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IN THE COURT OF APPEALS OF INDIANA

RONALD POLING,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A05-0703-CR-181
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey Todd, Judge
Cause No. 27D01-0504-FC-65

November 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Ronald Poling appeals his sentence. We affirm.

Issues

We restate the issues raised by Poling as follows:

I. Whether the trial court erred in sentencing him upon remand; and

II. Whether his sentence is inappropriate in light of the nature of his offense and his character.

Facts and Procedural History

On April 8, 2005, the State charged Poling with three counts of class C felony neglect of a dependent, three counts of class D felony neglect of a dependent, and one count of class A misdemeanor intimidation.[1] On July 15, 2005, a jury found Poling guilty as charged. On September 8, 2005, the trial court sentenced Poling to three four-year terms for the class C felony convictions, to be served consecutively, with four years suspended. Pursuant to Indiana Code Section 35-50-2-6, the presumptive sentence for a class C felony was four years at the time Poling committed his crimes. The trial court also ordered three sentences of one and one-half years for the class D felony convictions, to be served concurrent to each other and concurrent to the class C felony terms. Finally, the court imposed a concurrent

[1] The evidence showed that Poling "disciplined" his girlfriend's three older children (ages ten, six, and five) using such methods as forcing them to stand with their noses against the wall and their arms outstretched holding 14.5-ounce cans of food, locking them in their rooms at night, "hog-tying" them with duct tape, and padlocking the kitchen cabinets, freezer, and refrigerator to prevent the children's access to food. He also threatened a Grant County Department of Child Services investigator with physical harm when the investigator, along with several Grant County Sheriff's officers, took the children into protective custody.

one-year sentence for the class A misdemeanor conviction. Poling's aggregate sentence was twelve years, with four years suspended.

Poling appealed his convictions and sentence. In *Poling v. State*, 853 N.E.2d 1270 (Ind. Ct. App. 2006), this Court held, among other things, that Poling's three class C felony convictions violated the proportionality clause of the Indiana Constitution. On September 20, 2006, we remanded the case with instructions to the trial court to reduce those convictions to class D felonies and to resentence Poling accordingly.

On February 15, 2007, the trial court held a resentencing hearing. As instructed, the court reduced the class C felony convictions to class D felony convictions. The trial court imposed three consecutive three-year sentences for these reduced felonies, with three and one-half years suspended. The maximum sentence for a class D felony conviction is three years. Ind. Code § 35-50-2-7. The court imposed one and one-half years for each of the original class D felonies. These sentences are to run concurrent to each other but consecutive to the first three counts. Finally, the trial court imposed a one-year sentence for the class A misdemeanor, to be served consecutive to the other sentences. In all, Poling received an aggregate sentence of eleven and one-half years with three and one-half years suspended. He now appeals.

Discussion and Decision

I. Resentencing Error

Poling brings to our attention the fact that the length of his current executed sentence—eight years—is the same as that of his prior executed sentence in this case. Poling claims that his criminal history, the sole aggravator cited by the trial court at both hearings,

does not support the trial court's decision to "make the leap from the [presumptive] sentences it originally imposed on Counts 1-3 to the maximum sentences it imposed on remand." Appellant's Br. at 11. He further states: "The only logical conclusion to draw is that the trial court's resentencing decision was a result-oriented process in which the court worked backward from its desired result, which was to impose essentially the same sentence as it did the first time. This was clearly against the logic and effect of the facts and circumstances before the court, and therefore an abuse of discretion." *Id.* We disagree.

Our supreme court addressed this very issue in *Flowers v. State*, 518 N.E.2d 1096 (Ind. 1988). In that case, the trial court originally ordered Flowers to serve presumptive sentences for his class A felony convictions for burglary, attempted rape, and attempted robbery. These thirty-year sentences were to be served concurrent to each other and consecutive to an enhanced fifty-year sentence for attempted murder. Flowers appealed his convictions, and our supreme court remanded the case with instructions to the trial court to reduce the burglary and attempted rape convictions to class B felonies, to reduce the attempted robbery conviction to a class C felony, and to order appropriate sentences for these reduced convictions.

On resentencing, the trial court ordered enhanced fifteen-year sentences for both class B felonies, and it ordered those sentences to be served consecutive to each other and to the fifty-year term for attempted murder. The trial court also ordered an aggravated eight-year sentence for the class C felony conviction to be served concurrent to all the other sentences. In sum, the trial court imposed eighty years executed at the first sentencing, and it imposed eighty years executed at the second sentencing. As in Poling's case, the trial court cited the

same aggravators at the first and second sentencing hearings. Like Poling, Flowers argued that "he was entitled to have the same treatment under the new sentences which he had received under the original sentence, that is to receive the presumptive time on each crime and to have them run concurrently." *Id*. at 1097-98. Our supreme court stated:

> Upon resentencing, the judge observed that had he chosen to do so he could have rendered a sentence that would have equaled two hundred (200) years; however, he felt, based on all the evidence at the original sentencing hearing, an overall sentence of eighty (80) years was the appropriate sentence to be imposed for the entire criminal episode. He further stated that in complying with the mandate of the Supreme Court, he was still under the opinion that the sentences should be assessed in such a manner as to reach the result of an overall sentence of eighty (80) years. In so doing the judge remained within the bounds of the statutes.

Id. at 1098. Similarly, in the instant case, the trial court clearly considered it appropriate that Poling serve eight years executed for his crimes. At the second sentencing, the court identified Poling's criminal history as an aggravator, as it had done at the first sentencing. Based on the presence of this aggravator, the trial court's order of enhanced and consecutive sentences was clearly within the bounds of Indiana's sentencing statutes. We find no error here.

Also, Poling cites Indiana Post-Conviction Rule 1(10)(b), which states:

> If a sentence has been set aside pursuant to this rule and the successful petitioner is to be resentenced, then the sentencing court shall not impose a more severe penalty than that originally imposed unless the court includes in the record of the sentencing hearing a statement of the court's reasons for selecting the sentence that it imposes which includes reliance upon identifiable conduct on the part of the petitioner that occurred after the imposition of the original sentence, and the court shall give credit for time served.

In this case, the trial court did not impose upon Poling a more severe penalty at the second sentencing hearing. With regard to the revised convictions, the trial court decreased Poling's

sentence from four years for each class C felony to three years for each revised class D felony. Moreover, Poling's aggregate sentence was reduced from twelve years to eleven and one-half years. His executed sentence remained the same. Therefore, Indiana Post-Conviction Rule 10(1)(b) does not apply. *Cf. Flowers*, 518 N.E.2d at 1098 (in context of double jeopardy claim, court noted that "[a]lthough the trial judge applied the sentencing statutes in a different manner on the resentencing, the net result was to give appellant the same amount of total time he had received on the first sentencing. Thus there was no increase in the sentence.").

II. Inappropriate Sentence

Finally, Poling claims that his sentence is inappropriate. He asks us to revise it pursuant to Indiana Appellate Rule 7(B), which states that this 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." It is the defendant's burden to persuade the appellate court that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007). We first note that Poling has waived this claim because he fails to present any argument or authority on the issue. *See* Ind. Appellate Rule 46(A)(8)(a) (appellant's argument must contain contentions on the issue presented, supported by cogent reasoning and citation to authority).

Waiver notwithstanding, Poling's inappropriateness argument fails. The evidence shows that Poling severely neglected and abused his girlfriend's three young children in various ways over an extended period of time. He threatened a Department of Child Services investigator who removed the children from his home. As acknowledged by the trial court at

both sentencing hearings, Poling has a violent criminal history, including a conviction for battery of a police officer. In light of the nature of his offenses and his character, we conclude that Poling's sentence is not inappropriate.

Affirmed.

DARDEN, J., and MAY, J., concur.