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IN THE
COURT OF APPEALS OF INDIANA

IRA JAMES WASHINGTON, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1003-CR-151
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0808-FA-31

December 6, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Ira James Washington, Jr. ("Washington"), appeals from the twenty-year executed sentence imposed following his guilty plea to attempted aggravated battery,[1] a Class B felony, and battery[2] as a Class D felony. On appeal, Washington contends that his sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 22, 2008, Officer Tom Sawyer ("Officer Sawyer") from the Hammond Police Department was on patrol when he observed Washington waving his arms in an effort to gain the officer's attention. Officer Sawyer turned his police vehicle around, rolled down his passenger-side window, and asked whether Washington needed assistance. Washington responded, "I don't need to be talking to you." *Guilty Plea Tr*. at 10. Officer Sawyer exited his vehicle and requested Washington's identification. Washington reached into his back pocket, as if to pull out identification, and, instead, punched Officer Sawyer in the face.

Washington continued to hit Officer Sawyer repeatedly in the face and head until Officer Sawyer fell to the street between the squad car and the curb. Washington then braced himself against the squad car and began to kick and punch Officer Sawyer in the face and stomp on his head as he was lying on the ground. During the assault on Officer Sawyer, Washington yelled, "I'm gonna kill you M-Fer." *Sentencing Tr*. at 56. At some point during the attack, Officer Sawyer lost consciousness.

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[1] *See* Ind. Code §§ 35-42-2-1.5, 35-41-5-1.

[2] *See* Ind. Code § 35-42-2-1(a)(2)(A).

Officer Brian Campos ("Officer Campos"), an off-duty officer with the Hammond Police Department, happened upon the incident as he was leaving his security detail. Still wearing his police uniform, Officer Campos exited his pickup truck and approached Washington, who was kicking Officer Sawyer. Officer Campos used his taser against Washington, but due to the taser's malfunction, it had no effect on Washington and he turned and threw several wild punches at Officer Campos. Officer Campos was able to wrestle Washington to the ground, but injured his shoulder when the two men hit the pavement. A civilian entered the altercation and helped to get Washington under control.

Following the attack, Officer Sawyer was transported to the hospital where he regained consciousness. Officer Sawyer suffered severe swelling and bruising to both eyes, "severe abrasions to his upper cheek bones," and "several extensive lacerations above his right eye and to his forehead," which required about "45 sutures." *Guilty Plea Tr*. at 12. Officer Campos suffered a dislocated right shoulder and lacerations to his hands and elbows.

In connection with the assault on Officer Sawyer, Washington was charged with Class A felony attempted murder, Class B felony attempted aggravated battery, and Class C felony battery. Additionally, he was charged with Class D felony battery in connection with his assault on Officer Campos. Pursuant to a plea agreement, Washington pleaded guilty to Class B felony attempted aggravated battery and Class D felony battery in exchange for the dismissal of the remaining charges. The plea agreement did not contain an agreement as to the sentence to be imposed, but the parties agreed that the sentences would be served concurrently. *Appellant's App.* at 53.

In sentencing, the trial court considered: the nature of the circumstances of the crimes as stated within the factual basis for the plea agreement; Officer Sawyer's December 8, 2009 statement recounting the event and his injuries; and the mandatory nature of the plea agreement as to Washington's sentences being served concurrently. *Appellant's App.* at 57. The trial court found the following mitigating circumstances: 1) Washington pleaded guilty and admitted responsibility; and 2) Washington had "a documented history of mental illness including hallucinations and schizophrenia." *Id*. The trial court found the following aggravating factors: 1) Washington's history of criminal convictions; 2) prior leniency by criminal courts has had no deterrent effect on Washington's criminal behavior; 3) Washington committed two offenses involving separate and distinct victims; 4) Washington's history of *battery* arrests; and 5) Washington was on bond in Cook County, Illinois at the time this offense was committed for a charge that included "Aggravated Assault to Peace Officer." *Id*. at 57-58. Washington was sentenced to twenty years executed for the Class B felony and three years executed for the Class D felony, to be served concurrently. He now appeals.

DISCUSSION AND DECISION

Indiana Code section 35-50-2-5 establishes a sentencing range for a Class B felony of between six to twenty years imprisonment, with an advisory sentence of ten years. The sentencing range for a Class D felony is a fixed term of between six months and three years, with the advisory sentence being one and one-half years. Ind. Code § 35-50-2-7. While Washington agrees that his aggregate sentence of twenty years—twenty years for the Class B

felony and a concurrent three years for the Class D felony—was both authorized by statute and within the limits of the plea agreement, he contends that his sentence was inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B).

"This court has authority to revise a sentence '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.'" *Spitler v. State*, 908 N.E.2d 694, 696 (Ind. Ct. App. 2009) (quoting Ind. Appellate Rule 7(B)), *trans. denied*. "Although Indiana Appellate Rule 7(B) does not require us to be 'extremely' deferential to a trial court's sentencing decision, we still must give due consideration to that decision." *Patterson v. State*, 909 N.E.2d 1058, 1062-63 (Ind. Ct. App. 2009) (quoting *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007)). We understand and recognize the unique perspective a trial court brings to its sentencing decisions. *Id*. at 1063. The defendant bears the burden of persuading this court that his sentence is inappropriate. *Id*.

Washington argues that his twenty-year executed sentence was inappropriate in light of the nature of the offense. Focusing on his twenty-year sentence for attempted aggravated battery, Washington contends that although an attempt to commit a crime is the same class as the crime attempted, "for sentencing purposes some distinction should be drawn between inchoate and completed crimes." *Appellant's Br*. at 6. Under these facts, we disagree.

While it is true that the State charged Washington with attempted aggravated battery, there was nothing inchoate about his actions. Washington initiated the encounter by

signaling to Officer Sawyer. Once the officer stopped, Washington "sucker punched" him, knocking him to the ground. *Guilty Plea Tr.* at 11. Washington continued to beat Officer Sawyer in the face and stomped on his head. Even after Officer Sawyer lapsed into unconsciousness, Washington continued with his assault until Officer Campos came to the rescue. Officer Campos then injured his shoulder as he tried to restrain Washington. The beating of Officer Sawyer was so intense that he remained unconscious until he was taken to the hospital. Additionally, the lacerations above his eye were so extensive that more than forty-five sutures were required to close the wound. *Appellee's Br.* at 8. The photo taken of Officer Sawyer immediately afterward graphically depicts the serious injuries he suffered to his face and head. *See State's Ex*. 2. The sentence was not inappropriate in light of the nature of the offense.

Washington also claims that his character is not so negative as to warrant a maximum sentence because by entering a guilty plea he admitted responsibility for the crimes and he had a documented history of mental illness. *Appellant's Br.* at 6. Washington first contends that while the trial court recognized his guilty plea, it "discount[ed] its mitigating import." *Appellant's Br.* at 7. Washington next contends that he suffers from a serious, long-standing mental illness that was caused by, or associated with, a head trauma he sustained in an automobile accident in 1996. *Id.* at 8. Because of the head trauma, Washington had a paranoid obsession with the Hammond Police, which caused him to believe that they were stalking him, flattening his tires, cracking his windshield, and trying to kill him. *Sentencing Tr.* at 41. At times, he even thought that his fiancée was an undercover Hammond Police

operative who was trying to poison him. *Id*. Washington argues that his mental illness is not evidence of a defective character because it can be modified by medication. *Appellant's Br.* at 85.

In *Clay v. State*, 882 N.E.2d 773 (Ind. Ct. App. 2008), our court analyzed the appropriateness of a defendant's sentence in light of the character of the offender who had pleaded guilty and suffered from a mental illness. There, like here, the trial court considered both of these factors to be mitigating circumstances during sentencing; however, the *Clay* court noted that "these factors alone are not enough to render [the defendant's] sentence inappropriate." *Id.* at 777. The court found the defendant's extensive criminal history and numerous probation violations were aggravating factors. *Id*. Additionally, the court noted that Clay was on probation at the time of the instant offense. *Id*. These factors caused the court to find: "His repeated criminal behavior and disregard for the law shows Clay's less-than-admirable character and does not aid his inappropriateness argument. In sum, we do not find the nature of the offense or Clay's character to render his sentence inappropriate." *Id*.

Like the court in *Clay*, we neither ignore nor discount the mitigating factors of Washington's guilty plea and his history of mental illness. *Appellant's App.* at 57. Instead, we find that these factors are outweighed by the following aggravating factors. In 1995, Washington was charged in DuPage County, Illinois with battery. This was prior to his head trauma. *Sentencing Tr*. at 14. In 1998, he was again charged in DuPage County, Illinois, with two counts of domestic battery. *Id*. at 15. Washington was arrested in Cook County, Illinois in 2002, for domestic battery. *Id*. In 2003, Washington was convicted of possession

of a controlled substance and was placed on probation for twenty months. *Id*. Sixteen months prior to the instant offense, Washington was charged in Cook County, Illinois with nine counts, including two for resisting arrest and two for the aggravated assault of police officers in Chicago. *Id*. at 16. Of greatest significance is the fact that, at the time he committed the batteries on Officer Sawyer and Officer Campos, Washington was out on bond for the assaults on the Chicago police officers. *Id*. at 17.

We note that, under Washington's plea agreement, two other felony charges, including one for Class A felony attempted murder, were dismissed. Additionally, his plea agreement provided that his sentences would be served concurrently. We therefore conclude that a twenty-year sentence for the attacks on both Officer Sawyer and Officer Campos was not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

RILEY, J., and BAILEY, J., concur.