Martin v. State

934 N.E.2d 791 (2010) | Cited 0 times | Indiana Court of Appeals | September 21, 2010

MEMORANDUM DECISION

NOT FOR PUBLICATION

Case Summary

Jack Edward Martin ("Martin") belatedly appeals following his plea of guilty to Burglary, as a Class A felony.[1] He presents the sole issue of whether he was properly sentenced to forty-five years imprisonment. We affirm.

Facts and Procedural History

Just past midnight on July 21, 1999, D.H. was awakened in her Fort Wayne home by the sound of her dog barking. When D.H. walked into the kitchen to investigate, she saw Martin hiding in the corner. D.H. recognized Martin as one of the members of a roofing crew that had recently worked at D.H.'s residence.

Martin grabbed D.H. and they began to struggle. Martin attempted to choke D.H. and threatened to kill her if she did not stop screaming. Afraid, D.H. stopped struggling and screaming and also subdued her dog. Martin began to kiss D.H's neck and squeeze her breast painfully; he then directed her to go upstairs. D.H. agreed to do so, but asked if she could get a drink first. Apparently acquiescing to D.H.'s request, Martin let go of her and asked for a cigarette. D.H. went upstairs, ostensibly to retrieve a cigarette, and returned with a pistol.

D.H. pointed the pistol at Martin and informed him that it was loaded; Martin was convinced to leave D.H.'s residence. D.H. then discovered that her phone line had been cut. After D.H. was able to summon police assistance and identify Martin, he was arrested.

On July 23, 1999, the State charged Martin with Burglary, Sexual Battery,[2] and Battery.[3] On August 30, 1999, the State alleged Martin to be a habitual offender.[4] On February 29, 2000, Martin pleaded guilty to Burglary; the remaining charges and the habitual offender allegation were dismissed. The

plea agreement provided that sentencing was left to the trial court's discretion.

On March 24, 2000, Martin was sentenced to forty-five years imprisonment. On January 27, 2010, the trial court granted Martin permission to file a Belated Notice of Appeal pursuant to Indiana Post-Conviction Rule 2.

Discussion and Decision

Martin challenges his sentence on several grounds. First, he claims that the trial court abused its discretion in the finding of aggravators and mitigators. Second, he alleges that his sentence is excessive and should be revised upon our independent review. Finally, he claims that the trial court made factual findings in violation of his right to have a jury determine whether or not there existed aggravating circumstances to support his sentence enhancement.

Finding of Aggravating and Mitigating Circumstances

At the time Martin was sentenced, Indiana Code Section 35-50-2-4 provided that a person who committed a Class A felony should be imprisoned for a fixed term of thirty years, with not more than twenty years added for aggravating circumstances or not more than ten years subtracted for mitigating circumstances.[5] In general, sentencing determinations under the presumptive scheme are within the trial court's discretion. Henderson v. State, 769 N.E.2d 172, 179 (Ind. 2002).

In imposing upon Martin a sentence of five years less than the maximum, the trial court articulated two aggravators: (1) Martin's criminal history; and (2) his failure to benefit from prior rehabilitative efforts. The trial court found that Martin's decision to plead guilty was a mitigating factor.

Martin argues that the aggravator of his failure to benefit from prior rehabilitative efforts was improperly considered by the trial court as it lacks evidentiary support in the record. However, the Presentence Investigation Report indicates that Martin has four prior felony convictions and two misdemeanor convictions. He has also twice been charged with Sexual Battery and once been charged with Battery, with such charges dismissed prior to trial. He has been released on parole in 1987 and 1990, but continued to commit offenses. Although the finding does not lack evidentiary support, it is a derivation of the finding of a criminal history as opposed to an independent aggravator and may more properly be considered to be a "legitimate observation about the weight to be given to the facts found." Morgan v. State, 829 N.E.2d 12, 17 (Ind. 2005). Nonetheless, a single aggravator is adequate to justify an enhanced sentence. Storey v. State, 875 N.E.2d 243, 251 (Ind. Ct. App. 2007), trans. denied.

Martin also argues that the trial court improperly failed to acknowledge his remorse, his mental illness, and his intoxication at the time of the offense as mitigating circumstances. The finding of mitigating circumstances is within the discretion of the trial court. Legue v. State, 688 N.E.2d 408,

411 (Ind. 1997). A trial court is not obligated to find a circumstance to be mitigating merely because it is advanced by the defendant. Felder v. State, 870 N.E.2d 554, 558 (Ind. Ct. App. 2007). On appeal, the defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record. Id.

A trial court's determination of a defendant's remorse is similar to a determination of credibility. Pickens v. State, 767 N.E.2d 530, 535 (Ind. 2002). Absent some evidence of an impermissible consideration by the trial court, we accept its determination as to remorse. Id. Here, there is no evidence of an impermissible consideration and thus no error.

Where the trial court finds a defendant suffers from a long-standing and severe mental illness, the court may decide to accord significant weight to the defendant's mental illness as a mitigating factor. Archer v. State, 689 N.E.2d 678, 685 (Ind. 1997). On the other hand, where the mental illness is less severe or where the nexus between the defendant's mental illness and the commission of the crime is less clear, the court may determine that the mental illness warrants little or no mitigating weight. Id. Here, Martin did not offer evidence that he had been diagnosed with a mental illness or that it had a nexus to his crime. Indeed, at the guilty plea hearing Martin denied that he had "ever been treated for any mental illness" or that he "suffer[ed] from any mental or emotional disability." (Tr. 4.)

Furthermore, our Indiana Supreme Court has declined to hold that voluntary intoxication at the time of an offense is necessarily a mitigating circumstance, finding the "matter best left to the sound discretion of the trial court." Legue, 688 N.E.2d at 411. As such, Martin has demonstrated no abuse of discretion in the trial court's determination of aggravators and mitigators.

Inappropriateness

Martin requests that we conduct our independent review of the nature of the offense and character of the offender pursuant to Indiana Appellate Rule 7(B), which provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender."[6] Nevertheless, our review under Appellate Rule 7(B) is deferential to the trial court, and "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The nature of Martin's offense is that he, after becoming familiar with the victim's residence during a work assignment, entered a dog door and waited inside the victim's kitchen. When D.H. discovered the intruder in her home, Martin attacked her and threatened to kill her. At the guilty plea hearing, Martin admitted that his intent when breaking and entering D.H's home was to commit rape or sexual battery.

The character of the offender is such that he had accumulated four prior felony convictions and two

prior misdemeanor convictions. Martin decided to plead guilty, which demonstrates a defendant's acceptance of responsibility for the crime and at least partially confirms the mitigating evidence regarding his character. Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). Indiana courts have recognized that a defendant who pleads guilty deserves to have mitigating weight extended to the guilty plea in return, but it is not automatically a significant mitigating factor. Davis v. State, 851 N.E.2d 1264, 1268 n.5 (Ind. Ct. App. 2006), trans. denied. Here, Martin already received a significant benefit in exchange for his guilty plea, because two criminal counts and the habitual offender allegation were dismissed.

In sum, neither the nature of the offense or the character of the offender militates toward a lesser sentence than that imposed. Martin's sentence is not inappropriate.

Review Under Blakely v. Washington

Finally, Martin asserts that any aggravating circumstances recognized by the trial court, other than his criminal history, are invalid under Blakely v. Washington, 542 U.S. 296, 301 (2004) (in which the United States Supreme Court stated, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt"). As previously observed, the trial court did not recognize an aggravator apart from Martin's criminal history. Moreover, in Gutermuth v. State, 868 N.E.2d 427, 428 (Ind. 2007), the Indiana Supreme Court held that belated appeals of sentences entered before Blakely "are not subject to the holding in that case." Martin is not entitled to have his sentence reviewed under Blakely.

Conclusion

The trial court did not abuse its sentencing discretion in the finding of aggravators and mitigators. Martin's sentence is not inappropriate, and he is not entitled to review under Blakely.

Affirmed.

RILEY, J., and KIRSCH, J., concur.

1. Ind. Code § 35-43-2-1.

2. Ind. Code § 35-42-4-8.

3. Ind. Code § 35-42-2-1.

4. Ind. Code § 35-50-2-8.

5. Effective April 25, 2005, our legislature replaced the prior sentencing statutes, which provided for a "presumptive" sentence for each class of felony, with new statutes providing for an "advisory" sentence.

6. Martin's brief contemplates that his sentence was to be reviewed under the "manifestly unreasonable" test. On July 19, 2002, our Supreme Court amended Appellate Rule 7(B) effective January 1, 2003. It is directed to the reviewing court and sets forth the standard for that review, which is made as of the date the opinion is handed down. Accordingly, although the sentence here was imposed in 2000, our review applies the "inappropriateness" test. See Kien v. State, 782 N.E.2d 398, 416 n.12 (Ind. Ct. App. 2003), trans. denied.