

INDIANA SUPREME COURT

Jacob O. Robinson v. State of Indiana

91 N.E.3d 574 (Ind. 2018) · No. 18S-CR-33 · Decided February 23, 2018

SUMMARY

The Indiana Supreme Court affirmed Jacob O. Robinson’s convictions and sentences for attempted residential entry and resisting law enforcement. The court held that the trial court did not abuse its discretion in denying a continuance of the sentencing hearing and that Robinson’s three-year sentence for attempted residential entry was not inappropriate under Indiana Appellate Rule 7(B).

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Per Curiam; All Justices
JURISDICTION	Indiana
DECIDED	February 23, 2018
DOCKET	18S-CR-33
DISPOSITION	affirmed
PROCEDURAL POSTURE	Robinson appealed from his convictions and sentences, challenging the denial of a continuance of his sentencing hearing and the appropriateness of his maximum sentence under Indiana Appellate Rule 7(B). The Indiana Court of Appeals sua sponte reversed on other grounds. The Indiana Supreme Court granted transfer and addressed the issues Robinson raised.
STANDARD OF REVIEW	A ruling on a non-statutory motion for continuance is reviewed for abuse of discretion and resultant prejudice. A sentencing claim under Indiana Appellate Rule 7(B) is reviewed to determine whether the sentence is inappropriate in light of the nature of the offense and the character of the offender, with the defendant bearing the burden of persuasion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jacob O. Robinson v. State of Indiana

TOPICS

sentencing

criminal procedure

appellate procedure

standard of review

PRACTICE AREAS

criminal law

criminal procedure

appellate sentencing review

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying Robinson's request to continue the sentencing hearing.
2. Whether the maximum three-year sentence for Class D felony attempted residential entry was inappropriate under Indiana Appellate Rule 7(B).

HOLDINGS

1. The trial court did not abuse its discretion in denying Robinson's request for a continuance.
2. Robinson's three-year executed sentence for Class D felony attempted residential entry was not inappropriate under Indiana Appellate Rule 7(B) and did not warrant appellate revision.

KEY QUOTATIONS

“There is a strong presumption that the trial court properly exercised its discretion.” (91 N.E.3d at 575)

“The principal role of such review is to attempt to leaven the outliers.” (91 N.E.3d at 576)

FACTUAL BACKGROUND

Robinson fled from police, attempted to enter a house without permission, and broke the doorknob; police also found methamphetamine, a syringe, marijuana, and paraphernalia. He later fled from police while driving a car. He pleaded guilty to attempted residential entry and resisting law enforcement and admitted to being a habitual substance offender. Robinson failed to attend two presentence-investigation appointments and did not appear at his scheduled sentencing hearing, where the trial court denied a continuance and later imposed consecutive sentences, including the maximum three-year sentence for attempted residential entry.

PROCEDURAL HISTORY

Robinson pleaded guilty in two cases to attempted residential entry and resisting law enforcement, and admitted to being a habitual substance offender. The trial court denied a last-minute request to continue sentencing after Robinson failed to appear and had missed two presentence-investigation appointments, then imposed consecutive sentences and a habitual-substance-offender enhancement. The Court of Appeals reversed on grounds unrelated to the issues raised by Robinson; the Supreme Court granted transfer, vacated the Court of Appeals decision, addressed Robinson's claims, and affirmed the trial court.

DISPOSITION

affirmed

CASES CITED

- Robinson v. State, 84 N.E.3d 652 (Ind. Ct. App. 2017)
- Maxey v. State, 730 N.E.2d 158, 160 (Ind. 2000)
- Palmer v. State, 704 N.E.2d 124, 127 (Ind. 1999)
- Warner v. State, 773 N.E.2d 239, 247 (Ind. 2002)
- Serino v. State, 798 N.E.2d 852, 856 (Ind. 2003)
- Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008)
- Bowman v. State, 51 N.E.3d 1174, 1181 (Ind. 2016)

OPINION

Jacob O. Robinson v. State of Indiana 91 N.E.3d 574

PER CURIAM.

FILED

Feb 23 2018, 11:47 am

CLERK

Indiana Supreme Court Court of Appeals and Tax Court

IN THE

Indiana Supreme Court Supreme Court Case No. 18S-CR-33 Jacob O. Robinson, Appellant (Defendant), –v– State of Indiana, Appellee (Plaintiff). Argued: February 15, 2018 | Decided: February 23, 2018 Appeal from the Floyd Circuit Court, No. 22C01-1402-FD-377 The Honorable J. Terrence Cody On Petition to Transfer from the Indiana Court of Appeals, No. 22A01-1604-CR-856 Per Curiam Opinion All Justices concur. Per Curiam. Facts and Procedural History On February 21, 2014, Jacob O. Robinson fled from police on foot, attempted to enter a house without the owner’s permission, and broke the doorknob. The State charged Robinson under Case No. 22C01-1402-FD- 377 (“Case 377”) with Class D felony attempted residential entry, Class D felony possession of methamphetamine, Class D felony unlawful possession of a syringe, Class A misdemeanor possession of marijuana, Class A misdemeanor possession of paraphernalia, and Class A misdemeanor resisting law enforcement. The State also alleged Robinson is a habitual offender and a habitual substance offender. In November 2014, while out on bond, Robinson fled from police while driving his car. The State charged Robinson under Case No. 22C01-1411- F6-1932 (“Case 1932”) with Level 6 felony resisting law enforcement and alleged he is a habitual offender. In Case No. 377, Robinson pleaded guilty to Class D felony attempted residential entry. See Ind. Code §§ 35-43-2-1.5 (effective 1991 to June 30, 2014), 35-41-5-1 (effective 1977 to June 30, 2014). He also admitted to being a habitual substance offender. In Case No. 1932, Robinson pleaded guilty to Level 6 felony resisting law enforcement. In exchange, the State dismissed all other charges in Case No. 377 and, in both cases, dropped the allegation that Robinson is a habitual offender. At the guilty plea hearing, the trial court scheduled a sentencing hearing for September 24, 2015, at 10:30 a.m., and instructed Robinson to make an appointment with the

probation department for purposes of the presentence investigation report. (Tr. pp. 20-21.) Robinson failed to attend two scheduled appointments. Robinson also failed to appear at his sentencing hearing. His attorney appeared late due to a trial in another county. Counsel orally moved for a continuance of the sentencing hearing, informing the court he had received a text from Robinson that morning at 6:34 a.m. asking counsel to Indiana Supreme Court | Case No. 18S-CR-33 | February 23, 2018 Page 2 of 6 “get this case laid over” because Robinson had a real estate closing “coming up in the next few days” and “wish[ed] to get his ducks in line.” (Tr. p. 25.) Counsel had tried to call Robinson, but Robinson’s phone did not accept calls, only texts, and counsel was unable to send a text due to problems with his service provider. The trial court denied a continuance, indicating Mr. Robinson was in Court on the day that this hearing was scheduled and he blew off two appointments with . . . the probation officer [] in preparation of the Report and that leads me to the conclusion that Mr. Robinson isn’t taking this matter seriously so that’s why I’m denying the continuance[.] (Tr. p. 27.) The court held the hearing in Robinson’s absence, and counsel presented argument in Robinson’s defense. The presentence investigation report filed with the court indicates Robinson has an extensive criminal history that includes multiple drug related convictions. The court sentenced Robinson to three years executed on the attempted residential entry conviction and two years executed on the resisting law enforcement conviction, with the sentences to be served consecutively. The court withheld sentencing on the habitual substance offender enhancement until Robinson appeared in court and issued a warrant for his arrest. Robinson was arrested in January 2016. He appeared with counsel at the second sentencing hearing on March 3, 2016. The court imposed a three-year sentence on the habitual substance offender enhancement, with one and one-half years executed and one and one-half years suspended to probation. Robinson appealed and raised two issues. First, whether the trial court abused its discretion in denying his motion to continue the sentencing hearing. Second, whether the maximum sentence on the attempted residential entry conviction was inappropriate under Appellate Rule 7(B). The Court of Appeals addressed neither issue and, instead, sua sponte Indiana Supreme Court | Case No. 18S-CR-33 | February 23, 2018 Page 3 of 6 reversed on other grounds. *Robinson v. State*, 84 N.E.3d 652 (Ind. Ct. App. 2017), vacated. Having granted transfer, we address the issues Robinson raised on appeal.¹ Discussion and Decision I. The Trial Court Did Not Abuse Its Discretion in Denying a Continuance. Rulings on non-statutory motions for continuance are within the trial court’s discretion and will be reversed only for an abuse of that discretion and resultant prejudice. *Maxey v. State*, 730 N.E.2d 158, 160 (Ind. 2000). An abuse occurs only where the trial court’s decision is clearly against the logic and effect of the facts and circumstances. *Palmer v. State*, 704 N.E.2d 124, 127 (Ind. 1999). “There is a strong presumption that the trial court properly exercised its discretion.” *Warner v. State*, 773 N.E.2d 239, 247 (Ind. 2002). We conclude the trial court did not abuse its discretion in denying Robinson’s request to continue the sentencing hearing. Robinson sought a last-minute continuance on grounds he had a real estate closing within the next few days and desired to “get his ducks in line.” He also failed to

attend two appointments with the probation department. II. The Trial Court's Sentence for Attempted Residential Entry Is Not Inappropriate. The Indiana Constitution authorizes appellate review and revision of a trial court's sentencing decision. Ind. Const. art. 7, §§ 4, 6; *Serino v. State*, 1The State raised a single issue on cross-appeal, whether Robinson timely filed his Notice of Appeal. We find it unnecessary to address this issue. Indiana Supreme Court | Case No. 18S-CR-33 | February 23, 2018 Page 4 of 6 798 N.E.2d 852, 856 (Ind. 2003). This authority is implemented through Indiana Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court's decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender. *Serino*, 798 N.E.2d at 856. The principal role of such review is to attempt to leaven the outliers. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The burden is on the defendant to persuade the reviewing court that the sentence is inappropriate. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016). Under the statute then in effect, the sentence for a Class D felony was a fixed term between six months and three years, with an advisory term of one and one-half years. I.C. § 35-50-2-7 (effective July 1, 2013 to June 30, 2014). The trial court sentenced Robinson to three years executed on the conviction for Class D felony attempted residential entry, finding Robinson's criminal history outweighed any mitigating factors. (Tr. p. 35.) Our judgment is that the sentence imposed by the trial court is not inappropriate under Appellate Rule 7(B) and does not warrant appellate revision. Conclusion We affirm the trial court. All Justices concur.

ATTORNEY FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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