

STATE OF INDIANA
DELAWARE COUNTY

SS:

IN THE DELAWARE CIRCUIT
COURT NO. 1

STATE OF INDIANA

CAUSE NO. 18C01-1203-FA-0005
CAUSE NO. 18C01-1205-FC-0027

v.

BRANDON THOMAS MURPHY

CONSOLIDATED ORDER ON SENTENCING

The State of Indiana appears by Louis Denney, Deputy Prosecuting Attorney; Defendant, Brandon Thomas Murphy, appears in person and by counsel, Michael Quirk; Connie Pickett, Adult Probation Officer, appears; all for hearing on this 8th day of April, 2013, before the Honorable Marianne Vorhees, Judge.

The Court has vacated its order dated March 11, 2013, in Cause No. 18C01-1203-FA-0005. The Court restored Defendant to the status of not guilty on all counts in Cause No. 18C01-1203-FA-0005. The Court reinstated Cause No. 18C01-1205-FC-0027.

The Court, having taken under advisement the offered pleas of guilty and the proposed Plea Agreement, now accepts the offered pleas of guilty and approves the Plea Agreement and finds Defendant guilty in Cause No. 18C01-1203-FA-0005 as to Count 5, Battery by Means of a Deadly Weapon, a Class C felony; and in Cause No. 18C01-1205-FC-0027, as to Count 1, Battery by Means of a Deadly Weapon, a Class C felony.

The Court enters a judgment of conviction in Cause No. 18C01-1203-FA-0005 as to Count 5, Battery by Means of a Deadly Weapon, a Class C felony; and in Cause No. 18C01-1205-FC-0027, as to Count 1, Battery by Means of a Deadly Weapon, a Class C felony.

The Court now proceeds to sentencing and considers the pre-sentence investigation report together with the evidence as presented and the final comments of counsel. The Court, being duly and sufficiently advised in this cause, now finds as follows:

Circumstances Supporting an Enhanced Sentence:

1. Defendant has prior adjudications as a juvenile as follows: Entering Without Owner's Permission, Cause No. 09-00845, Wayne County, Michigan; and the same charge, Cause No. 09-04757, Wayne County, Michigan; the Court gives these adjudications some weight, as Defendant received the benefit of "intensive probation" in these cases and did not take advantage of that rehabilitative opportunity.

2. Defendant has a prior felony conviction as follows: Motor Vehicle Unlawful Driving Away, a felony (Cause No. 10003679-01-FH, Wayne County, Michigan); the Court gives this conviction some weight, as Defendant was given additional opportunities to rehabilitate himself through incarceration and did not take advantage. **Note: this adjudication causes the minimum sentences in both cases to be non-suspendible under Indiana Code 35-50-2-2.**
3. Defendant has a prior misdemeanor convictions as follows: Retail Fraud, Cause No. 09-182354, Wayne County, Michigan; and Battery Resulting in Bodily Injury, a Class A misdemeanor, in Cause No. 18C04-1108-FD-0145. The Court gives the battery conviction some weight, even though it is a misdemeanor, because Defendant was sentenced in that case on January 11, 2012, and committed the first offense just over Two (2) Months later. The short time period between sentencing and this incident supports an enhanced sentence. Also, the battery conviction is the same type of offense as involved in the two cases before the Court.
4. Defendant was on supervised probation in Cause No. 18C04-1108-FD-0145 when he committed this offense; again, the Court gives this factor some weight, because it indicates prior attempts at rehabilitation through Delaware County Jail (he served a Six Month jail sentence in that case) and supervised probation have failed.
5. As to the Cause No. 18C01-1205-FC-0027, Battery Resulting in Bodily Injury, the injuries to the victim were greater than those associated with the offense itself; the victim suffered from a concussion and had staples in his head, stitches in his ear and chin, and several cuts to the forehead; the Court gives this factor some weight.

Circumstances Supporting a Reduced Sentence:

1. Defendant entered guilty pleas in these cases and accepted responsibility, and he saved the State the cost of going to trial; the Court gives this factor some weight.
2. Long term incarceration could cause undue hardship to the Defendant's dependent; the Court gives this factor some weight.
3. Defendant's youthful age, now Age 20; the Court gives this factor minimal weight, as Defendant committed both offenses using weapons.
4. Defendant has strong family backing and support; the Court gives this factor minimal weight, as Defendant had the opportunity to use this support to avoid committing crimes.

In weighing the above factors, the Court finds the circumstances supporting an enhanced sentence outweigh the circumstances supporting a reduced sentence, supporting an enhanced sentence. Defendant was on probation and had just been released from jail about two months before he committed this offense. Defendant has two juvenile adjudications, two misdemeanor convictions, and one prior felony conviction, all within less than Three (3) Years.

The nature of each offense supports an enhanced sentence. Defendant fired a weapon into a crowd, which could have resulted in serious injuries or even death. Defendant inflicted serious injuries upon the victim using a weapon. The pattern of Defendant's juvenile and adult criminal offenses includes other battery offenses and indicates an escalating pattern of violence toward others.

Defendant's character supports an enhanced sentence. Defendant was offered prior opportunities to rehabilitate himself through Delaware County Jail, SAI Boot Camp, juvenile probation, and adult supervised probation, which have failed. Defendant needs rehabilitative treatment through incarceration at the Department of Correction. Defendant was on supervised probation when he committed the offenses in these cases.

Therefore, as to **Cause No. 18C01-1203-FA-0005, as to Count 5, Battery by Means of Deadly Weapon, a Class C felony**, Defendant is committed to the custody of the Department of Correction for a period of Six (6) Years, executed.

Defendant shall pay a \$1.00 fine, the \$100.00 Public Defender Fee, and court costs of \$179.00, but Defendant is indigent and shall not be incarcerated for his failure to pay the same.

The Court enters a judgment against Defendant for the \$100.00 Public Defender Fee.

The Court grants Defendant credit for 348 actual days served in the Delaware County Jail, which is Class I credit time (4/25/12 to 4/7/13).

The State of Indiana moves to dismiss Counts 1, 2, 3, 4, and 6. Defendant having no objection, the Court dismisses Counts 1, 2, 3, 4, and 6.

Therefore, as to **Cause No. 18C01-1205-FC-0027, as to Count 1, Battery by Means of Deadly Weapon, a Class C felony**, Defendant is committed to the custody of the Department of Correction for a period of Six (6) Years, executed.

Defendant shall pay a \$1.00 fine and court costs of \$179.00, but Defendant is indigent and shall not be incarcerated for his failure to pay the same.

The Court enters a judgment against Defendant for the \$100.00 Public Defender Fee.

Defendant shall serve the sentence in Cause No. 18C01-1205-FC-0027 consecutively to the sentence in Cause No. 18C01-1203-FA-0005. The two offenses are separate and distinct occurrences. Both involve particularly disturbing facts (discharging a firearm at people; causing serious injuries to a person using brass knuckles). Defendant was the principal in both acts. Both incidents involved some degree of care and planning.

The Court recommends the Department of Correction place Defendant in a Therapeutic Community during the time he is serving in Cause No. 18C01-1205-FC-0027. The Court will not modify the sentence but believes Defendant would benefit from the program and the 180 day time cut he will receive from the Program.

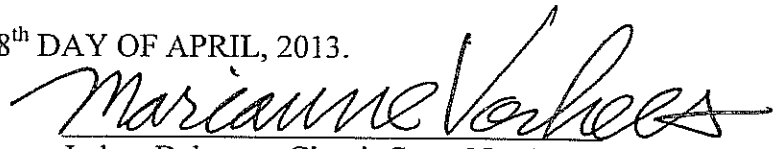
The Court also recommends the Department of Correction place Defendant in a facility where he can obtain his GED.

Any weapon recovered as a result of this offense shall be destroyed.

Defendant is reminded he waived his right to appeal the sentence in this case.

The Clerk shall issue notice to the Central State Repository of this matter's disposition.

ALL OF WHICH IS ORDERED THIS 8th DAY OF APRIL, 2013.


Judge, Delaware Circuit Court No. 1

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Defendant's counsel/M. Quirk/B. Murphy P.D.
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