occurrences and developments which may be viewed as distinctive and apart although part of a larger or more comprehensive series.” This would cover the simultaneous robbery of seven individuals, the killing of several people with successive shots from a gun, the successive burning of three pieces of property, or such contemporaneous and related crimes as burglary and larceny, or kidnapping and robbery.

(Citations omitted).

Here, Bennett asserts that “[t]here is no way that any of the eight (8) counts of forgery . . . can be described separate[ly] and without reference to each other, leaving the conclusion that these crimes are in fact one (1) episode and not two (2) separate episodes as found by the trial court.” Brief of Appellant at 16. But we conclude that the incidents are “sufficiently unrelated and may each be described independently without referring to the specific details of the other[.]” See Newman, 690 N.E.2d at 737; see also Monyhan v. State, 780 N.E.2d 1187, 1190 (Ind. Ct. App. 2003) (holding offenses not episode of criminal conduct where “[e]ach incident occurred at a different place and time[.]” despite

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.”

fact that incidents involved same victims and occurred sequentially; defendant fought with corrections officers, spat on one of those officers while he was transporting the defendant, spat blood at second officer, and kicked third officer).

The offenses in this case are similar to those our Supreme Court addressed in Smith v. State, 770 N.E.2d 290 (Ind. 2002). In Smith, the defendant stole checks from two related victims and deposited six checks at six different branches of the same bank over a three-hour period. The Court determined that the deposits were neither simultaneous nor contemporaneous with one another. And the Court held:

[W]e can recount each of the forgeries without referring to the other forgeries. Each forgery occurred at a separate time, separate place and for a separate amount of money from the other. We are satisfied that Defendant's conduct does not constitute a single episode of criminal conduct under Indiana Code § 35-50-1-2.

Id. at 294.

Likewise, here, Bennett cashed one forged check at Bob-O-Links Liquors on June 17, and the other offenses occurred on June 19. In addition to the significant lapse of time between incidents, we can recount the June 17 forgery without referring to any of the incidents on June 19. Thus, the June 17 offense is not part of a single episode of criminal conduct in conjunction with the offenses on June 19. The trial court did not err when it ordered the sentence relating to the June 17 forgery to run consecutive to the other sentences.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.