

Case Summary

Christopher Turner appeals his forty-three-year aggregate sentence for Class D felony criminal confinement, Class B felony burglary, Class B felony criminal confinement, and Class C felony intimidation. We affirm.

Issue

The sole issue for our review is whether Turner's forty-three-year aggregate sentence is proper.

Facts

Turner was involved in a violent relationship with his girlfriend, S.C. Turner became aggressive and violent at S.C.'s birthday party on November 26, 2005. That night, Turner strangled S.C. multiple times, pulled her hair, threw her against a wall, and left the apartment. He returned in the early morning hours of November 27, 2005, and told S.C. that she could not leave. Eventually Turner relented, and S.C. left the residence briefly. She returned to pack her bags in an attempt to leave Turner. Party guests, including Turner's sister, were still at the apartment. Turner refused to let S.C. leave the apartment a second time. He strangled her and threw her to the floor. S.C. attempted to call police, but Turner prevented her from reaching the phone. Turner's sister also attempted call for help, but Turner prevented her from calling 911. Turner's sister eventually stepped outside the apartment to make the call from her cell phone. Turner stormed out of the apartment, but before leaving he overturned furniture and threw a cake at S.C. He left in S.C.'s car, taking over \$200 from S.C. and her cell phone.

On December 12, 2005, the State charged Turner with Class D felony criminal confinement, Class A misdemeanor domestic battery, Class A misdemeanor battery, and Class A misdemeanor interference with reporting a crime. A warrant was issued for Turner's arrest.

Before he was arrested on that warrant, Turner's violence against S.C. escalated. On January 3, 2006, he arrived at S.C.'s apartment wielding a crowbar.¹ He and an accomplice apparently broke through a second story sliding glass door and entered the premises. S.C. attempted to escape, but Turner's accomplice blocked her exit. Turner beat S.C. with the crowbar and threw her down the stairs. While pulling S.C. by her hair across the parking lot, Turner yelled, "You're going to die bitch, you lied to me, I told you, you were going to get it tonight." App. p. 67. He told S.C. he was going to stab her with the crowbar. Turner's accomplice came out of the apartment with a television and S.C.'s pit bull puppy. He warned Turner that the cops were coming, and the two left in Turner's car with the television and the dog. The apparent motive for this attack was Turner's desire to deter S.C. from testifying as the victim in a pending rape charge against him.

The State charged Turner with Class B felony burglary, Class B felony robbery, Class B felony criminal confinement, Class C felony battery, and Class C felony intimidation on January 6, 2006.

¹ Later reports refer to this instrument as a "tire tool." App. p. 70. Either way, it appears that Turner used a long metal instrument, shaped liked crowbar, so we will refer to it as such.

Turner pled guilty to Class B felony burglary, Class B felony criminal confinement, Class C felony battery, and Class C felony intimidation stemming from the January attack. He also pled guilty to Class D felony criminal confinement stemming from the November incident. In a combined sentencing hearing on January 5, 2007, the trial court sentenced Turner as follows: twenty years for Class B felony burglary and twenty years for Class B felony criminal confinement, to run consecutively, and eight years for Class C felony intimidation, to run concurrently. The trial court found that the Class C felony battery merged into the Class B felony criminal confinement. The trial court sentenced Turner to three years for the Class D criminal confinement, to run consecutive to the sentences for the January offenses, for an aggregate sentence of forty-three years. Turner now appeals.

Analysis

Turner argues the sentence issued by the trial court is inappropriate in light of the nature of his offense and his character. As recently announced by our supreme court, “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). 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)). We review all challenged sentences using the method set out by Anglemyer.

Anglemyer mandated that the trial court must enter a statement identifying the detailed reasons and circumstances for imposing the sentence. Id. The weight or values assigned to those reasons are not subject to review. Id. at 491. The appellate court retains the right to review and revise a sentence under Indiana Appellate Rule 7(B) if it finds that “the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Id.; See also Ind. Appellate R. 7(B). Under this rule “a defendant must persuade the court that his or her sentence has met the inappropriateness standard of review.” Anglemyer, 868 N.E.2d at 490 (citing Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

The trial court outlined the circumstances it considered as aggravators during the sentencing hearing but did not issue a written sentencing statement. First, Turner had a significant criminal history, and the trial court noted that his criminal activity was escalating. Juvenile delinquency adjudications included truancy, operating a vehicle without a license, curfew violation, theft, and criminal trespass. Turner’s adult convictions included Class B misdemeanor criminal mischief, Class A misdemeanor criminal recklessness, Class B felony dealing in cocaine, Class D felony battery, Class A misdemeanor resisting law enforcement, and Class C felony robbery. The weight of an individual’s criminal history is measured by the number of prior convictions, the gravity of the prior convictions, the proximity in time to the present offense, and any similarity to the present offense. Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006). Turner’s criminal history is extensive and the multiple adult offenses occurred in a relatively short seven-year period of time.

The trial court noted that the nature of Turner's intimidation of S.C. escalated to result in violence and injury and illustrated a pattern of behavior that needed to be addressed. See Sherwood v. State, 784 N.E.2d 946, 953-54 (Ind. Ct. App. 2003), trans. denied, (reasoning that when the record provided sufficient evidence that the defendant engaged in a pattern of abuse against the same victim, the trial court appropriately found that element as an aggravating factor). Turner contends the trial court erred by considering information outside the scope of the crimes for which he pled guilty – specifically that S.C. was the victim in a pending rape charge. Although the trial court acknowledged that the pending rape charge was not a part of Turner's official criminal history, it reasoned that because S.C. was the victim, a pattern of violence existed. We find that the trial court put this information in the proper context when considering and determining its weight. Tunstill v. State, 568 N.E.2d 539, 544 (Ind. 1991) (reasoning that allegations of criminal activity need not be reduced to convictions before they can be properly considered by as aggravating factors by a sentencing court). Turner also contends that because evidence submitted by the State does not include any proof of physical injury to S.C., the trial court should not have considered injury as an element of the nature of the crime. The facts surrounding these crimes, however, make it quite obvious that S.C. sustained physical injuries.

The mitigating factors considered by the trial court included Turner's apology, attempts to improve himself with education while incarcerated, his guilty plea, and his minor children who needed support. Turner contends that trial court failed to acknowledge certain factors of his character, including prior suicide attempts, sexual

abuse, and substance abuse. Turner did not argue at the sentencing hearing that past sexual abuse should be a mitigator, so this issue is waived. Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005). Turner did raise the issues of his mental health history, suicide attempts, and substance abuse with the trial court, and the trial court did not find these factors as mitigators or afford them any weight. The finding of mitigating factors is not mandatory and rests within the discretion of the trial court. O'Neill v. State, 719 N.E.2d 1243, 1244 (Ind. 1999). Also, the weight a trial court chooses to assign a mitigating circumstance cannot constitute an abuse of discretion. Anglemyer, 868 N.E.2d at 491.

The trial court found that the aggravators outweighed the mitigators. We find that the trial court did not abuse its discretion in considering the aggravating and mitigating factors here. Turner's criminal history was extensive and escalating, and he inflicted physical harm to S.C. Having found no abuse of discretion in the trial court's sentencing, we now analyze whether Turner's sentence was appropriate in light of the nature of the offense and his character under Indiana Appellate Rule 7(B).

An element of the nature of the crimes for which Turner was being sentenced included the victim of the crimes, here S.C. Turner's pattern of abuse towards S.C. was a relevant element to consider, especially given the escalation in violence with each occurrence. During the January 2006 attack on S.C., after breaking into her home with an accomplice, Turner beat her with a crowbar, pulled her by her hair across a parking lot, and threatened to kill her. Moreover, the letter submitted to the trial court by S.C. reveals the frightening nature of Turner's attacks and the severe impact on her life. S.C.

was forced to move out of state and she still lives in fear. We find that the nature of these crimes is extremely egregious and cannot be discounted.

We find that Turner's character does not justify any adjustment to the sentence entered by the trial court. His criminal history is lengthy and was escalating at the time of these crimes. S.C. attempted to end their relationship and Turner's reaction indicated his immaturity, violence, and disregard of the law. He attacked S.C. in an effort to affect her testimony in another pending matter, using violence and intimidation as a means to this end. This action reflects poorly on his character. We find that Turner's sentence is appropriate in light of the nature of the crimes against S.C. and his character and will not revise the sentence.

Conclusion

The trial court did not abuse its discretion in sentencing Turner, and his forty-three-year sentence is appropriate in light of the nature of the crimes and his character.

We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.