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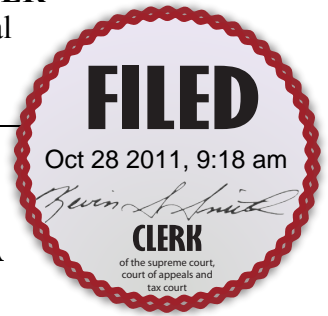
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**IN THE
COURT OF APPEALS OF INDIANA**



TERRY LADERSON,)
)
Appellant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee.)

No. 49A02-1103-CR-221

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
The Honorable Christina Klineman, Commissioner
Cause No. 49G05-0912-FA-102422

October 28, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Terry Laderson (“Laderson”) pleaded guilty in Marion Superior Court to Class A felony burglary and Class A misdemeanor carrying a handgun without a license. He was ordered to serve fifty years executed in the Department of Correction with five years suspended to probation. Laderson appeals his sentence and argues that the trial court abused its discretion when it failed to appropriately consider the mitigating circumstances, and that his fifty-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On the afternoon of December 23, 2009, Laderson and Terrance Turner (“Turner”) burglarized Maciej Zurawski’s residence and took several items including gold and silver currency and numerous two dollar bills that Zurawski collected and kept in a shoebox. Zurawski arrived home during the burglary and encountered Turner, who ran and jumped through a kitchen window to escape. As Zurawski attempted to follow Turner, he was shot in the back by Laderson. Laderson then shot Zurawski in the back a second time.

Officers responding to the 911 call observed Laderson running between two houses and then into a house located near Zurawski’s home. The officers found Laderson hiding in the attic of the residence, and when they searched Laderson, they recovered gold and silver coins and seven two-dollar bills. As Laderson was removed from the attic, he asked an officer “if that guy who was shot had died.” Appellant’s App. p. 21. A search of the residence where Laderson was hiding led to the recovery of a shoebox containing additional gold and silver coins.

One of the shots fired at Zurawski's back severed his spinal column, rendering him permanently paralyzed. Zurawski additionally suffers from constant urinary tract infections, incontinence, and gastrointestinal issues. He is required to take multiple medications each day and experiences constant pain. Tr. pp. 38-39.

As a result of these acts, Laderson was charged with Class A felony attempted murder, Class A felony burglary, and Class A misdemeanor carrying a handgun without a license. On February 10, 2011, nearly fourteen months after he was charged, Laderson agreed to plead guilty to Class A felony burglary and Class A misdemeanor carrying a handgun without a license, in exchange for dismissal of the Class A felony attempted murder charge.

On February 24, 2011, the trial court sentenced Laderson to fifty years in the Department of Correction with five years suspended to probation for the Class A felony burglary conviction. In its sentencing order, the trial court stated that it considered Laderson's age and guilty plea as mitigating circumstances. The court declined to find his lack of a prior criminal history as mitigating because Laderson had previously entered into a diversion agreement with the prosecutor's office after he was charged with resisting law enforcement. The trial court considered the nature and circumstances of the crime, particularly that Zurawski was shot in the back twice and was rendered a paraplegic, and Laderson's lack of remorse as aggravating circumstances. Laderson was also ordered to serve a concurrent one-year sentence for the misdemeanor carrying a handgun without a license conviction. Laderson now appeals.

Discussion and Decision

Laderson was ordered to serve fifty years, with five years suspended to probation, for his Class A felony burglary conviction. See Ind. Code § 35-50-2-4 (providing that the sentencing range for a Class A felony is twenty to fifty years, with thirty years being the advisory term). Laderson argues that the trial court abused its discretion in imposing this sentence because the court failed to appropriately consider certain mitigating circumstances. Laderson also argues that his aggregate fifty-year sentence, with five years suspended to probation, is inappropriate in light of the nature of the offense and the character of the offender.

Sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. Id. An abuse of discretion will be found where 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. We review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. Id. at 491.

Laderson argues that the trial court abused its discretion when it failed to consider his lack of a prior criminal history as a mitigating circumstance. When an allegation is made that the trial court failed to find a mitigating factor, the defendant is required to establish that the mitigating evidence is both significant and clearly supported by the record. Id. at 493. However, a trial court is not obligated to accept a defendant's claim

as to what constitutes a mitigating circumstance. Rascoe v. State, 736 N.E.2d 246, 249 (Ind. 2000).

Twenty-year-old Laderson argues that the trial court should have considered his lack of prior criminal history as a mitigating circumstance. See Ind. Code § 35-38-1-7.1(b)(6) (stating that the trial court may consider that the “person has no history of delinquency or criminal activity” as a mitigating circumstance). “Although a lack of criminal history may be considered a mitigating circumstance, ‘[t]rial courts are not required to give significant weight to a defendant’s lack of criminal history,’ especially ‘when a defendant’s record, while felony-free, is blemished.’” Rawson v. State, 865 N.E.2d 1049, 1058 (Ind. Ct. App. 2007), trans. denied (quoting Stout v. State, 834 N.E.2d 707, 712 (Ind. Ct. App. 2005), trans. denied.) “Uncharged crimes may be considered in assessing ‘lack of criminal history’ as a claimed mitigating circumstance.” Wilkes v. State, 917 N.E.2d 675, 692 (Ind. 2009).

At the sentencing hearing, the trial court acknowledged that Laderson did not “have a lot of contact with the criminal justice system” prior to committing the instant offense. Tr. p. 63. But the trial court refused to consider it as a mitigator because Laderson had previously entered into a diversion agreement for resisting law enforcement. Appellant’s App. p. 68. Laderson also admitted to serious marijuana use, including use on the date of the instant offense. Although Laderson had never been convicted of a misdemeanor or felony prior to committing Class A felony burglary, his diversion for resisting law enforcement and his heavy marijuana use, including on the day of the crime, are relevant and significant sentencing factors. Under these facts and circumstances we

conclude that the trial court did not abuse its discretion when it refused to assign mitigating weight to his lack of prior criminal history.

We also reject Laderson's arguments that the trial court abused its discretion when it failed to consider his remorse as a mitigating circumstance and failed to assign substantial mitigating weight to his guilty plea. Laderson waived his argument concerning remorse because he failed to ask the trial court to consider it at the sentencing hearing. See Anglemyer, 868 N.E.2d at 492. Also, there is no evidence in the record that would support Laderson's claim of remorse. Finally, Laderson's argument concerning the mitigating weight afforded to his guilty plea is not available for appellate review. See id., 868 N.E.2d at 493-94. For all of these reasons, we conclude that the trial court did not abuse its discretion in sentencing Laderson.

We turn now to Laderson's argument that his aggregate fifty-year sentence with five years suspended to probation is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing Anglemyer, 868 N.E.2d at 491). The defendant has the burden of persuading us that his or her sentence is inappropriate. Id. (citing Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)). In our

consideration of whether a sentence is inappropriate, we may take into account whether a portion of the sentence is ordered suspended or is otherwise crafted using any of the variety of sentencing tools available to the trial judge. See Davidson v. State, 926 N.E.2d 1023, 1025 (Ind. 2010). Finally, although we have the power to review and revise sentences, “[t]he principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008).

In this case, the nature of the offense is more than enough to support the imposition of the maximum fifty-year sentence.¹ Laderson broke into Zurawski’s home with the intent to commit theft while carrying a handgun without a license. During the commission of that burglary, Laderson shot Zurawski in the back causing Zurawski to fall to the ground. Laderson also shot Zurawski in the back a second time. As a result, Zurawski has been rendered a paraplegic and suffers from numerous conditions related to his paralyzed state including urinary tract infections and multiple gastrointestinal issues. Zurawski also suffers from constant pain. Zurawski has incurred thousands of dollars in medical expenses and is not able to live in his home because it is not handicap accessible. Zurawski is also unable to continue his employment as a land surveyor. Zurawski is no

¹ Laderson’s argument that his sentence is inappropriate because the facts used to establish the “serious bodily injury,” which elevated the offense to a Class A felony, “are no greater than that contemplated by statute” is nonsensical. Zurawski’s injuries are unquestionably more severe and life-altering than most who suffer serious bodily injury during the commission of a crime. See I.C. § 35-38-1-7.1 (stating that the trial court may consider as an aggravating circumstance that the harm or injury suffered by the victim of an offense was “greater than the elements necessary to prove the commission of the offense”).

longer able to care for himself, and requires constant assistance from his friends and family.

Moreover, the following facts reflect poorly on Laderson's character. At the age of eighteen, Laderson entered into a diversion program with the State after he resisted law enforcement. Laderson also admitted to serious marijuana use. Although it is true that Laderson pleaded guilty to burglary and carrying a handgun without a license, he did so fourteen months after he was charged. His delayed acceptance of responsibility for his actions did not entirely spare the State the expense of preparing for trial. And his decision to plead guilty was likely a pragmatic one given the weight of the evidence against him. Laderson also never apologized to Zurawski for the offense and for causing such devastating and life-altering injuries.

The trial court did not abuse its discretion in sentencing Laderson. And upon consideration of the nature of the offense and the character of the offender, we conclude that Laderson's fifty-year sentence, with five years suspended to probation, is not inappropriate.

Affirmed.

BAILEY, J., and CRONE, J., concur.