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IN THE
COURT OF APPEALS OF INDIANA

SHAWNTRELL NORINGTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0702-CR-112
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause Nos. 49G05-0309-MR-155245, 49G05-0307-FB-111827

September 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant, Shawntrell Norington, appeals following his guilty plea and conviction in Cause Number 49G05-0307-FB-111827 ("Cause No. 111827") for Class B felony Robbery,[1] and, in Cause Number 49G05-0309-MR-155245 ("Cause No. 155245"), for Class C felony Burglary[2] and Class A felony Voluntary Manslaughter.[3] Norington, who was sentenced to an aggregate sentence of sixty years, claims upon appeal that the trial court abused its discretion in considering elements of the crimes of robbery and manslaughter as aggravators in sentencing him to aggravated consecutive terms. We affirm.

FACTS

The factual basis entered at the time of the plea in Cause No. 111827 indicated that on July 3, 2003, Norington entered the Community Spirits Liquor Store at 3744 East 30th Street in Indianapolis and asked to purchase some cigarettes or cigars from employee Cheryl Burgos. Burgos asked Norington for some identification, which Norington refused to show. Norington then pulled out a handgun, called Burgos an "expletive name," and told her to "give me all the money you've got." Guilty Plea Tr. at 15. Norington stole $5.92 and fled the scene. He was subsequently identified in a photographic array and through fingerprints left at the scene.

The factual basis entered at the time of the plea in Cause No. 155245 indicated that on September 3, 2003, Norington met with Roderick Shreve, and the two returned to Shreve's home at 5607 Dunk Drive, Indianapolis, where they engaged in sexual relations.

[1] Ind. Code § 35-42-5-1 (2003).
[2] Ind. Code § 35-43-2-1 (2003).
[3] Ind. Code § 35-42-1-3 (2003).

Subsequent to such relations, Shreve revealed to Norington that he was HIV positive. Upon learning this information, Norington became enraged. He responded by beating and stabbing Shreve multiple times with such force that at some point he broke a knife off in Shreve's body, grabbed another knife, and continued stabbing and slashing, ultimately causing Shreve's death. Norington then left Shreve's residence but, before Shreve's death had been discovered, he returned, either later that day or the next, with his friend, Edward Benson. Norington broke into Shreve's home and, with Benson's assistance, stole Shreve's property including two motor vehicles, a wallet and its contents, a safe, and a telephone.

On July 8, 2003, in Cause No. 111827, the State charged Norington with robbery and carrying a handgun without a license. On September 11, 2003, in Cause No. 155245, the State charged Norington with murder, felony murder, robbery, burglary and theft. On April 21, 2004, pursuant to a plea agreement, Norington agreed to plead guilty to robbery in Cause No. 111827 and to Class C felony burglary[4] and voluntary manslaughter[5] in Cause No. 155245. The plea agreement, which did not include an agreed-upon sentencing recommendation, indicated that the parties were free to argue for an appropriate sentence.

At the May 12, 2004 sentencing hearing the trial court imposed a twelve-year executed sentence for the robbery conviction, and eight-year and forty-year executed sentences for the burglary and voluntary manslaughter convictions, respectively, with the

[4] Norington was originally charged with Class B felony burglary.

[5] In order to formalize the plea negotiations, the State amended the charging information the day of the guilty plea hearing to include Count VII, voluntary manslaughter.

sentences to be served consecutively. In imposing this sentence, the court stated the following:

> "I will recognize that the defendant's age, the fact that he entered this plea, the fact that he was probably intoxicated and has a drinking problem combined with a troubled childhood are mitigating factors. His age isn't such a mitigating factor because he's been in trouble before, but I recognize it is. The fact that he entered a plea is a significant mitigating factor because he saved the Court and county the time of two extended trials, not just one. The fact that he was intoxicated is a fact to be considered, but it's not much of one because it's voluntary. And his troubled childhood, we didn't hear a whole lot of testimony. Your argument contained information that wasn't really supported by testimony. I don't know if his father did all these things to him or if he—if it was a lifestyle set of circumstances out in California. I fully believe that Mr. Elliot Norington would have raised a different child, but that was denied him after Mr. Norington reached nine years of age. There were aggravating factors, speaking first to the armed robbery charge under cause [no. 111827], the aggravating factors being the prior criminal history and the fact that Mr. Norington was just so in your face with the victim. Robbery is a crime that requires some degree of intimacy between the accused and the victim, but sometimes it's worse than others and making a direct threat in somebody's face where you are cursing at them and yelling at them is, in my mind, especially in this case, an aggravating factor. I'm going to find that the aggravating factors I've outlined, his theft conviction history and the in your face nature of the confrontation here outweigh the mitigating factors and I'm going to impose a sentence of twelve years on the armed robbery and that would be Count One under cause number … 111827. On the voluntary manslaughter, which is Count Seven under cause number … 155245, I recognize the same mitigating factors, but again, and this is going to be hard to explain, and it might not even stand up on appeal, rage is a component of voluntary manslaughter and the reason the State entered the plea is, I guess, because your survey of those with whom you consult convinced you that telling the jury that this man killed another man after a sexual encounter, and after the other man said oh, by the way, I'm HIV positive, a jury might have agreed that this was voluntary manslaughter instead of murder, and I think that's a wise decision on your part. But even though that sudden heat, that rage, that anger is a factor that reduces murder down to voluntary manslaughter, there are times when the rage just reaches totally unacceptable dimensions. In this case he stabbed a man until he ran out of knives. He broke a knife off in the man, grabbed another knife and kept on stabbing him. That, I think, is what leads to [the prosecutor's] butchery comment and so adopting

> that description for the reasons I've stated I find that there's an aggravating fact—that the prior criminal record and the butchery are an aggravating factor that outweigh the mitigating factors and on Count [VII] [voluntary manslaughter] I'll impose a sentence of forty years.

Sentencing Transcript at 34-36.

On December 18, 2006, Norington filed a petition for permission to file a belated notice of appeal, which the trial court granted on February 1, 2007. This appeal follows.

DISCUSSION AND DECISION

Upon appeal, Norington argues that the trial court abused its discretion by aggravating the sentence for his robbery conviction due to the "in-your-face" factor, which Norington argues was factored into the material elements of the crime of robbery. Norington further argues that the trial court additionally abused its discretion by aggravating the sentence for his voluntary manslaughter conviction due to the "butchery" factor, which Norington claims was factored into the material elements of the crime of voluntary manslaughter.

We bear in mind that sentencing determinations, including whether to adjust the presumptive sentence,[6] are within the discretion of the trial court. *See Ruiz v. State*, 818 N.E.2d 927, 928 (Ind. 2004). If a trial court relies upon aggravating or mitigating circumstances to modify the presumptive sentence, it must do the following: (1) identify all significant aggravating or mitigating circumstances; (2) explain why each circumstance is aggravating or mitigating; and (3) articulate the evaluation and balancing

[6] The amended versions of Indiana Code sections 35-50-2-4, -5, and -6 (2007) reference the "advisory" sentence, reflecting the April 25, 2005 changes made to the Indiana sentencing statutes. Since Norington committed the crimes in question in July and September 2003, before the effective date of the amendments, we apply the version of the statutes then in effect and refer instead to the presumptive sentence. *See* Ind. Code §§ 35-50-2-4, -5, and -6 (2003).

of the circumstances. *Id*. A single aggravating circumstance may be sufficient to justify an enhanced sentence. *McNew v. State*, 822 N.E.2d 1078, 1082 (Ind. Ct. App. 2005). A sentence enhancement may still be upheld when a trial court improperly applies an aggravator but other aggravators exist. *Kien v. State*, 782 N.E.2d 398, 411 (Ind. Ct. App. 2003), *trans. denied*.

As the Indiana Supreme Court recently noted, "sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)). "An abuse of discretion occurs if the decision is "'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.'" *Id*. (citing *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)).

Norington claims that the trial court erroneously attributed aggravating weight to the facts that he was in the victim's face during the robbery and that he "butchered" Shreve while committing voluntary manslaughter. Norington claims these facts were already factored into the elements of their respective crimes. Norington is correct that a trial court may not use a factor constituting a material element of an offense as an aggravating circumstance. *See Henderson v. State*, 769 N.E.2d 172, 180 (Ind. 2002). A trial court may, however, consider the particularized nature and circumstances of the crime as an aggravating factor. *Id*.

With respect to the robbery, the trial court found as aggravating the particularized nature and circumstances of the crime, namely that Norington was in the victim's face

and swearing at her while conducting the armed robbery. Given the unique position of the trial court to evaluate the facts, we are reluctant to second-guess its conclusion that these particularized facts and circumstances merited aggravating weight. *See Hornbostel v. State*, 757 N.E.2d 170, 183 (Ind. Ct. App. 2001) (finding use of bare hands to kill was proper "nature and circumstances" aggravating circumstance to serve as aggravator for defendant's murder sentence), *trans. denied*. In any event, the primary aggravator found by the trial court was Norington's criminal history, which included both theft and carrying a handgun without a license, crimes not unlike the robbery at issue. While the court acknowledged the existence of more than one mitigator, the only mitigator it deemed significant was the fact of Norington's plea, the weight of which is somewhat offset by the fact that, pursuant to such plea, the State dropped its carrying-a-handgun charge against him. In light of Norington's criminal history, an aggravator which he does not challenge, we conclude that the record supports the trial court's aggravating Norington's sentence for B-felony robbery by two years. *See Kien*, 782 N.E.2d at 415-16.

With respect to the voluntary manslaughter conviction, we conclude the trial court was within its discretion to consider the particularized circumstances of Norington's "butchery" of the victim to count them as an aggravator. While "sudden heat" may constitute an element of the crime of voluntary manslaughter, we are not convinced that "butchering" a victim by stabbing him numerous times, breaking off a knife in his body, and then finding another knife to continue stabbing him with, is contemplated by "sudden heat." We find no error in the trial court's determination that the brutality of these

particularized circumstances merited aggravating weight. *See Martin v. State*, 784 N.E.2d 997, 1010-11 (Ind. Ct. App. 2003) (finding brutality of circumstances surrounding offense of battery resulting in serious bodily injury to be proper aggravating factor).

Having concluded that the trial court did not abuse its discretion in imposing a twelve-year aggravated sentence for Norington's robbery conviction and that its consideration of the nature and circumstances of Norington's voluntary manslaughter conviction were proper, we decline Norington's challenge to his aggravated and consecutive[7] sentences.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.

[7] Norington does not make a separate argument regarding the consecutive nature of his sentences but incorporates his above claims as a challenge to the imposition of consecutive sentences.