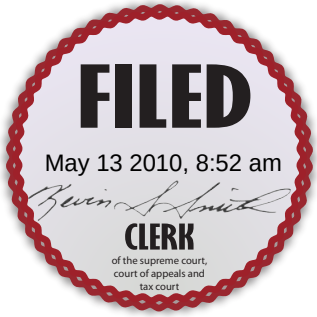

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IN THE
COURT OF APPEALS OF INDIANA

DIA KHARI NELSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0910-CR-610
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0707-MR-00007

May 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Dia Khari Nelson appeals his forty-year sentence for Class A felony voluntary manslaughter. Concluding that Nelson's sentence is not inappropriate in light of the nature of the offense and his character, we affirm.

Facts and Procedural History

Nelson and ShaDonna Cheatham were in a romantic relationship. On the evening of July 26, 2007, Nelson and Cheatham got into an argument in the apartment they shared in Gary, Indiana. Nelson shot Cheatham in the head while acting under sudden heat. Cheatham died as a result of her injuries.

At the time of the offense, Nelson was out on bond in cause number 45G02-0403-FC-00033 ("FC-33"), in which he was charged with one count of Class C felony unlawful possession of a handgun and two counts of Class D felony criminal recklessness.

The State charged Nelson with murder a few days later. On July 24, 2009, three days before the jury trial, Nelson pled guilty pursuant to a plea agreement to an amended count of Class A felony voluntary manslaughter.[1] In exchange, the State agreed to dismiss the murder count and FC-33. The plea agreement made no restrictions on sentencing.

At the sentencing hearing, the trial court found the fact that Nelson was out on bond in FC-33 when he shot Cheatham to be a significant aggravator. Because Nelson's previous criminal convictions consisted of two misdemeanors around ten years old, the

[1] Ind. Code § 35-42-1-3.

trial court did not consider his criminal history to be a significant aggravator. Nelson's guilty plea was not found to be a significant mitigator because the evidence favoring a murder conviction was strong. The trial court found that the aggravators outweighed the mitigators and sentenced Nelson to forty years. Nelson now appeals.

Discussion and Decision

Nelson contends that his forty-year sentence for Class A felony voluntary manslaughter is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The defendant has the burden of persuading us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Nelson pled guilty to Class A felony voluntary manslaughter. The statutory range for a Class A felony is between twenty and fifty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4.

Regarding the nature of the offense, Nelson shot his girlfriend in the head while they were arguing.

Regarding the character of the offender, Nelson pled guilty to Class A felony voluntary manslaughter pursuant to a plea agreement in which the State agreed to dismiss the murder count and FC-33. We do not believe Nelson's decision to plead guilty reflects particularly positively on his character in light of the benefit he received from the State and because the evidence favoring a murder conviction was strong. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("[A] guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one."), *trans. denied*.

We acknowledge that Nelson expressed remorse and asked for forgiveness from Cheatham's family. Nevertheless, after Nelson addressed Cheatham's family, the trial court stated, "I find it very disingenuous, Mr. Nelson, that you would dare counsel the Cheatham family on how to deal with the tragedy you caused." Tr. p. 69. It is clear from this statement that the trial court did not completely trust the genuineness of Nelson's remorse.

Nelson also notes his strong support from family and clergy. The people who testified on his behalf at the sentencing hearing certainly establish that he has many people who care for him. However, although Nelson's father had arranged for others to speak with Nelson and try to get him on the right path, these attempts were not enough to keep him from shooting Cheatham. Further, Nelson's two young children will likely suffer minimal financial hardship from his incarceration as he has never been ordered to

pay child support, and in any event, he has only worked briefly from 1995 to 1996 and 2001 to 2002.

Nelson, who was thirty-three at the time of the offense, does not have a particularly lengthy criminal history. He has an infraction for a seat belt violation and two misdemeanors: one from 1998 for public intoxication and the other from 1999 for carrying a handgun without a license. In addition to the unlawful possession of a handgun and criminal recklessness charges pending at the time of this offense, at the time the Pre-Sentence Investigation Report was compiled, Nelson had a pending case for pointing a firearm and battery in 2003.

Although his criminal history is not extensive, particularly relevant to our consideration is the fact that Nelson was out on bond at the time he shot Cheatham.

Nelson has failed to persuade us that his forty-year sentence is inappropriate in light of the nature of the offense and his character.

Affirmed.

NAJAM, J., and BROWN, J., concur.