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IN THE
COURT OF APPEALS OF INDIANA

JOSEPH AARON BURNETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A04-0707-CR-417
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0512-FB-69

October 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Aaron Burnett appeals his eighteen-year sentence for Class B felony burglary, Class B felony criminal confinement with a deadly weapon, and Class D felony auto theft. We affirm.

Issue

The issue before us is whether Burnett's eighteen-year sentence is proper.

Facts

On December 18, 2005, Burnett stole a car in Lafayette. Three days later, he drove the car to the home of his ex-girlfriend, L.W., and entered the home through the back door without permission or invitation. He argued with L.W. and brandished a knife. He told her that he would harm her if she did not come with him. L.W. did not succeed in her two attempts to escape. She also unsuccessfully attempted to ward off Burnett with a baseball bat. Burnett somehow cut himself while handling the knife and left blood in various areas of the home.

Burnett persuaded L.W. to leave the house with him and get into the car. L.W. indicated to police that she agreed to go with Burnett because she was afraid Burnett would kill her if she refused. Burnett then drove to Seymour and checked into a hotel. L.W. managed to call her mother at one point, but Burnett wrestled the cell phone away before she could share details of their location. Eventually, L.W. persuaded Burnett to leave her at the hotel. She gave him her cell phone and money, and Burnett left. He turned himself in to the Tippecanoe County Jail shortly thereafter.

On December 27, 2005, the State charged Burnett with Class B felony burglary, Class B felony burglary while armed with a deadly weapon, Class B felony criminal confinement while armed with a deadly weapon, and Class D felony auto theft. In February, Burnett gave notice that he intended to interpose the defense of insanity and moved for a psychiatric evaluation to determine whether he was competent to stand trial. On July 13, 2006, a psychiatrist deemed that Burnett was competent to stand trial and did not have a significant mental illness to support his insanity defense. Burnett pled guilty to Class B felony burglary, Class B felony criminal confinement while armed with deadly weapon, and Class D felony auto theft on March 15, 2007. The State dismissed the remaining burglary count as well as four other pending charges under different cause numbers.

The trial court held a sentencing hearing on April 27, 2007. The trial court considered the victim's recommendation, Burnett's long history of substance abuse, and that the nature and circumstances of the crime as aggravators. Burnett's age, eighteen, and mental illness were considered mitigating factors. The trial court sentenced Burnett to ten years for Class B felony burglary, eighteen years for Class B felony criminal confinement while armed with a deadly weapon, and two years for Class D felony auto theft, to run concurrently. The trial court specified that twelve of the eighteen years were to be executed and six were suspended. This appeal followed.

Analysis

Burnett argues that the sentence was inappropriate under Indiana Appellate Rule 7(B) in light of the nature of the offense and his character. Specifically, Burnett contends

the trial court did not assign enough weight to his history of mental illness when considering 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)).

Anglemyer mandated that the trial court must enter a detailed statement identifying the 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.; 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)).

Pursuant to Anglemyer, we first review Burnett's sentence under the abuse of discretion standard. The trial court made both oral and written sentencing statements. The trial court recognized substance abuse, the nature and circumstances of the crime, and the victim's recommendation as aggravators and Burnett's age and mental illness as mitigators. The trial court acknowledged Burnett's substance abuse problems during the

sentencing hearing, but did not formalize this element as an aggravator in the written sentencing statement. This omission does not greatly affect our review because we examine the written statement alongside the oral statement to discern the findings of the trial court. McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007). We also do not find this discrepancy to be a major conflict because Burnett is not appealing the trial court's consideration of his substance abuse as an aggravator. The pre-sentence report indicated that since Burnett was fifteen years old he has used marijuana, cocaine, methamphetamine, mushrooms, ecstasy, and abused alcohol and prescription medications. The transcript reveals that the trial court spent a significant amount of time commenting on this issue and questioning Burnett about this problem. Burnett was also under the influence of methamphetamine at the time of these crimes. Based on these facts and Burnett's history of substance abuse, we find that the trial court did not abuse its discretion in considering this factor as an aggravator.

L.W. and her mother testified at the sentencing hearing regarding the nature of the crime and its impact on their family. L.W. testified she underwent therapy following the incident because she was unable to be in her own bedroom or leave the house by herself. Her mother testified to the horror and fear she experienced when she arrived home to find her daughter missing, the back door broken, and blood in the house, and to the frightening nature of the abrupt cell phone call from L.W. Given these facts, it was not an abuse of discretion for the trial court to consider the particular nature and excessive violence of the crime as an aggravator.

The trial court considered Burnett's age and mental illness as mitigating factors. Burnett was eighteen years old at the time he committed these crimes, and the trial court did not abuse its discretion in considering his young age. To the extent that Burnett asks us to reweigh the mitigating value of his mental illness, Anglemyer prevents us from such an assessment. The weight a trial court chooses to assign a mitigating circumstance cannot constitute an abuse of discretion. Anglemyer, 868 N.E.2d at 491.

Contrary to Burnett's contentions, however, the trial court did not overlook his mental illness as a factor in sentencing. After a finding of guilty but mentally ill, "trial courts should at a minimum carefully consider on the record what mitigating weight, if any, to accord to any evidence of mental illness, even though there is no obligation to give the evidence the same weight the defendant does." Smith v. State, 770 N.E.2d 818, 823 (Ind. 2002) (quoting Weeks v. State, 697 N.E.2d 28, 30 (Ind. 1998)). Our supreme court has noted that a recent study found that about half of Americans will suffer or have suffered from a mental illness, as defined by the American Psychiatric Association's expanding definitions of mental illness, during their lifetime. Covington v. State, 842 N.E.2d 345, 349 (Ind. 2006). Such a finding "suggests the need for a high level of discernment when assessing a claim that mental illness warrants mitigating weight." Id.

Burnett's detailed mental illness history information was before the court in the pre-sentence report and the psychiatric evaluation. The trial court spent considerable time addressing Burnett's long history of mental issues and acknowledged that Burnett's illness had not been properly treated. In fact, the trial court issued a specific finding that Burnett was guilty but mentally ill in an effort to assure the Department of Correction

would address these issues. "I'm gonna make a finding that the, that you're, that you're guilty but mentally ill. And the reason I'm gonna do that is that when you go to the Department of Corrections, they can't ignore giving you medication that you need." Tr. pp. 55-56. The trial court did give significant consideration to Burnett's mental issues, and we do not find that the trial court abused its discretion considering these mitigators and in imposing the eighteen-year sentence.

We also find that this sentence is not inappropriate under Indiana Appellate Rule 7(B) given the nature of the offense and the character of the offender. The offense was violent and frightening not only to the victim L.W., but also to her family. Burnett forced his way into L.W.'s home and used a knife to threaten her. He then drove her more than halfway across the state. Meanwhile, L.W.'s family panicked and feared the worst when they arrived home to find her missing and the house in disarray with blood spots.

Burnett's mental illness issues do not affect our assessment of his character. When considering the potential mitigating weight assignable to mental illness, courts must consider the defendant's ability to control behavior, overall limit on function, duration of the illness, and nexus between the illness and the crime. Weeks, 697 N.E.2d at 30. Regarding his claims of mental illness, Burnett has not persuaded us that these crimes were directly linked to his mental illness, nor has he presented any facts that his mental conditions limited his function or diminished any responsibility on his part. His mental illness history includes diagnoses for attention deficit disorder, bipolar disorder, conduct disorder, and depression. Burnett contends, without any support from the record, that "[t]here is no other apparent motivation for the kidnapping than [his] desire to cure

his perceived abandonment by everyone who was ever close to him in his life." Appellant's Br. p. 12. Any abandonment or loneliness felt at the end of a relationship does not justify unlawfully entering the home of another and confining the object of one's affections, nor does a desire to cure such a feeling serve as a defensible motive for breaking the law and inflicting terror and harm. Burnett has not presented any facts that demonstrate positive character traits in dealing with his mental illness or seeking help or treatment for the issues. Here, we find that the eighteen-year sentence is appropriate in light of the nature of this crime and the character of the offender.

Conclusion

Burnett's eighteen-year sentence for Class B felony burglary, Class B felony criminal confinement while armed with a deadly weapon, and Class D felony auto theft is proper. We affirm.

Affirmed.

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