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IN THE
COURT OF APPEALS OF INDIANA

HOWARD CANNADY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 14A04-0911-CR-668
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DAVIESS SUPERIOR COURT
The Honorable Dean A. Sobecki, Judge
Cause No. 14D01-0802-FB-119

March 3, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Howard Cannady pleaded guilty to Neglect of a Dependent Causing Serious Bodily Injury,[1] a class B felony. The trial court sentenced Cannady to sixteen years, with four years suspended to probation. On appeal, Cannady argues that his sentence is inappropriate.

We affirm.

The factual basis underlying Cannady's guilty plea reveals the following facts. Between January 1, 2007 and January 4, 2008, Cannady was a primary caregiver for his infant son, C.C. During that time period, Cannady inflicted severe, disfiguring injuries on C.C., including at least thirteen cigarette burns on his nose, collarbone, back, stomach, and both thighs. The cigarette burns have left permanent scarring about his body. Cannady also squeezed C.C. so hard that he broke four of C.C.'s ribs.

On February 12, 2008, the State charged Cannady with Count I, neglect of a dependent resulting in serious bodily injury, a class B felony; Counts II and III, battery resulting in bodily injury, as class B felonies; and Count IV, neglect of a dependent, a class D felony. On May 6, 2009, Cannady pleaded guilty to Count I and the State agreed to dismiss the remaining charges. The trial court held a sentencing hearing on July 24, 2009. During the hearing, the court discussed the pre-sentence investigation (PSI) report with Cannady. Cannady testified about his criminal history, his childhood, and his drug usage throughout his life. Cannady further testified about his efforts to improve himself while in jail. The court considered the PSI report, the testimony presented, and the arguments of counsel before sentencing Cannady to sixteen years, with four years suspended to probation. In explaining

[1] Ind. Code Ann. § 35-46-4-1 (West, Westlaw through 2009 1st Special Sess.).

the sentence imposed, the trial court noted that Cannady had a "horrible" childhood, that his criminal history included a prior felony conviction, and the effort Cannady had made in jail to better himself. *Transcript* at 71.

Cannady argues that his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Ind. Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g by* 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that Cannady bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

With regard to the nature of the offense, Cannady acknowledges that he burned his one-year-old son with cigarettes in multiple places on his body and that he squeezed him so hard that he broke four of C.C.'s ribs. Cannady asks us to consider, however, that other than the scarring left by the cigarette burns, the physical injuries are not permanent. The fact that some of the physical injuries he inflicted upon his one-year-old son will heal does not make the nature of the offense any less heinous. Cannady deliberately inflicted severe and disfiguring wounds on his infant son. At sentencing, Cannady admitted that he burned his son because he was upset that he did not have any dope. We, frankly, find this assertion to be absurd.

With regard to his character, Cannady asks us to consider his upbringing by a drug-addicted mother and the fact that he was a victim of sexual and physical abuse. Canady admits that he began using drugs at a young age and that he was a chronic drug user and has been abusing drugs, including marijuana, crack cocaine, and methamphetamine, for many years. Cannady admitted that be became frustrated when he ran out of money for drugs and that he took his frustrations out on his son. Cannady asks us to discount his prior theft-related convictions, arguing that they are not significant in reference to the current conviction for neglect of a dependent. Cannady also asks us to consider his acceptance of responsibility and his expression of remorse as reflecting positively on his character as well as his efforts to better himself while in jail on this charge.

As recognized by the trial court, Cannady had a "horrible" childhood. *Transcript* at 71. As further recognized by the trial court, Cannady has simply continued the cycle of abuse by burning his one-year-old son with cigarettes and squeezing him so hard that he broke four of the child's ribs out of his frustration over the inability to obtain drugs. In the past, Cannady has had several contacts with the criminal justice system as a juvenile and as an adult while residing in California. Cannady has three prior felony convictions, two of which were later reduced to misdemeanors, and has twice violated his probation. His prior crimes are for robbery, battery, and theft.

Turning to his acceptance of responsibility and expression of remorse, we disagree that the trial court overlooked such factors. The trial court acknowledged that Cannady admitted what he had done to his son and his expression of remorse. The court also noted

Cannady's efforts while in jail to change his life for the benefit of his son. Be that as it may, the trial court acts within its discretion in considering whether these mitigators should apply in a sentencing matter. *See Gibson v. State*, 856 N.E.2d 142, 146 (Ind. Ct. App. 2006) ("[r]emorse, or lack thereof, by a defendant often is something that is better gauged by a trial judge who views and hears a defendant's apology and demeanor first hand and determines the defendant's credibility"); *Davies v. State*, 758 N.E.2d 981, 987 (Ind. Ct. App. 2001) (affirming the trial court's refusal to find defendant's guilty plea as a mitigating circumstance when the record indicated that the plea as "more likely the result of pragmatism than acceptance of responsibility or remorse"), *trans. denied.* Cannady's expression of remorse and acceptance of responsibility were not so compelling that the trial court can be said to have abused its discretion in imposing the sentence. Indeed, in terms of our appellate review, we are not persuaded that Cannady's expression of remorse and acceptance of responsibility reflect so positively on his character as to render the sentence inappropriate.

Having considered the nature of the offense and the character of the offender, we conclude that the sixteen-year sentence imposed by the trial court is not inappropriate.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.-