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IN THE
COURT OF APPEALS OF INDIANA

TERRELL WALLACE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0908-CR-738
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-0808-MR-201514

May 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Terrell Wallace appeals his convictions for Murder, a felony; Robbery, as a Class B felony; Burglary, as a Class B felony; and Carrying a Handgun without a License, as a Class A misdemeanor, following a jury trial, and he appeals the sentences imposed. We consider the following on review:

1. Whether the trial court erred when it denied Wallace's request, first made on the morning of trial, to represent himself.

2. Whether the court abused its discretion by granting the State's motion for joinder of charges over Wallace's objection.

3. Whether the court abused its discretion when it identified aggravating and mitigating factors.

4. Whether Wallace's sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

In January 2008, Crystal Digbie and her two-year-old daughter moved into unit B-8 of the North Oaks of Broad Ripple Apartments in Indianapolis. Clois Goldsmith, Digbie's boyfriend at the time, moved in with Digbie in May. In June, Goldsmith introduced Digbie to his friend, eighteen-year-old Wallace, and Wallace's girlfriend, Tanika Bonds. Goldsmith and Wallace saw each other frequently until Goldsmith started a job at a nearby grocery. Thereafter, Wallace called Goldsmith two or three times a day on Digbie's cell phone.

At 11:00 p.m. on July 1, Wallace arrived at Digbie and Goldsmith's apartment with a girlfriend, Crystal, and her sister. Wallace entered the building, and Goldsmith

and Wallace argued in the hallway. After the argument, Wallace and the sisters left in a car. The following day, around 6:00 or 7:00 p.m., Wallace called Digbie's cell phone. Goldsmith took the phone and argued again with Wallace.

Digbie next saw Wallace late on July 21. That evening, Digbie and Goldsmith were taking a shower when they heard a loud "bam" twice. Goldsmith and Digbie exited the shower and, looking out the bathroom door, saw Wallace and another man, unknown to Digbie, in the hallway of Digbie's apartment. Digbie told Goldsmith "your friend just kicked in my door." Transcript at 132. Goldsmith then moved to stand in front of Digbie.

The man with Wallace asked, "Where is the weed at [sic]?" and "made a gesture which made [Digbie] look down, and he had a gun in his hand to his side." Id. at 133. That man was wearing black winter gloves, and the gun was a small, black handgun "like a revolver." Id. at 135. The man also asked, "Where is the money?" Id. Goldsmith replied, "I do not smoke. There is no weed and there is no money." Id. The man said that Wallace had told him that Digbie and Goldsmith had "fifteen Gs" in the house. Id.

The man searched the house, but after finding no money or "weed" said to Wallace, "I thought you said there was some money in the house." Id. at 139. Wallace then asked Goldsmith for money and checks. Wallace searched the apartment, including lifting the toilet basin lid. The other man threatened to kill everyone in the apartment before pointing the gun at the ceiling and firing. At some point, the other man gave Wallace the gun, took new clothes that Goldsmith had recently purchased, and left the apartment. Wallace, now armed, said "I am going to kill you," grabbed Digbie and

kissed her forehead, grabbed Goldsmith and kissed his forehead, "backed up like he was about to shoot," and then laughed and said "I'm not even going to kill y'all." Id. at 150-51. Wallace then left with Digbie's food stamp card.

After Wallace left, Digbie and Goldsmith ran to a friend's apartment, where they stayed. Goldsmith told Digbie, "I will handle it." Id. at 155. After pacing back and forth for a while at the friend's apartment, Goldsmith went to the home of Wallace's mother and fired several shots at the home. On the afternoon of July 22, Wallace called Digbie's cell phone and asked for Goldsmith. When Digbie told him that Goldsmith was at work, Wallace said "Your man shot up my mama [sic] house. I'm going to kill him when I see him." Id. at 165. Over the following three or four days, Wallace repeatedly called Digbie's phone asking for Goldsmith, saying "I'm going to keep calling until I get in contact with him. I'm going to kill him when I see him," and then he would hang up. Id. at 166.

On July 28, Digbie and Goldsmith purchased a white Dodge Avenger. On July 30, Goldsmith and Digbie returned home from McDonald's in the Avenger when Wallace called Digbie's cell phone. Goldsmith answered and spoke with Wallace for twenty to thirty minutes. While on the phone, Goldsmith asked Digbie the location of Arlington, Emerson, and other Indianapolis streets. At the end of the conversation, Goldsmith said, "I'm on my way." Id. at 174. Goldsmith, armed with a .380-caliber handgun, then left in the Avenger.

Later that evening, Goldsmith and Wallace went to the apartment of Wallace's long-time friend, Robert "Tank" Kennedy. In Digbie's car, the three young men went to

visit some girls at the Mallard Cove apartments. Wallace and Goldsmith discussed robbing the boyfriend of Wallace's cousin. The robbery was going to "settle" Wallace's and Goldsmith's "differences." Id. at 379. The three men then drove to Hawthorn Apartments, where Wallace's cousin lived, and Goldsmith backed the Avenger into a parking spot. Goldsmith and Kennedy waited in the car while Wallace went to the cousin's apartment. Wallace returned a few minutes later, waited a short time, and then walked toward the apartment again.

When Wallace returned the second time, he entered the back of the Avenger and asked Goldsmith for his gun. Goldsmith handed his gun to Wallace, and both men left the car and walked into the parking lot. Wallace asked Goldsmith if the gun was loaded and handed it to him. Goldsmith loaded the gun and handed it back to Wallace. Wallace started to walk toward his cousin's apartment but then turned to Goldsmith, pointed the gun at Goldsmith's head, and shot him in the right eye. The gun was no more than twenty-four inches from Goldsmith's head when Wallace fired. Still holding the gun, Wallace ran away.

In the early morning hours of July 31, police officers found Goldsmith lying in the parking lot, barely alive. They found an undamaged shell casing near him. Goldsmith died at the hospital later that morning. A spent .380-caliber bullet was recovered from his head.

When officers spoke with Digbie on the day of the murder, she told them about the July 21 robbery of her apartment. The following day, the United States Marshals Fugitive Task Force arrested Wallace as he was leaving the apartment of his girlfriend

Tanika Bonds. The State charged Wallace with robbery, as a Class B felony; burglary, as a Class B felony; and carrying a handgun without a license, as a Class C felony, for the July 21 incident at Digbie's apartment under Cause Number 49G22-0808-FB-184840 ("No. 184840").

Following his arrest, Wallace was housed in the Marion County Jail with Roscoe Nuckols. Wallace told Nuckols that he had met with Goldsmith to settle their differences by committing a robbery, that he had shot Goldsmith in the head with Goldsmith's gun, and that he had thrown the gun into the retention pond behind Bonds' apartment. Nuckols relayed that information to police through his attorney, and officers searched the pond behind Bonds' apartment. During a recorded telephone call to Wallace in jail, Bonds told Wallace that the police had searched the pond. Wallace later told Nuckols that police had searched in the wrong area. Nuckols again passed that information on to police, who then searched a pond behind Bond's apartment a second time on August 22 and found a .380-caliber Bersa semi-automatic handgun. The shell casing found near Goldsmith's body had been fired from that gun.

On August 27, the State charged Wallace with Murder under Cause Number 49G22-0808-MR-201514 ("No. 201514"). On October 14, the State filed a motion for joinder of the charges in No. 184840 and No. 201514. In support of the motion, the State argued that the charges from both cases arose from a series of acts connected together that began with the robbery of Digbie's apartment on July 21 and ended with Goldsmith's murder on July 31. On October 31, the court held a hearing on the joinder motion. At the hearing, Wallace objected to the motion on the ground that the incidents were days

apart, there was an intervening retaliatory shooting, and joinder would result in prejudice to him. On December 19, the court entered a written order granting the motion and joined the charges under No. 201514.

On May 11, 2009, the morning that trial started, Wallace's appointed counsel told the court that Wallace "ha[d] informed [her] that he wanted to represent himself[.]" Id. at 3. During a lengthy colloquy with the court, Wallace stated that his counsel was not prepared for trial, that his attorney was "railroad[ing] him[,]" and that she was "misrepresent[ing] him. Id. at 8-9. When the court inquired into his experience, Wallace stated that he was nineteen years old, had dropped out of school in tenth grade but was working on his GED, and had been to the law library. But the court also established that Wallace had not had a jury trial, did not know how a jury is selected, and had never looked at the Rules of Evidence. The trial court found that Wallace's attorney would "fight for" him, that Wallace had "demonstrated no ability to represent" himself, and that such self-representation "would be a total disaster." Id. at 15. As a result, the trial court denied his request for self-representation, and the jury trial commenced. At the conclusion of the trial, the jury returned a verdict finding Wallace guilty as charged of murder; robbery, as a Class B felony; burglary, as a Class B felony; and carrying a handgun without a license, as a Class A misdemeanor.[1]

The court held the sentencing hearing on May 27, 2009. In sentencing Wallace, the court considered the pre-sentence investigation report and testimony from Digbie and

[1] The State originally charged Wallace with carrying a handgun without a license, as a Class C felony. But the jury was instructed on and found him guilty of the handgun offense as a Class A misdemeanor. On the day following the jury's return of the verdicts, the State moved to dismiss the original charge of carrying a handgun without a license, as a Class C felony. Neither the State nor Wallace directs us to when before trial that charge was reduced to a Class A misdemeanor.

Goldsmith's father and sister. The court then found no mitigators but made the following finding regarding aggravators:

> [T]he Court does find a number of aggravators. Those aggravators start with Mr. Wallace's juvenile history which is significant. In May of 2003, he was found true of having made a bomb threat at his school: False Report, and was placed on probation with numerous violations of probation filed during the course of his probationary period. He was then arrested in 2004 for Criminal Mischief and those charges were dismissed. The[] next significant arrest as a juvenile was in July of 2004, and he was found true of Auto Theft, which would have been a felony had he been an adult at the time. He was placed on a suspended commitment to the Indiana Department of Correction[] and that suspended commitment was violated on several instances. In October of 2004, and it would appear that he was still on a suspended commitment to the Indiana Department of Correction[], he was arrested for Auto Theft and Count Two, Fleeing Law Enforcement, place on a suspended commitment and again I note a number of violations of that suspended commitment. In November of 2005, he was arrested and found true in May of 2006 of a B felony Burglary, Residence Burglary, which would have been a B felony had he been an adult at the time of the arrest and true finding. He was committed to the Department of Correction[] and in May of 2007, he was arrested on numerous offenses and found guilty as an adult of Pointing a Firearm as a D felony, Carrying a Handgun Without a License as an A misdemeanor, Criminal Trespass as an A misdemeanor, and the defendant was at the time of the current offenses on parole. The Court finds that the juvenile history as well as the adult record constitute a serious aggravator. The Court finds that the fact that he was on parole at the time, and recently released from the Department of Correction[] at the time of this tragedy is a second aggravator. The Court finds that the circumstances of this crime constitute another aggravator. The circumstances include the fact that basically Mr. Wallace, from the time after he broke into Miss Digbie's home and told the victim and Miss Digbie that he wasn't going to kill them that night, he basically stalked Mr. Goldsmith, placing threatening phone calls on Miss Digbie's phone, indicating to her that he was looking for the victim. The Court finds that the evidence showed that he planned this murder. And that he basically set the victim up, with the plan of killing him; he ambushed this young man and shot him in the face, point blank, with the victim's gun.

Transcript at 724-25. The court sentenced Wallace to sixty-five years for murder, twenty years for robbery, twenty years for burglary, and one year for carrying a handgun without

a license. The court ordered Wallace to serve the burglary and robbery sentences concurrently but consecutive to the sentences for murder and carrying a handgun without a license, for an aggregate sentence of eighty-six years. Wallace now appeals.

DISCUSSION AND DECISION

Issue One: Self-Representation

Wallace contends that the trial court erred when it refused to allow him to represent himself at trial. We recently described a defendant's right to self-representation as follows:

> A criminal defendant's Sixth Amendment right to counsel is essential to the fairness of a criminal proceeding. Gideon v. Wainwright, 372 U.S. 335, 344-45, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963). Implicit in the right to counsel is the right to self-representation. Faretta v. California, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). Because a criminal defendant gives up many benefits when the right to counsel is waived, "the accused must 'knowingly and intelligently' forgo those relinquished benefits." Id. at 835 (quoting Johnson v. Zerbst, 304 U.S. 458, 464-65, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938)). Furthermore, when a defendant asserts his or her right to self-representation, the trial court should advise the defendant of the "dangers and disadvantages of self-representation." Id.

Drake v. State, 895 N.E.2d 389, 392 (Ind. Ct. App. 2009). The four factors to consider when determining whether a knowing and intelligent waiver occurred are: (1) the extent of the court's inquiry into the defendant's decision; (2) other evidence in the record that establishes whether the defendant understood the dangers and disadvantages of self-representation; (3) the background and experience of the defendant; and (4) the context of the defendant's decision to proceed pro se. Id. But the right to self-representation also must be asserted within a reasonable time prior to the first day of trial. Campbell v. State, 732 N.E.2d 197, 204 (Ind. Ct. App. 2000) (citing Olson v. State, 563 N.E.2d 565, 570

(Ind. 1990)). Specifically, our supreme court has held that a request to proceed pro se on the morning of trial is per se untimely, and denial of a request to proceed pro se on the ground of untimeliness is permissible. Id. (citing Moore v. State, 557 N.E.2d 665, 669 (Ind. 1990)).

Here, the trial court inquired into Wallace's educational background and experience with jury trials, finding that he had dropped out of school in tenth grade, had no G.E.D., and had never participated in a jury trial. The trial court also discerned from questioning Wallace that he did not understand the basic parts of a trial such as voir dire and cross-examination, nor had he ever looked at any of the Rules of Evidence. The trial court found that Wallace had "demonstrated no ability to represent [him]self" and that his self-representation "would be a total disaster." Transcript at 15. In other words, the trial court found that Wallace had not knowingly and intelligently waived his right to counsel given his background and inexperience.

We need not consider the propriety of the trial court's finding regarding waiver because Wallace's request to represent himself was per se untimely. As such, its denial would have been proper for that reason alone. See Campbell, 732 N.E.2d at 204. Again, our supreme court has held that a defendant's request to represent himself made on the day of trial is per se untimely. Id. In other words, Wallace's request to represent himself, made for the first time on the first day of trial, was in and of itself untimely. See id.; see also Black's Law Dictionary 1162 (7th ed. 1999) ("per se" means of, in, or by itself). As such, the trial court did not err when it denied his request on the morning of trial to represent himself.

Wallace argues that the per se rule should not apply here because he "had only one jail visit with his court-appointed attorney prior to the day of trial . . . so he had no opportunity to fully ascertain the type of representation he would otherwise receive or to communicate his wishes to the court." Appellant's Brief at 8-9. Courts applying the per se rule on appeal have not inquired into the reason for the timing of the request. See Campbell, 732 N.E.2d at 204; Moore, 557 N.E.2d at 669; Russell v. State, 270 Ind. 55, 383 N.E.2d 309, 314 (1978). Moreover, the court in Russell observed that "experience has shown that day[-]of[-]trial assertions of the self-representation right are likely to lead to a rushed procedure, increasing the chances that the case should be reversed because some vital interest of the defendant was not adequately protected." Id. Wallace has not shown that the per se rule should not be applied in this case.

Wallace also argues that the per se rule from Russell and its progeny should be "modified" or "reconsidered." Appellant's Brief at 11-12. In support, he maintains that the per se rule "minimizes the inconvenience to our state trial courts in dealing with pro se representation, [yet] harshly denies a basic federal constitutional right in a very arbitrary manner." Id. at 12. But we are bound by supreme court precedent and, therefore, are without authority to revise a rule set down by that court. Further, Wallace ignores the Russell court's observation linking day-of-trial requests with rushed trials and inadequate protection of a defendant's interests. And even more significantly, he ignores that trial courts considering a request for self-representation are balancing the Sixth Amendment right to representation with the implied Sixth Amendment right to represent

oneself. As such, a court refusing such a request is not denying a Sixth Amendment right but, instead, is choosing between alternative Sixth Amendment rights.

We cannot and will not modify or reconsider the per se rule. Absent any indication from our supreme court that the per se rule from Russell has been modified, we follow the rule in that case. We must conclude that Wallace's request to represent himself was per se untimely. Therefore, the trial court did not abuse its discretion when it denied that request.[2]

Issue Two: Joinder

Wallace next contends that the trial court abused its discretion when it granted the State's motion to join the murder charge with the charges for robbery, burglary, and carrying a handgun without a license. Indiana Code Section 35-34-1-9(a) provides:

> Two (2) or more offenses may be joined in the same indictment or information, with each offense stated in a separate count, when the offenses:
>
> > (1) are of the same or similar character, even if not part of a single scheme or plan; or
> >
> > (2) are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

Under Indiana Code Section 35-34-1-11(a),

> Whenever two (2) or more offenses have been joined for trial in the same indictment or information solely on the ground that they are of the same or similar character, the defendant shall have a right to a severance of the

[2] The State argues that Wallace did not unambiguously request to represent himself at trial due to the "lack of a personal and unequivocal assertion by [Wallace] of his right to self-representation[.]" Appellee's Brief at 12. Wallace's counsel made the request on behalf of Wallace at the start of trial, and Wallace later said, "I can speak for myself and go there by myself and be proud of what I stood for." Transcript at 10. We need not determine whether the statements by Wallace and his counsel constitute unequivocal requests for self-representation because we conclude that his request was untimely.

> offenses. In all other cases the court, upon motion of the defendant or the prosecutor, shall grant a severance of offenses whenever the court determines that severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense considering:
>
> (1) the number of offenses charged;
>
> (2) the complexity of the evidence to be offered; and
>
> (3) whether the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.

Accordingly, severance is required as a matter of right under subsection 11(a) only when the offenses are joined solely because they are of the same or similar character. Heinzman v. State, 895 N.E.2d 716, 720 (Ind. Ct. App. 2008) (citing Ben-Yisrayl v. State, 690 N.E.2d 1141, 1145 (Ind. 1997)), trans. denied. Where severance is not required, an abuse of discretion occurs when, in light of the reasons stated by the trial court, the exercise of that discretion is without reason or when it is based upon impermissible reasons or considerations. Elkhart v. Middleton, 265 Ind. 514, 356 N.E.2d 207, 210-11 (1976).

Here, the State requested that the trial court join the murder charge with the robbery, burglary, and handgun charges on the ground that all of the charges constituted a series of acts connected together. Wallace argues that the events underlying his charges are not so "intricately connected" as are the facts in other cases where our supreme court has held joinder to be proper. For example, in the case of Barajas v. State, 627 N.E.2d 437 (Ind. 1994), the defendant sought severance of a murder charge from drug dealing charges. There, the "State's theory of the case was that the victim was murdered by [the defendant] because he had not paid for drugs supplied by [the defendant]." Barajas, 627

N.E.2d at 438. Although the defendant was not engaged in drug dealing at the time of the murder, our supreme court affirmed the trial court's denial of defendant's motion to sever on the ground that "the murder and the drug charges were intricately connected." Id.

And in Smoote v. State, 708 N.E.2d 1 (Ind. 1999), the defendant borrowed the victim's Buick from the victim for use in a bank robbery. The defendant and another man then drove to the bank in a second car, committed the robbery, and fled in the second car. They later abandoned the second car and drove away in the Buick. Police linked the Buick to the robbery, and a high-speed chase ensued, but defendant escaped. Police questioned the Buick's owner, the victim, but he did not finger the defendant. Later that day, police found the victim dead from a gunshot wound. The supreme court held that the murder and robbery charges were connected: "The State's theory here was that the defendant killed the victim in order to assure that the victim would not implicate him in the bank robbery. Given this connection, we see no abuse of the trial court's discretion in determining that the charges should not be severed." Id. at 3.

In the present case, Wallace threatened to kill Goldsmith and Digbie during the robbery of Digbie's apartment. In the days following the robbery, he repeatedly called Digbie's phone, threatening to kill Goldsmith. And ten days after the robbery, Wallace telephoned and asked Goldsmith to help with a robbery to "settle" their differences, and Goldsmith agreed. Transcript at 379. But as the two men crossed a parking lot, Wallace asked for Goldsmith's gun. Once Goldsmith loaded the gun, Wallace immediately pointed the weapon at Goldsmith's head and fired a fatal shot into his eye. The evidence shows that Wallace's murder threats began during the July 21 robbery and continued up

until the July 31 murder. We cannot say that the trial court's decision to join the murder charges with the other charges is without reason. See Middleton, 356 N.E.2d at 210-11.

Nevertheless, Wallace argues that an intervening act, Goldsmith's shooting into the home of Wallace's mother, interrupted the alleged connection between the robbery and the murder. But, again, the shooting resulted from the July 21 robbery and, therefore, was merely an additional link between the robbery and the murder. We conclude that the charges arising from the robbery constitute a series of acts that culminated in the murder. The trial court did not abuse its discretion when it joined and then refused to sever the charges.

Wallace also contends that the trial court should have severed the charges because he suffered prejudice as a result of the joinder. In particular, he maintains that the threat to kill Digbie and Goldsmith that he made during the robbery was not necessary to prove the elements of the offenses charged as a result of the robbery. Thus, he argues, the jury could have used evidence of uncharged misconduct that shows he is a "bad person who should be punished" for his uncharged misdeeds. Appellant's Brief at 18 (citation omitted). But the test for determining whether the charges should have been severed considers the connectivity of the events. Wallace's argument regarding prejudice does not address the three factors in Indiana Code Section 35-34-1-11(a) regarding connectivity, nor does it address whether severance of the charges would have promoted a fair determination of the defendant's guilt or innocence. See Ind. Code § 35-34-1-11(a). And insofar as Wallace's argument hints at the relevant standard, the events are

clearly interrelated and show a series of acts connected together. Thus, Wallace's prejudice argument must fail.[3]

Issue Three: Aggravators and Mitigators

Wallace next contends that the trial court abused its discretion when it identified aggravators and mitigators in sentencing him. "[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds on reh'g, 875 N.E.2d 218 (Ind. 2007). "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." Id. (quotation omitted).

As our supreme court has explained:

> One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.
>
> Because the trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other when imposing a sentence . . . a trial court can not now be said to have abused its discretion in failing to "properly weigh" such factors. . . .
>
> * * *

[3] Wallace's argument regarding prejudice sounds like an argument regarding the admission or exclusion of evidence. To the extent Wallace was attempting such an argument, he has not supported it with cogent analysis, so that argument is waived. See Ind. Appellate Rule 46(A)(8)(a).

> Because the trial court's recitation of its reasons for imposing sentence included a finding of mitigating circumstances, the trial court was required to identify all significant mitigating circumstances. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. However, "If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist."

Id. at 490-93 (citations omitted; emphasis added).

Wallace received an aggregate eighty-six-year sentence. As noted above, the trial court identified the following aggravators in imposing that sentence: (1) Wallace's juvenile and adult criminal history; (2) that he was on parole at the time of the offenses; and (3) the circumstances of the offenses, namely, that he "basically stalked Mr. Goldsmith, placing threatening phone calls on Miss Digbie's phone, indicating to her that he was looking for the victim." Transcript at 724-25. Wallace did not proffer any mitigators, and the court did not find any.

On appeal, Wallace argues that the aggravators found by the trial court are "unsupported or inappropriate." Appellant's Brief at 21. Specifically, he points to the court's findings that he "basically set the victim up, with the plan of killing him." Transcript at 725. Wallace maintains that the evidence shows that he "did not even have a weapon. Rather, he was not armed until the victim gave him the gun he was carrying. The conclusion that Mr. Wallace could have planned and foreseen that Mr. Goldsmith would give him the weapon is not warranted by the evidence." Id. at 22 (citations omitted). But regardless of whether Wallace had a gun when he met Goldsmith on July 31, the evidence shows that he had repeatedly threatened to kill Goldsmith over the

previous ten days, that he had then asked Goldsmith to commit a robbery with him, that he asked for Goldsmith's gun, that Goldsmith handed him the loaded gun, and that without prior provocation Wallace immediately aimed the gun at Goldsmith's head and fired. We cannot say that the evidence does not support the trial court's finding that Wallace had stalked and set up the victim.

Wallace also argues that his sentence violates the rule under Blakely v. Washington, 542 U.S. 296 (2004), where the United States Supreme Court held that a sentence imposed under the former presumptive sentencing scheme violated the Sixth Amendment if it was based on aggravating circumstances not found by a jury. Anglemyer I, 868 N.E.2d at 490. But our legislature amended Indiana's sentencing scheme effective April 25, 2005. Under the new advisory sentencing scheme, courts may impose a sentence anywhere within the range provided for each class of felony. Id. A sentence imposed under the advisory sentencing scheme does not violate Blakely except in limited circumstances not argued here. Wallace committed the offenses in 2008, after the effective date of the advisory sentencing scheme. Thus, Blakely does not apply, and Wallace's argument must fail.

Wallace also argues that the court failed to find a mitigator that was clearly supported by the record, namely, his youth. But Wallace concedes that "no mitigators were advanced or argued at sentencing." Appellant's Brief at 21. Thus, he cannot raise this issue on appeal. Thomas-Collins v. State, 868 N.E.2d 557, 561 (Ind. Ct. App. 2007), trans. denied. Waiver notwithstanding, Wallace has not presented a compelling argument regarding the identification of that mitigator. The fact that he was eighteen years old

does not merit great weight, especially in light of his extensive juvenile history and his repeated violations during probation and parole. Further, even if we were to find his age to be a mitigator, it would not outweigh the aggravators found by the trial court and affirmed here. Wallace has not shown that the trial court abused its discretion in identifying aggravators and mitigators.

Issue Four: Appellate Rule 7(B)

Wallace also argues that his sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration original).

Here, Wallace contends that his sentence is inappropriate in light of the nature of the offenses. In that regard he states:

> The death was the result of pride and anger—retaliation for shooting up [Wallace's] mother's home.
>
> It is the impulsiveness of the act that distinguished this from other cold-blooded killings. Here, Mr. Wallace did not even have a weapon. It was the victim, Clois Goldsmith, who brought the handgun to the robbery he and Mr. Wallace were going to perform. That the murder occurred in front of an eyewitness underscores the impulsiveness.

Appellant's Brief at 23. Wallace's argument contradicts the trial court's finding that Wallace planned the murder. We have already concluded that there is evidence in the record to support that finding. As found by the trial court, for over a week Wallace threatened to kill Goldsmith, then he asked Goldsmith to commit a robbery with him to settle their differences. When the two met to commit the robbery, Wallace asked for Goldsmith's gun, and Goldsmith complied. Immediately upon receiving the loaded handgun, Wallace pointed it at Goldsmith's head and fired a fatal shot into his right eye. Wallace has not shown that his sentence is inappropriate in light of the nature of the offenses.

Wallace also has not shown that his sentence is inappropriate in light of his character. The trial court listed Wallace's extensive juvenile history, which included adjudications for false reporting of a bomb threat at his school; auto theft, a Class D felony; fleeing law enforcement, a Class A misdemeanor; and residential burglary, a Class B felony.[4] Wallace also had numerous violations of the probation and suspended commitment terms he was ordered to serve for these adjudications. Further, Wallace has

[4] These juvenile adjudications are described based on the class of offense if committed by an adult.

convictions as an adult for pointing a firearm, a Class D felony; carrying a handgun without a license, a Class A misdemeanor; criminal trespass, as a Class A misdemeanor. pointing a firearm, as a Class D felony; and carrying a handgun without a license, as a Class A misdemeanor. He was on parole when he committed the underlying offenses, and he has never held a job. We cannot say that his sentence is inappropriate in light of his character.

Affirmed.

VAIDIK, J., and BROWN, J., concur.