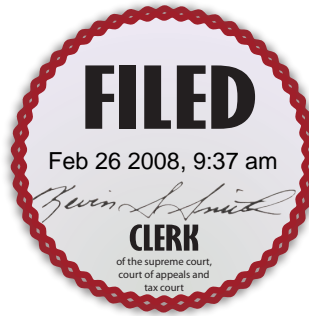


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES TERRELL,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A02-0707-CR-592
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0605-FA-90220

February 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Charles Terrell (“Terrell”) appeals the thirty-five-year sentence imposed following his plea of guilty to Attempted Murder, a Class A felony.¹ We affirm.

Issues

Terrell presents four issues for review:

- I. Whether he was subjected to governmental action based upon a racial classification in violation of his right to equal protection;
- II. Whether the trial court abused its sentencing discretion;
- III. Whether the sentence is inappropriate; and
- IV. Whether the credit for pretrial confinement is adequately documented.

Facts and Procedural History

During the early morning hours of May 17, 2006, Officer Michael Moore initiated a traffic stop of the vehicle Terrell was driving on Westbrook Avenue in Indianapolis. Terrell gave his identification to Officer Moore, who walked back to his police vehicle. Terrell then exited his vehicle and began to walk away. As Officer Moore approached him, Terrell turned toward Officer Moore and fired gunshots. Officer Moore fell to the pavement and returned fire. Officer Moore felt concrete fragments flying up as bullets struck the concrete around his head. A single bullet struck Officer Moore in his leg.

Terrell sustained three gunshot wounds, but was able to flee and hide in an attic where police eventually apprehended him. On May 19, 2006, the State charged Terrell with

¹ Ind. Code §§ 35-41-5-1, 35-42-1-1.

Attempted Murder, Battery,² two counts of Resisting Law Enforcement,³ and Carrying a Handgun Without a License.⁴

The State and Terrell entered into a plea agreement whereby Terrell agreed to plead guilty to Attempted Murder and the State agreed to dismiss the remaining charges. The parties agreed that the executed portion of Terrell's sentence would not exceed twenty-five years. On May 16, 2007, the trial court accepted the plea agreement and Terrell's guilty plea. On June 14, 2007, the trial court sentenced Terrell to thirty-five years imprisonment, with twenty-four years to be executed. Terrell now appeals.

Discussion and Decision

I. Racial Classification

At sentencing, Terrell argued that his victim's occupation should not be considered an aggravator. The trial court rejected Terrell's argument, stating:

When a law enforcement officer is shot at or hit it impacts the entire community like nothing else. It impacts the entire community like a baby's death. Everyone who wears a uniform is affected because it could be them. Everybody who wears a uniform affects those around them, because they are more suspicious of the people they meet under innocent circumstances. And sometimes, the law enforcement officers are more suspicious and less accepting of the minorities in our community, if it's a minority who shot the law enforcement officer.

(Tr. 71-2.) Terrell now contends that he was denied equal protection because the trial court "considered [his] race in determining his sentence."

² Ind. Code § 35-42-2-1.

³ Ind. Code § 35-44-3-3.

⁴ Ind. Code § 35-47-2-1.

The Fourteenth Amendment to the United States Constitution provides in part: “No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Generally, when assessing a claim that government action has violated the Fourteenth Amendment, the threshold question concerns the level of scrutiny of the action. Indiana High Sch. Athletic Ass’n, Inc. v. Carlberg, 694 N.E.2d 222, 236 (Ind. 1997). Absent a burden upon the exercise of a constitutionally protected right or creation of a suspect class, the general standard of review of state action challenged under the Fourteenth Amendment is the rational basis test. Id.

Here, Terrell has not identified the existence of separate classifications based on race, either legislative or judicial. The trial court did not aggravate Terrell’s sentence because of his race but rather because the victim was a police officer. The superfluous reference to race notwithstanding, the trial court’s comments as a whole refer to heightened community impact when a police officer is victimized. We need not remand for resentencing upon this basis.

II. Abuse of Discretion in Finding of Mitigators

Terrell contends that the trial court abused its discretion by omitting mitigating factors submitted for the trial court’s consideration.

In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (Ind. 2007), our Supreme Court determined that 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 the 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. So long as it is within the statutory range, a sentencing decision is subject to review on appeal for an abuse of discretion. Id. One way in which a trial court may abuse its discretion is to fail to enter a sentencing statement at all. Id. Another is to enter a sentencing statement that explains reasons for imposing a sentence and the record does not support the reasons, the statement omits reasons clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

At the sentencing hearing, Terrell advanced four mitigators for the trial court's consideration: his guilty plea, remorsefulness, rehabilitative efforts, and undue hardship to a dependent. The trial court recognized Terrell's rehabilitative efforts as mitigating but was silent as to the remaining mitigating circumstances. The trial court found Terrell's criminal history and the fact that the victim was a police officer to be aggravating circumstances. Terrell argues that the trial court abused its discretion by ignoring his guilty plea and "sincere expressions of remorse." Appellant's Brief at 11.

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 guilty plea 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, Terrell already received a significant benefit in exchange for his guilty plea, because the charges of Resisting Law Enforcement and Carrying a Handgun Without a License were dismissed.⁵

Moreover, a trial court is not required to find that a defendant's expression of remorse is a significant mitigating factor. See Pickens v. State, 767 N.E.2d 530, 535 (Ind. 2002) (finding that an expression of remorse requires a trial court function similar to a determination of credibility, which the reviewing court generally accepts). The trial court need only identify mitigating circumstances that it finds to be significant, and if the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist. Anglemyer, 868 N.E.2d at 493.

⁵ The Battery charge was based upon the same conduct as the Attempted Murder charge. Thus, Terrell did not receive an additional benefit from the dismissal of the Battery charge upon his plea of guilty to Attempted Murder. Double jeopardy principles would have precluded multiple punishments based upon the same conduct.

Terrell has failed to demonstrate that the trial court abused its discretion by omitting certain mitigating factors advanced by him.

III. Appropriateness of the Sentence

Indiana Code Section 35-50-2-4 provides in relevant part, “A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years.”

Terrell requests that we reduce his sentence to the advisory sentence thirty years, with ten years suspended.

Indiana Appellate Rule 7(B) 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.” In particular, Terrell emphasizes that he has taken significant steps toward rehabilitation.

The character of the offender is such that he had a history of multiple misdemeanor offenses and one felony drug offense. He was using and selling drugs at the time of the instant offense. Thus, he had failed to benefit from prior rehabilitative efforts. On the other hand, Terrell’s more recent actions indicated a willingness to benefit from rehabilitative efforts as he had obtained his GED, tutored other students, assisted jail personnel, attended substance abuse therapy, and pursued religious studies.

The nature of the offense is that Terrell fired multiple shots at a police officer engaged in his duties. Terrell did so in an effort to prevent the discovery of cocaine and a handgun in his possession.

In sum, the character of the offender suggests that leniency is appropriate while the nature of the offense militates against leniency. Terrell received a sentence that is five years more than the advisory sentence, with eleven years suspended. We do not find this sentence to be inappropriate in light of Terrell's character and the nature of his offense.

IV. Credit for Pretrial Confinement

Terrell's final contention is that his credit for pretrial confinement could be subject to dispute in the future because the trial court's oral sentencing statement did not include a reference to pretrial confinement and the clerk's record compiled for appellate review does not include a written judgment of conviction.

Indiana Code Section 35-38-3-2, governing the certification of judgment of conviction and sentence to the receiving authority, requires the trial court's judgment to include "the amount of credit, including credit time earned, for time spent in confinement before sentencing." Here, the Abstract of Judgment, which is an Indiana Department of Correction form, indicates that Terrell was in pretrial confinement for 389 days. "Sentencing judgments that report only days spent in pre-sentence confinement and fail to expressly designate credit time earned shall be understood by courts and by the Department of Correction automatically to award the number of credit time days equal to the number of pre-sentence confinement days." Robinson v. State, 805 N.E.2d 783, 792 (Ind. 2004).

The chronological case summary states that the trial court entered a judgment of conviction for attempted murder and Terrell was to receive "jail credit time of 389 days as agreed upon by both parties," (App. 15.) Neither the appellate record nor the arguments of

counsel reveal a dispute between the parties or a discrepancy in the available documents as to the appropriate number of days. In the interest of judicial economy, rather than remand for a trial court pronouncement, we recognize that Terrell was in pretrial confinement for 389 days, with entitlement to corresponding credit time.

Conclusion

Terrell has not demonstrated that the trial court abused its sentencing discretion nor has he persuaded this Court that his sentence is inappropriate. The record indicates that Terrell was in pretrial confinement for 389 days and is entitled to corresponding credit time.

Affirmed.

NAJAM, J., and CRONE, J., concur.