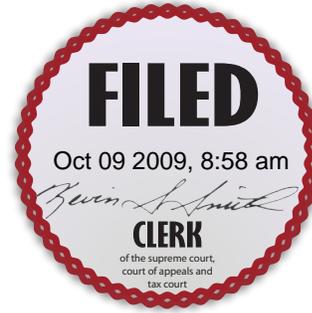


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

MICHAEL C. BORSCHEL
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE DONGIEUX WIGGINS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DEMARCUS PRIESTER,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A05-0902-CR-90

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark H. Rogers, Judge
The Honorable Melissa Kramer, Master Commissioner
Cause No. 49G17-0808-FD-195861

October 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

DeMarcus Priester appeals the denial of his motion to correct error regarding his aggregate six-year sentence for strangulation, criminal confinement, operating a vehicle while an habitual traffic violator, theft, domestic battery, and interfering with reporting a crime. We reverse and remand.

Issue

Priester raises one issue, which we restate as whether the trial court abused its discretion by ordering his sentences to be served consecutively for a total of six years.

Facts

Priester and M.T. had a child but did not live together. On August 19, 2008, Priester was upstairs in M.T.'s house, and M.T. was lying on the couch. Priester came downstairs, and M.T. thought that he had been drinking. M.T. told Priester that he had to leave because he had been drinking, and Priester refused. Priester began angrily questioning M.T. about a man who had called her cell phone. Priester repeatedly pushed M.T. down and punched M.T. seven or eight times in the face. Priester then put his hands around M.T.'s neck and choked her.

When Priester stopped choking M.T., she tried to leave, but Priester took her cell phone and would not allow her to get medical attention. After two hours, M.T. convinced Priester that they needed to pick up their child from school. Priester and M.T.

picked up their child, and Priester dropped M.T. off at the hospital. Priester was later arrested while driving M.T.'s vehicle, and M.T.'s cell phone was in his possession when he was searched at the time of his arrest.

The State charged Priester with: (1) Count I, strangulation as a class D felony; (2) Count II, criminal confinement as a class D felony; (3) Count III, operating a vehicle while an habitual traffic violator as a class D felony; (4) Count IV, theft as a class D felony; (5) Count V, domestic battery as a class A misdemeanor; (6) Count VI, battery as a class A misdemeanor; and (7) Count VII, interfering with reporting a crime as a class A misdemeanor. After a bench trial, the trial court found Priester guilty as charged but merged the battery conviction with the domestic battery conviction. The trial court orally sentenced Priester to: (1) two years for Count I, the strangulation conviction; (2) two years for the criminal confinement conviction to run consecutive to the sentence for Count I; (3) 180 days for the operating a vehicle while an habitual traffic violator conviction to run concurrent with the sentence for Count I; (4) one year for the theft conviction “to run consecutive;” (5) one year for the domestic battery conviction to run “consecutive;” and (6) 180 days for the interfering with reporting a crime conviction to run concurrent. Tr. p. 92. When asked for clarification, the trial court stated that Priester had been sentenced to “six years total.” *Id.* at 93. The chronological case summary and the abstract of judgment indicate that each of the sentences for the confinement, theft, and domestic battery convictions are consecutive to the sentence for Count I, the strangulation conviction.

Priester filed a motion to correct error, arguing that his offenses were a single episode of criminal conduct and that his maximum allowable aggregate sentence was four years pursuant to Indiana Code Section 35-50-1-2(c). After a hearing, the trial court denied Priester's motion. The trial court found that Priester's convictions did not "arise out of an episode of conduct" and that his sentence "of six years stands." App. p. 36.

Analysis

Priester argues that the trial court abused its discretion by ordering his sentences to be served consecutively for a total of six years. Specifically, Priester argues that his offenses were a single episode of criminal conduct and that his aggregate sentence was limited to four years. Before addressing Priester's argument, we address the State's contention that Priester was, in fact, sentenced to four years rather than six years. The State argues that, because the trial court ordered each of the sentences for the confinement, theft, and domestic battery convictions to be served consecutive to the sentence for the strangulation conviction, "Defendant's service of all three sentences commences running on the same date, i.e. when he is released on the strangulation count." Appellee's Br. pp. 7-8. Thus, according to the State, Priester was sentenced to only four years.

In interpreting the trial court's sentence, our supreme court has held that we examine both the trial court's oral statement and its written order to discern the findings of the trial court. McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007). We have "the option of crediting the statement that accurately pronounces the sentence or remanding

for resentencing.” Id. The trial court here twice emphasized that it had sentenced Priester to six years, not four years as argued by the State. Consequently, we conclude that the trial court intended to sentence Priester to an aggregate sentence of six years. See, e.g., Dowell v. State, 873 N.E.2d 59, 61 (Ind. 2007) (noting that trial court’s intent was to impose executed three-year sentence rather than suspended three-year sentence).

We now address Priester’s argument that the trial court abused its discretion by ordering his sentences to be served consecutively. The trial court has discretion to determine whether terms of imprisonment are to be served concurrently or consecutively. See Ind. Code § 35-50-1-2(c); Breaston v. State, 907 N.E.2d 992, 994 (Ind. 2009). Indiana Code Section 35-50-1-2(c) provides:

[E]xcept for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

“This limitation does not prohibit consecutive sentences, but it does limit the length of the sum of the consecutive sentences.”¹ Harris v. State, 861 N.E.2d 1182, 1185 (Ind. 2007).

Indiana Code Section 35-50-1-2(b) defines an episode of criminal conduct as “offenses or a connected series of offenses that are closely related in time, place, and

¹ Priester’s offenses were not “crimes of violence” under Indiana Code Section 35-50-1-2.

circumstance.”² The consecutive sentences here were for Priester’s convictions for strangulation, criminal confinement, theft, and domestic battery. Priester strangled, battered, and confined M.T. in her house within a short period of time because he was angry about her receiving calls from a man on her cell phone. He also took her cell phone during the incident. We conclude that the offenses were “closely related in time, place, and circumstance.” I.C. § 35-50-1-2(c). As a result, under the consecutive sentencing limitation of Indiana Code Section 35-50-1-2(c), the maximum aggregate sentence the trial court could impose for these convictions could not exceed four years, which is the advisory sentence for a class C felony, the next highest class of felony. See, e.g., Harris, 861 N.E.2d at 1189 (holding that defendant’s offenses were an episode of criminal conduct).

² Although Priester argues that his offenses were an episode of criminal conduct because a complete account of one charge cannot be related without referring to the details of the other charge, we note that our supreme court has held:

[A]lthough the ability to recount each charge without referring to the other can provide additional guidance on the question of whether a defendant’s conduct constitutes an episode of criminal conduct, it is not a critical ingredient in resolving the question. Rather, the statute speaks in less absolute terms: “a connected series of offenses that are closely connected in time, place, and circumstance.” I.C. § 35-50-1-2(b).

Reed v. State, 856 N.E.2d 1189, 1200 (Ind. 2006).

Conclusion

The imposition of a six-year sentence violated the consecutive sentencing limitation of Indiana Code Section 35-50-1-2(c). We reverse and remand with instructions that the trial court enter a sentence not to exceed four years.

Reversed and remanded.

NAJAM, J., and KIRSCH, J., concur.