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Abernathy gets 20 years in prison for beating

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CHARLESTON — Gina Giberson may be “no saint” but was nonetheless a victim of a “heinous” attack at the hands of Jason Abernathy that wasn’t justified, Circuit Judge Gary Jacobs concluded Wednesday.

Jacobs sentenced Abernathy to 20 years in prison for beating Giberson with a baseball bat.

Jacobs said he didn’t believe Abernathy’s self defense claims and the rest of his version of the October 2007 attack, the same conclusion a jury reached during a trial in December. The jury convicted Abernathy on a charge of aggravated domestic battery.

“Gina Giberson was the victim of a very serious and, I would say, very heinous attack,” the judge said Wednesday. “Mr. Abernathy is, in some sense, lucky he’s not being sentenced on a murder charge.”

Abernathy, 35, faced a sentence of six to 30 years for the conviction. Prison time was mandatory and the maximum sentence possible was more than normal for the offense because of his prior convictions. At Wednesday’s sentencing hearing, State’s Attorney Steve Ferguson argued for a 28-year prison term and defense attorney Mark Wykoff asked for a seven-year sentence.

Giberson was injured at her home at 211 Fourth St., Charleston, early on the morning of Oct. 16, 2007. Abernathy, who was in a relationship with Giberson and also lived there, never denied hitting her but claimed she first tried to hit him with an aluminum baseball bat and she was hurt when she fell after he hit her trying to defend himself.

During the trial, the prosecution used the extent of Giberson’s injuries, which put her in a coma, to try to convince the jury that Abernathy’s version wasn’t believable. Their contention was he took the bat from a friend’s house and returned to Giberson’s home to attack her because she’d kicked him out.

And while Abernathy was never charged with setting the fire that destroyed the house the same morning, the prosecution tried to get the jury to believe he might have started it to hide evidence. That theory was something Abernathy’s attorneys indicated Wednesday they would attack in their attempts to get Jacobs to reconsider the sentence and to appeal the conviction.

Abernathy, who's been jailed since his arrest the day Giberson was attacked, cried heavily during a statement to Jacobs, during which he apologized to Giberson's family as well as his own.

"I still love her," Abernathy said to Jacobs, with his voice trailing off as he added: "I know that sounds" He then turned to members of Giberson's family in the courtroom audience.

"I am so sorry," he said. "Please let her know I love her. A part of me is gone now and I can't get it back."

As they did during Abernathy's trial, Wykoff and co-defense counsel Monroe McWard tried Wednesday to show that Giberson could have started the attack, based on her history of violence toward men with whom she's involved.

The wife of a man who was reportedly involved in a fight with Giberson last month testified that he told her that Giberson attacked him. Marsha Cox said her husband Jerry Cox was living with Giberson when she attacked him on Feb. 20.

Jacobs allowed the testimony over an objection from Ferguson, who said it wasn't relevant to Abernathy's conviction and sentencing. The judge didn't say how much consideration he gave it, though he later said Giberson was "no saint" but it was apparent that she was the only victim in the incident with Abernathy.

Ferguson also noted that a police report on the incident indicated that Cox told Giberson he was "tougher than Jason." Charleston police said last week that Giberson reported that Cox injured her and she requested that he be charged. No one was charged in connection with the incident as of Wednesday.

Wykoff acknowledged that Abernathy has a lengthy criminal history which began as a juvenile and included other violent crimes. However, he said Abernathy had been trying to turn himself around since he was released from his last prison sentence, and trying to start a life with Giberson was part of that.

"He simply wants nothing more than to be a normal guy," Wykoff said. "Mr. Abernathy is a genuinely respectful man. He's a big, burly guy who absolutely wears his heart on his sleeve."

And while the jury didn't believe Abernathy's self defense claim, that still could have been a part of what led Abernathy to do what he did, Wykoff also said.

"He was operating under the belief that he was going to have great bodily harm inflicted upon him," he said.

Ferguson contended that Abernathy not only initiated the attack but planned it ahead of time, noting evidence that he took the bat from a friend's house after Giberson kicked him out, and then "went back armed, if you will, ready to have it

out.”

Abernathy “hasn’t gotten the message” with his earlier convictions and his record showed that “when he gets angry, he explodes,” Ferguson said.

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