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IN THE
COURT OF APPEALS OF INDIANA

RYAN WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0703-CR-281
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
Cause No. 49G02-0512-FA-212604

December 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Ryan Williams appeals his convictions and sentence, following a jury trial, for Robbery as a Class B felony (Count III);[1] four counts of Criminal Confinement as a Class B felony (Counts IV, V, VI, and VII);[2] Resisting Law Enforcement as a Class D felony (Count IX);[3] Residential Entry as a Class D felony (Count XI);[4] Theft as a Class D felony (Count XII);[5] Resisting Law Enforcement as a Class A misdemeanor (Count XIII);[6] and Carrying a Handgun Without a License as a Class A misdemeanor (Count XV),[7] for which he received an aggregate thirty-six-year sentence. Upon appeal Williams challenges his sentence by arguing that the trial court improperly considered and weighed certain factors. Williams further claims his sentence was inappropriate. Concluding that the trial court did not err in sentencing Williams and that his sentence was not inappropriate, but also concluding that his convictions for Counts IV and V violate double jeopardy, we affirm in part, reverse in part, and remand to the trial court to vacate his judgment of conviction on Count V.

BACKGROUND FACTS AND PROCEEDINGS

On December 7, 2005, at approximately 10:00 a.m., two masked men, later identified to be Williams and his brother, Ronnie Williams, entered the Flagstar Bank at 71st Street and Binford Boulevard in Indianapolis. Williams and Ronnie, both of whom

[1] Ind. Code § 35-42-5-1 (2005).

[2] Ind. Code § 35-42-3-3 (2005).

[3] Ind. Code § 35-44-3-3 (2005).

[4] Ind. Code § 35-43-2-1.5 (2005).

[5] Ind. Code § 35-43-4-2 (2005).

[6] Ind. Code § 35-44-3-3.

[7] Ind. Code § 35-47-2-1 (2005).

were armed, approached bank employee Rada Stroder in her office near the front door and demanded to know where the money was. Stroder took them to the back area of the bank and to the vault room where the men told her to "get the money." Tr. p. 114.

Bank employees Abbey King and Dawn Brenton were also working at the time. King and Brenton were in a back room balancing the Automated Teller (ATM) Machine when King noticed Williams and Ronnie enter the bank and heard them yell loudly. King hit two silent panic buttons. Ronnie and Williams, whose gun was pointed at Stroder's head, came toward the back area to the vault room. They found King and Brenton there and told them to lie on the ground. The men demanded that the women "get the money." Tr. p. 113. The vault, which was controlled by a timer, could not be opened immediately. At some point during this time, the gun Williams was pointing at Stroder discharged, but no one was hit or physically injured as a result.

In compliance with their demands, Brenton directed Williams and Ronnie to the money from the ATM machine in the back room. One of them took the money from the ATM canisters and put it into his bag. King then opened her teller drawer, and one of the men took the money from the drawer and placed it into his bag. Williams and Ronnie then demanded that Brenton and King return to the vault room where Stroder remained. They closed the vault room door and told the women to count to thirty before coming out.

Williams and Ronnie ran out of the bank and into a waiting vehicle. Shortly thereafter, Marion County Sheriff's Deputies Gary Schuller and Bradley Millikan stopped the suspects' vehicle near the corner of 75th Street and Allisonville Road, with Deputy Schuller parking approximately seventy-five feet behind the vehicle and Deputy

Millikan stopping approximately seventy-five feet in front of it. Deputy Shuller exited his patrol car and observed Ronnie, who was in the passenger seat, make several attempts to exit the vehicle. Deputies Schuller and Millikan repeatedly ordered Ronnie to stay in the vehicle. Ronnie ultimately got out of the vehicle and shot multiple times at Deputy Schuller, hitting him in the left thigh, before running off into a nearby wooded area. As Deputies Schuller and Millikan returned fire, Williams exited the vehicle and fired his gun at Deputy Schuller while running off into the wooded area as well. Deputy Millikan responded by firing his weapon at Williams. Williams then fired a shot at Deputy Millikan. The driver stayed inside the vehicle until he was ordered out and taken into custody.

Williams and Ronnie were subsequently apprehended inside two nearby residences. Williams was located inside of a garment bag in the basement of a residence at 7414 Glenmora Avenue. He was wearing clothes belonging to the residents of 7414 Glenmora Avenue. When Indianapolis Metropolitan Police Department Officer Greg Davis tried to physically remove him from the garment bag, Williams forcibly resisted by pulling his hands away. Williams's clothes, including a gray hooded sweatshirt, were subsequently located inside the house. Additional money not belonging to the homeowners was found in the seat cushion in the basement of 7414 Glenmora Avenue. Police also discovered a Steyr handgun covered in motor oil in the garage there. Ronnie was located in the attic of a residence at 7422 Glenmora Avenue, near a Ruger handgun and a black bag containing $37,851.

On December 9, 2005, the State charged Williams with two counts of attempted murder (Counts I and II), robbery (Count III), four counts of criminal confinement (Counts IV-VII), aggravated battery (Count VIII), resisting law enforcement (Count IX), residential entry (Count XI), theft (Count XII), resisting law enforcement (Count XIII), and carrying a handgun without a license (Count XV). Williams and Ronnie were tried jointly on January 22-25, 2007. The jury acquitted Williams of both counts of attempted murder (Counts I and II) and of aggravated battery (Count VIII). The jury found Williams guilty of all remaining counts.[8]

At the February 21, 2007 sentencing hearing, the trial court entered judgment of conviction and sentenced Williams to the following terms: fifteen years in the Department of Correction for Count III; fifteen years each for Counts IV, V, VI, and VII; one and one-half years for Count IX; one and one-half years for Count XI; one year for Count XII; one year for Count XIII; and one year for Count XV. The court ordered that the sentences were to be served consecutively, but that the fifteen-year sentences in Counts IV, V, VI, and VII were to be served concurrently with each other and consecutively with the remainder of the sentence, for an aggregate thirty-six-year sentence. This appeal follows.

[8] Following the jury's verdict finding Ronnie guilty on all counts, the trial court entered conviction on two counts of attempted murder (Counts I and II), robbery (Count III) four counts of criminal confinement (Counts IV-VII), resisting law enforcement (Count IX), residential entry (Count X) and carrying a handgun without a license (Count XIV). We recently considered Ronnie's appeal in *Williams v. State*, No. 49A02-0703-CR-274 (Ind. Ct. App. Dec. 5, 2007).

DISCUSSION AND DECISION

I. Double Jeopardy

Although Williams does not raise this claim, we first address the question raised and deemed meritorious in Ronnie's appeal that their convictions in both Counts IV and V violate double jeopardy principles. We raise the issue *sua sponte* because a double jeopardy violation, if shown, ensnares fundamental rights. *Scott v. State*, 855 N.E.2d 1068, 1074 (Ind. Ct. App. 2006).

Article 1, Section 14 of the Indiana Constitution provides that "[n]o person shall be put in jeopardy twice for the same offense." The right not to be placed in jeopardy twice stems from the underlying premise that a defendant should not be tried or punished twice for the same offense. *Boyd v. State*, 766 N.E.2d 396, 399-400 (Ind. Ct. App. 2002). It is the defendant's burden on appeal to demonstrate that his convictions violated his constitutional right to be free from double jeopardy. *Id*. at 400.

Crimes including kidnapping and the lesser included offense of confinement are defined under the continuing crime doctrine. *Bartlett v. State*, 711 N.E.2d 497, 500 (Ind. 1999). Under this doctrine, the span of the kidnapping or confinement is determined by the length of time of the unlawful detention necessary to perpetrate the crime. *Id.* It begins when the unlawful detention is initiated and ends only when the victim both feels, and is in fact, free from detention. *Id*. Although a single incident of confinement may result in two separate convictions, in such cases the confinement must be divisible into two separate parts. *Boyd*, 766 N.E.2d at 400. A confinement ends when the victim both

feels and is, in fact, free from detention, and a separate confinement begins if and when detention of the victim is re-established. *Id*.

Williams's conviction in Count IV was based upon his removing Stroder from the lobby of the bank to a locked teller area of the bank. His conviction in Count V was based upon his confining Stroder by forcing her to enter and remain in a room at gunpoint. There was no evidence suggesting that Stroder felt free and was free from detention at any time within the span of her confinement during the bank robbery, regardless of the number of rooms to which she was confined. As there was but one continuous period of confinement, and both of Williams's convictions flowed from that offense, Williams's dual convictions and sentences in Counts IV and V violate the double jeopardy clause of the Indiana Constitution. Accordingly, his conviction and sentence in Count V, which merge into his conviction and sentence in Count IV, must be vacated.

II. Sentencing

While Williams frames his entire sentencing argument in terms of Indiana Appellate Rule 7B, he appears to challenge the trial court's consideration of his juvenile criminal history as an aggravating factor as well as the relative weight the court placed upon juvenile history relative to the weight it placed upon the mitigating circumstances. Williams further suggests that the trial court erred by imposing a sentencing enhancement to compensate for his being acquitted on the attempted murder counts. Additionally, Williams points to his church attendance, past good deeds, and community support in arguing that his character and his offenses, which could have had graver consequences, warrant a lesser sentence. We address each argument in turn.

In sentencing Williams, the trial court stated the following:

I'm struck by the fact that Mr. Ryan Williams along with Mr. Ronnie Williams had an incredible upbringing. Educated young men, their mother has done a very good job of raising them, they've had a lot of family support, they've had a lot of community support with Coopers and everybody else and the Reverend that I heard from here today. And to say this was out of character, maybe it was, but it was—wow—when you do something like this, I mean, it's just—this wasn't, . . . a shoplifting at Wal-Mart. These actions combined, although I understand that Ryan Williams had no role in the actual shooting of Deputy Schuller but, you know, these combined actions put a lot of people in fear that day and I sat here and watched those three bank tellers, you know, I think we focused a lot on Deputy Schuller, I mean no disrespect to him, it's a man that's going to lose his career as a result of this incident. But I'll never forget those three tellers that came in here; because they were shaking so bad we had to take some time to let them stop shaking. And so maybe it was out of character but when an adult man walks into a bank loaded with a gun, fires the gun into the floor of the bank, that's a pretty drastic thing, it's a pretty amazing thing. So, anyway, my sentencing though has nothing to do with that, I sit here and listen to the facts and the legislature has told me how I'm to do my sentencings and it gives me a range of punishments and I start with an advisory sentence, I can go down or I can go up, depending on any aggravating circumstances I can find and any mitigating circumstances I can find, and so—and that's how I sentence. So as to aggravating circumstances, the Court's going to find Mr. Ryan Williams' criminal history as being aggravating. And I'm referring to those juvenile adjudications that are contained in his presentence investigation report: a 2001 conversion and although not part of his criminal history to that extent, but I do find it interesting that in that conviction there was an arrest in that, that was a battery on a police officer that was dismissed. And I just—I find that interesting. In 2004, disorderly conduct; 2005 possession of cocaine, a juvenile adjudication as a C felony. I also note that there was also another arrest in that one for resisting law enforcement. So I find his criminal history is aggravating. As to mitigating circumstances I've considered whether or not his age is a mitigating circumstance and while I will find that eighteen years of age is a young age, I'm going to give that little weight due to the actions of this Defendant, that I heard during this trial. And I look at his criminal history and I think he was an adult man and so despite the fact that he was eighteen he was certainly acting like an adult male and his actions speak to that of acting like an adult male if that makes any sense. Anyway, I'm going to give that little weight. His good character, while I will consider that, I'm not going to find that as a

> mitigator based on the fact that he does have those juvenile adjudications and so I will not find that as a mitigator. His remorse, I'm going to find that as a mitigator, I heard what he said today, I do believe he's truly remorseful. But once again I'm going to give that little weight because it's hard to say whether or not a person is sincere or not and it's also easier to be remorseful after you've been convicted but nevertheless I will find that as a mitigator. I have very carefully balanced the aggravating circumstance against the mitigator, I believe the aggravator outweighs the mitigator.

Tr. pp. 972-75.

A. Sentencing Statement

In *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), the Supreme Court held that Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id*. If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id*. A trial court may abuse its discretion if it fails to enter a sentencing statement at all. *Id*. A trial court may also abuse its discretion if it explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. *Id.* at 490-91. However, because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing

a sentence, a trial court cannot now be said to have abused its discretion in failing to properly weigh such factors. *Id*. at 491.

To the extent Williams is requesting that we reweigh the relative aggravating weight of his juvenile criminal history against the mitigating weight of his young age and remorse, we decline to do so, because *Anglemyer* precludes such a reweighing assessment. *Id*. The weight which a trial court chooses to assign the aggravators and mitigators cannot constitute an abuse of discretion. *Id*.

In enhancing Williams's sentence, the trial court relied upon the aggravator of his juvenile criminal history. We first observe that a trial court may consider a defendant's history of criminal or delinquent behavior as an aggravating circumstance. *Allen v. State*, 722 N.E.2d 1246, 1256 (Ind. Ct. App. 2000); *see* Ind. Code § 35-38-1-7.1 (2005). Although Williams cites several cases in support of his challenge to the trial court's use of his juvenile criminal history as an aggravator, we find them unpersuasive in demonstrating that the trial court erred on this basis. In *Allen*, 722 N.E.2d at 1256-57 (Ind. Ct. App. 2000), this court found error in the trial court's reliance upon a defendant's juvenile criminal history when such history, which included multiple arrests but only one adjudication, was not accompanied by specific evidence regarding either the context of the arrests or the grounds upon which the adjudication was made. Here, in contrast, the court relied upon Williams's adjudications only; the bases of the adjudications, namely criminal conversion, disorderly conduct and cocaine possession, were easily discernible; and two of the three adjudications were accompanied by detailed accounts of the surrounding circumstances. Additionally, each offense comprising Williams's criminal

history is separately dated and listed in its context in the pre-sentence investigation report ("PSI"), which Williams agreed was accurate at the sentencing hearing. We find no error on this point.

In *Sherwood v. State*, 702 N.E.2d 694, 699-700 (Ind. 1998), the Supreme Court found error in a trial court's consideration of a defendant's prior arrest for cocaine possession as an aggravator. Here, the trial court, in considering Williams's criminal history as an aggravator, relied only upon true findings. While the court took note of certain arrests, such as the February 13, 2001 charge for battery on a police officer, it specifically did not consider them to be part of his criminal history. Accordingly, *Sherwood* is distinguishable and provides no basis for relief.

In *Watson v. State*, 784 N.E.2d 515, 523 (Ind. Ct. App. 2003), this court determined that the trial court erred in considering as an aggravating circumstance, when sentencing a defendant for battery, that he had a criminal history consisting of a juvenile adjudication for recklessness or disorderly conduct and marijuana possession. The *Watson* court concluded that, given the defendant's limited prior contacts with the justice system and the non-violent nature of his prior offenses, a criminal history comprised of two nonviolent misdemeanors unrelated to the present offense was not significant in the context of a sentencing hearing for battery. *Id*. Unlike in *Watson*, the defendant in this case had a juvenile history which included both a property crime and a felony if committed by an adult, and the admitted context of both his disorderly conduct and felony cocaine possession adjudications involved continuing resistance to authority. We are unconvinced *Watson* demonstrates that the trial court's consideration of Williams's

juvenile criminal history in the instant case was an abuse of discretion on the basis that his juvenile criminal history was somehow unrelated to the instant offenses.

B. Sentence Enhancement as Compensation for Acquittals

Williams additionally argues that the trial court's interjection stating that he "shot a police officer" during Williams's allocution, in spite of his acquittal of both counts of attempted murder, suggests that the trial court may have improperly enhanced his sentence to compensate for these acquittals. Tr. p. 964. In making this argument, Williams points to *Hammons v. State*, 493 N.E.2d 1250, 1253 (Ind. 1986); *Gambill v. State*, 436 N.E.2d 301, 305 (Ind. 1982); and *Cloum v. State*, 779 N.E.2d 84, 91-92 (Ind. Ct. App. 2002), for the proposition that a trial judge may not enhance a sentence to compensate for what he believes to be an erroneous verdict. In *Hammons*, *Gambill*, and *Cloum*, however, the trial courts, in imposing the maximum sentence, specifically articulated their doubt or disagreement with voluntary manslaughter convictions when, according to the trial courts, the facts would have been adequate to support murder convictions. Here, the trial court did not impose the maximum sentence, it did not express doubt or disagreement with the jury's verdict, and it specifically retracted its statement that Williams shot a police officer by stating, "I understand that Ryan Williams had no role in the actual shooting of Deputy Schuller[.]" Tr. p. 973. We are unpersuaded that Williams's sentence was in any way intended to serve as compensation for his acquittals for attempted murder.

C. Inappropriateness of Sentence

Having found no error in the trial court's sentence, we turn to the question of whether Williams's sentence was inappropriate in light of his character and the nature of his offense. Article VII, Sections 4 and 6 of the Indiana Constitution "'authorize[] independent appellate review and revision of a sentence imposed by the trial court.'" *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the "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." We exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires that we give "due consideration" to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant's burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

Williams does not dispute the terrifying nature of the offenses he committed and the ongoing emotional harm he caused the bank tellers. With respect to the nature of his offenses, therefore, his argument that his sentence is excessive is largely based upon his contention that his crimes could have been worse. We are unconvinced that the nature of his offenses was anything less than egregious, and we decline to minimize such egregious crimes on the basis that an even worse scenario could be imagined. *See Buchanan v.*

State, 767 N.E.2d 967, 973 (Ind. 2002). Williams participated in an armed bank robbery in which he forcefully confined three women, fired his weapon, and stole over $37,000 in cash. He then fled with his cohorts in a waiting car, and when escape in the car became futile, fired his gun multiple times in the vicinity of innocent citizens and sheriff's deputies while attempting to escape on foot. In his continuing attempts to evade authorities, he broke into a house, stole some clothes to disguise himself, hid inside of a garment bag, and struggled with authorities once he was discovered. There is nothing about the noticeably violent nature of Williams's offenses which suggests that a thirty-six-year sentence is inappropriate.

Further, to the extent Williams's intelligence, church attendance, community support, and past good deeds reflect favorably upon his character, their effect is largely diminished by the great negative effect on his character of the instant crimes, which follow a rather substantial history of juvenile involvement with the authorities, including at least one previous alleged attempt to evade them while committing what would be Class C felony cocaine possession if committed by an adult. Williams's apparent failure to respond to any deterrent effect occasioned by his past involvement with authorities causes us to further doubt his alleged good character. *See Sherwood*, 702 N.E.2d at 700. Due to Williams's commission of the instant crimes despite this history of involvement with law enforcement authorities, we are unconvinced that his character is somehow sufficiently exemplary to favor the imposition of a lesser sentence.[9]

[9] While this court reduced the defendant's sentence in *Borton v. State*, 759 N.E.2d 641, 648 (Ind. Ct. App. 2001), *trans. denied*, on the basis of his youth, limited prior contacts with the justice system, and

We have concluded that the trial court did not consider improper factors in sentencing Williams and that his thirty-six-year sentence is not inappropriate in light of his character and the nature of his offenses. We have also concluded, however, that Williams's conviction and accompanying sentence in Count V violate double jeopardy. Accordingly, we affirm in part, reverse in part, and remand with instructions to the trial court to vacate Williams's conviction and sentence in Count V.

The judgment of the trial court is affirmed in part, reversed in part, and remanded.

BAKER, C.J., and DARDEN, J., concur.

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the non-violent nature of his prior offenses, we are unconvinced that this case similarly warrants a reduced sentence. In *Borton*, the defendant received maximum fifty-year sentences for each of his Class A felony convictions for conspiracy to commit robbery and attempted robbery, in spite of a juvenile history consisting of nonviolent misdemeanor offenses if committed by an adult. Here, Williams's Class B felony convictions for robbery and criminal confinement yielded fifteen-year sentences, not maximum twenty-year-sentences. The only maximum sentences Williams received were his one-year sentences for resisting law enforcement and carrying a handgun without a license, both Class A misdemeanors, in Counts XIII and XV. Additionally, Williams's juvenile history, which involved a true finding on the basis of Class C felony cocaine possession, was significantly more serious than was the *Borton* defendant's misdemeanor juvenile history.