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Judge refuses to change Abernathy's sentence in beating case

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CHARLESTON — Jason Abernathy was “planning an attack, a vicious attack” when he beat Gina Giberson, a judge said Thursday, and refused to reduce the 20-year prison sentence Abernathy received for the beating.

Circuit Judge Gary Jacobs denied a motion to reconsider the sentence he imposed last week. That means an appellate court is the next stop for Abernathy, as the motion to reduce the sentence was a necessary step before an appeal.

Abernathy, 35, is now in Illinois Department of Corrections custody following his conviction at a trial in December on a charge of aggravated domestic battery. He wasn't returned to Coles County for Thursday's hearing.

Jacobs spoke at length about the trial evidence against Abernathy to explain why he thinks the sentence was justified. Evidence that Giberson suffered about a dozen brain contusions and other injuries contradicted Abernathy's self-defense claim, namely that Giberson attacked him with the bat and he hit her in response, Jacobs said.

The judge also said it was clear that Abernathy was upset that Giberson kicked him out of the house at 211 Fourth St., Charleston, and evidence showed that he took a bat from a friend's house and used it to attack her.

Jacobs also said there was a “strong correlation” to Abernathy starting a fire that destroyed the house hours after the Oct. 16, 2007 beating, with the possible motive of trying to conceal evidence, and noted that it took Abernathy several hours to get Giberson to a hospital.

“I don't see these actions as someone defending himself,” Jacobs said.

Defense attorney Mark Wykoff argued that Abernathy had to defend himself against a woman with a “pattern” of violence against men with whom she's romantically involved. He noted trial testimony from men who said Giberson attacked them and

added that it continued more recently, as Giberson allegedly was also involved in a fight with a man last month.

State's Attorney Steve Ferguson responded by saying the jury at Abernathy's trial "didn't see that as an issue in regards to this particular event." He said Giberson "does not make good choices in regards to men" but the recent incident didn't have anything to do with the sentence Abernathy deserved.

Jerry W. Cox, 47, has been charged with a misdemeanor domestic battery offense for allegedly hitting Giberson in the face on Feb. 20. At Abernathy's sentencing, his attorneys argued that Giberson was the aggressor and Cox was the more seriously injured, but just after the incident Charleston police said Giberson reported that Cox injured her and she wanted him arrested.

At the conclusion of Thursday's hearing, Jacobs granted Wykoff's request that an appellate public defender be appointed to handle Abernathy's appeal.

Abernathy was eligible for a prison sentence of six to 30 years, with prison time required and the possible sentencing range above the normal maximum because of his criminal record. He received credit on the sentence for the roughly 13 months he was jailed before his conviction and is eligible for day-to-day credit in prison while serving his sentence.

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