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IN THE COURT OF APPEALS OF INDIANA

LANCE DOUGLAS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 22A01-0907-CR-337
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Susan L. Orth, Judge
Cause No. 22D01-0705-MR-316

JUNE 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant Lance Douglas appeals from his convictions and sentences for murder, a felony,[1] attempted robbery resulting in serious bodily injury, a class A felony,[2] and burglary resulting in bodily injury, a class A felony.[3] We affirm in part, reverse in part, and remand with instructions.

ISSUES

Douglas raises five issues for review, which we restate as:

I. Whether the trial court abused its discretion by admitting testimony and exhibits about DNA analysis into evidence.

II. Whether the trial court abused its discretion by admitting a report about a shoe print analysis into evidence.

III. Whether the trial court abused its discretion by admitting into evidence a photograph of the victim taken during life.

IV. Whether Douglas' enhanced convictions for robbery and burglary are erroneous because they share an aggravator.

V. Whether Douglas' sentence is erroneous.

FACTS

On the night of January 22, 2007, Lewis James was in an apartment at 6 Vance Court, New Albany, Indiana. He was drinking and smoking crack cocaine with Sheila

[1] Ind. Code § 35-42-1-1.
[2] Ind. Code § 35-42-5-1.
[3] Ind. Code § 35-43-2-1.

Delores Sutton[4] and Tywanna Kendall. Clinton Smith, who had leased the apartment, allowed James and Sutton to stay there. Smith was in and out of the apartment over the course of the evening.

At around midnight, Sutton and Kendall heard someone pounding on the apartment's front door. They thought the police were at the door, so Sutton and James began to run upstairs while Kendall ran out the apartment's back door. Someone kicked in the front door, and Sutton went back downstairs and looked outside. Sutton did not see anyone at first, but as she turned around, Douglas came up to her, pointed a gun at her face, and told her to leave. Douglas had a bandana on his face, but Sutton recognized him by his voice. Sutton ran to tell Smith that someone had broken into his apartment. As Smith approached his apartment, he saw someone run out of the front door. Smith could not identify the person. When Smith entered his apartment, he found James slumped over on the floor, dead. James had been shot seven (7) times, including four (4) shots in the back.

The police found a red knit hat in the apartment and observed shoeprints on the apartment's front door.

The State charged Douglas and Quintez Deloney, who was a minor when the crimes were committed, with Murder, attempted robbery as a class A felony, and burglary as a class A felony. Douglas and Deloney were tried together, and the jury

[4] Some of the people involved in this case referred to Sutton by her first name, and others referred to her by her middle name.

found Douglas guilty as charged.[5] The trial court sentenced Douglas to sixty-five (65) years for murder, fifty (50) years for attempted robbery, and thirty (30) years for burglary. The trial court ordered Douglas to serve his robbery and burglary sentences concurrently, but consecutively to the murder sentence, for an aggregate sentence of 115 years.

DISCUSSION AND DECISION

I. ADMISSION OF DNA EVIDENCE

We review the trial court's evidentiary decisions for an abuse of discretion. *Smith v. State*, 702 N.E.2d 668, 672 (Ind. 1998). The results of DNA testing, like any other evidence aided by expert testimony, must be offered in conformity with the Indiana Rules of Evidence. *Overstreet v. State*, 783 N.E.2d 1140, 1150 (Ind. 2003), *cert. denied*, 540 U.S. 1150, 124 S.Ct. 1145, 157 L.Ed.2d 1044 (2004). Indiana Evidence Rule 702 provides:

> (a) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.
>
> (b) Expert scientific testimony is admissible only if the court is satisfied that the scientific principles upon which the expert testimony rests are reliable.

To be admissible, evidence must not be unfairly prejudicial. Regarding unfair prejudice, Indiana Evidence Rule 403 provides: "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair

[5] The jury found Deloney not guilty of murder but guilty of attempted robbery resulting in serious bodily injury and guilty of burglary resulting in bodily injury.

prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence." Therefore, DNA evidence is admissible when the trial court is satisfied that: (1) the scientific principles upon which the expert testimony rests are reliable; (2) the witness is qualified; and (3) the testimony's probative value is not substantially outweighed by the dangers of unfair prejudice. *Overstreet*, 783 N.E.2d at 1140 (quotation omitted).

Here, Douglas challenges the trial court's decision to admit testimony and reports regarding DNA testing performed on a red knit hat that was found at the crime scene. Specifically, Douglas argues that the evidence's probative value was substantially outweighed by unfair prejudice.

It is necessary at this point to generally describe the process of DNA testing. The analyst receives a sample for testing and extracts the DNA, if any, from the sample. Tr. p. 576. Next, the analyst determines how much DNA is present in the sample. *Id.* Subsequently, the analyst amplifies, or copies, the DNA molecule(s) for testing. *Id.* Finally, the analyst examines the sample, identifies a DNA profile and uses that information to make comparisons with another profile. *Id.* In the DNA testing method used in this case, the Short Tandem Repeat Analysis, the analyst identifies a DNA profile by examining thirteen different areas, or loci, of a DNA molecule for genetic designations, or alleles, that could identify a DNA profile. *Id.* at 596. Ideally, the analyst identifies a DNA profile from the sample, compares it with a known DNA profile (such as a reference sample provided by a defendant), and identifies matches between the

alleles in the profiles. *Id.* at 599. Once a match is identified, the analyst performs a statistical calculation to determine the significance of the match. *Id.* at 589-590.

In this case, Amy Winters, the DNA expert who tested a sample taken from the red knit hat for DNA and testified at trial, concluded in her reports that the sample contained a mixture of DNA from "at least two individuals, at least one of which is male." Tr. Exhibit Volume I, pp. 86, 88. She determined that Douglas' DNA profile could not be excluded as a contributor to the sample. *Id.* at 88. Winters could not calculate the statistical significance of matches between the sample DNA profile and Douglas' DNA profile because the "partial DNA results are insufficient for statistical analysis." Tr. Exhibit Volume I, p. 88.

Douglas' specific argument as to unfair prejudice is that without a statistical analysis to determine the significance of the allele matches between the sample's DNA profile and Douglas' DNA profile, Winters' reports and testimony confused the jury and caused them to give undue weight to the DNA analysis. We disagree. In *Smith*, 702 N.E.2d at 674, the appellant contended that DNA evidence was unfairly prejudicial because the evidence was improperly handled, the analyst failed to do control tests, and the analyst did not use "confidence intervals" when calculating the statistical significance of allele matches. Our Supreme Court disagreed, noting that the DNA evidence was highly probative, and the State presented evidence that the potential prejudice was only slight. *Id.* Furthermore, failure to use confidence intervals went to the weight of the evidence, not its admissibility. *See id.* at 673.

In this case, the DNA evidence linking the hat to Douglas was, at best, equivocal. Nevertheless, the testing indicated that Douglas could not be excluded from contributing to the DNA mixture that was found on the hat, which is of some probative value. Furthermore, at no time did Winters state that the evidence specifically implicated Douglas and/or Deloney. She testified clearly to the jury regarding the limits of her analysis:

> [I]t just means that from a conservative standpoint I indicated that-that these individuals could not [be] excluded, because there's not enough information to say that, yes, [Douglas and/or Deloney] could be a contributor, and therefore this is how significant the match is. Um, that was the most that I could say.
>
> * * *
>
> I mean, to say that [Douglas and/or Deloney] can't be excluded just means that you don't want to say that I, you know, you don't want to look at it and say that they could not have-have left this, have worn this hat or left DNA on this hat. But to say that they are included is a little bit stronger in saying that, well, there's more evidence there than there is. So to say that they can't be excluded is a little bit more conservative.

Tr. pp. 604-605. Winters also stated although Douglas could not be excluded as a contributor, she was not able to say that the sample DNA profile was a match to Douglas' DNA profile or that it was consistent with Douglas' profile. Tr. p. 596.

In addition, Douglas and Deloney extensively cross-examined Winters regarding her testing method and reports, including the following:

> Q: With regard to that red cap, uh, that you did the DNA analysis, can you say that Quintez Deloney wore that hat?
> A: No, Ma'am.
> Q: Can you say that Lance Douglas wore that hat?
> A: No, Ma'am.

Tr. p. 612. Winters also conceded that the presence of other alleles indicated that a third person could have been a contributor to the DNA sample found on the hat. Tr. pp. 615-616.

Finally the jury also asked Winters questions, including whether a female could have contributed to the DNA found on the hat. Winters answered, "it is possible . . . ." Tr. p. 639.

Thus, the DNA evidence had some probative value, Winters described the limits and weaknesses in her test results, and Douglas and Deloney cross-examined Winters at length. Furthermore, the jury questioned Winters about her reports and testimony, which indicates that the jury did not take the DNA evidence at face value. Under these circumstances, we conclude that Winters' testimony and related exhibits, like the DNA evidence in *Smith*, had probative value that was not substantially outweighed by the danger of unfair prejudice to Douglas. Consequently, the trial court did not abuse its discretion by admitting the evidence.[6] *See Smith*, 702 N.E.2d 674.

II. ADMISSION OF FOOTPRINT EVIDENCE

As is noted above, the admission of expert testimony is governed by Indiana Rule of Evidence 702. The trial court's determination regarding the admissibility of expert testimony under Rule 702 is a matter within its broad discretion and will be reversed only for abuse of that discretion. *Carter v. State*, 766 N.E.2d 377, 380 (Ind. 2002), *reh'g denied*.

[6] The parties discuss at length cases from other states discussing whether DNA test results are admissible in the absence of an analysis of the statistical significance of the results. Our decision follows our Supreme Court's precedent on the admissibility of DNA evidence, so we shall not consider those cases.

In this case, Marcus Montooth, an analyst with the Indiana State Police, appeared at trial on behalf of the State as an expert on shoeprint identification and comparison. Montooth had analyzed shoeprint marks that were found on the front door of the apartment where James was killed and compared those marks to a pair of shoes owned by Douglas. Montooth testified, without objection, that one of the shoeprint marks could be consistent with a pair of shoes that was found at Douglas' residence. Specifically, Montooth testified, "I can't say that [the shoes] did make [the shoeprint], but I can't say that [the shoes] didn't." Tr. p. 499. Next, the State sought to admit Montooth's report into evidence. Montooth's report states, in relevant part, "the shoes . . . are similar in size, shape, and tread design to one of the impressions found on [the door], and therefore could neither be eliminated nor identified as having made one of the footwear impressions found on [the door]." Tr. Exhibit Volume I, p. 79. Douglas objected to the admission of the report as unfairly prejudicial and maintains that argument on appeal.

As the State points out, Douglas did not object when Montooth testified as to his conclusions. Instead, Douglas only objected when the State sought to admit Montooth's written report into evidence. The written report was cumulative of Montooth's testimony. Therefore, assuming without deciding that the trial court erred by admitting the report, any error is harmless because the report was merely cumulative of other admitted evidence. *See Bryant v. State*, 802 N.E.2d 486, 494 (Ind. Ct. App. 2004), *transfer denied* (determining that the admission of testimony from a detective was harmless error because the same testimony was presented by other witnesses without objection). We find no grounds for reversal on this issue.

III. PUBLICATION OF A PHOTOGRAPH OF THE VICTIM WHILE ALIVE

We review the admission of photographic evidence for an abuse of discretion. *See Wheeler v. State*, 749 N.E.2d 1111, 1114 (Ind. 2001). The focus of our inquiry is whether the photograph is relevant and whether its probative value is substantially outweighed by its prejudicial impact.[7] *Sauerheber v. State*, 698 N.E.2d 796, 804 (Ind. 1998). A photograph of the victim with his or her family smacks of victim impact evidence and is to be discouraged due to possible emotional impact on the jury. *Humphrey v. State*, 680 N.E.2d 836, 842 (Ind. 1997). Because murder involves the taking of a human life, the trier of fact must be given some proof that the alleged victim is actually dead and was alive before the date and time of the alleged killing. *Id*.

In *Humphrey*, a man was murdered while looking for crack cocaine. *Id.* at 832. At trial, the State sought to admit a pre-death photograph of the victim with his young son. *Id.* at 842. Our Supreme Court concluded that the photograph was marginally relevant because it tended to show that the victim was alive before the date and time of the alleged killing. *Id.* Furthermore, as to unfair prejudice, the Court concluded that any consideration of the jury's reaction to the photograph of the victim with his child would be speculative at best in light of the fact that the victim was trying to buy crack cocaine when he was murdered. *See id.*

[7] It is unclear from the transcript whether Douglas objected at trial on grounds of unfair prejudice. He objected on grounds of relevance, but much of the rest of the sidebar concerning the photograph is indiscernible. Tr. pp. 691-693. This Court prefers to address matters on the merits when possible, so we will assume that Douglas objected to the photograph during the sidebar on grounds of unfair prejudice as well as relevance.

In this case, during the testimony of Tonya James, who was James' wife, the trial court admitted into evidence a photograph of James and Tonya standing side by side and smiling. The photograph was taken on October 22, 2006, which was ninety-two days before Douglas murdered James. Douglas contends that the photograph was irrelevant and unfairly prejudicial. We disagree. Like the photograph in *Humphrey*, the photograph of James with his wife is marginally relevant to show that James was alive before the time and date of his murder. Furthermore, as in *Humphrey*, the impact on the jury of the photograph of James and Tonya is speculative at best because on the day of James' murder, James had been arguing with her about his drinking and had left home to drink and smoke crack cocaine. Our Supreme Court has concluded that trial courts would do better to exclude pre-death photographs of murder victims with family members, but we cannot conclude that the trial court abused its discretion by admitting this photograph into evidence.

IV. DOUBLE JEOPARDY

Prohibitions against double jeopardy protect the integrity of jury acquittals and the finality interest of defendants, shield against excessive and oppressive prosecutions, and ensure that defendants will not undergo the anxiety and expense of repeated prosecution and the increased probability of conviction upon reprosecution. *Richardson v. State*, 717 N.E.2d 32, 37 (Ind. Ct. App. 1999). In *Richardson*, our Supreme Court articulated the purpose and standard for applying of the Double Jeopardy Clause of the Indiana

Constitution.[8] *Id.* at 32. In addition, the Indiana Supreme Court has long adhered to a series of rules of statutory construction and common law that are often described as double jeopardy but are not governed by the constitutional test set forth in *Richardson. See Pierce v. State*, 761 N.E.2d 826, 830 (Ind. 2002) (citing *Richardson*, 717 N.E.2d at 55 (Sullivan, J., concurring)). Among these is the doctrine that where a burglary conviction is elevated to a Class A felony based on the same bodily injury that forms the basis of a Class B robbery conviction, the two cannot stand. *Id.*

In *Smith v. State*, 872 N.E.2d 169, 174 (Ind. Ct. App. 2007), *transfer denied*, a jury convicted the appellant of burglary as a class A felony and robbery as a class A felony. The appellant claimed that those convictions violated his protections against double jeopardy because the same bodily injury was cited to support his burglary and robbery convictions. *See id.* at 177. This Court concluded that the appellant demonstrated a reasonable possibility that his claim was correct. *Id.*

Here, Douglas contends that his convictions for attempted robbery as a class A felony and burglary as a class A felony were improper because the same bodily injury was cited to support both convictions. The State concedes that Douglas is correct. In the charging information, the State asserted that Douglas committed attempted robbery which resulted in "serious bodily injury to-wit: Lewis James suffered gunshot wounds." Appellant's App. p. 19. Similarly, in the charging information the State asserted that Douglas committed burglary that resulted in "bodily injury, to-wit: Lewis James suffered

[8] Article I, § 14 of the Indiana Constitution provides: "[n]o person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself."

gunshot wounds." *Id.* at p. 20. Consequently, the convictions for attempted robbery as a class A felony and burglary as a class A felony cannot both stand. *See Smith*, 872 N.E.2d at 177.

We must next determine the appropriate remedy. In *Pierce* and *Smith*, the cases were remanded with instructions to convict the appellants of robbery as a class C felony, which does not include bodily injury as an element of the offense. *See Pierce*, 761 N.E.2d at 830; *Smith*, 872 N.E.2d at 177. In this case, Douglas and the State agree that the appropriate remedy is to remand with instructions to enter a conviction for robbery as a class B felony. In order to obtain a conviction for robbery as a class B felony, the State does not need to contend that the robbery resulted in bodily injury or serious bodily injury, thereby eliminating the conflict with the conviction for attempted burglary as a class A felony.[9] We agree with Douglas and the State, vacate Douglas' conviction for robbery as a class A felony, and remand with instructions to enter a judgment of conviction for robbery as a class B felony. As for the sentence, the trial court sentenced Douglas to fifty (50) years, which is the statutory maximum for robbery as a class A felony, and ordered it served concurrently with the attempted burglary conviction. *See* Ind. Code § 35-50-2-4. Under these circumstances, we direct the trial court to sentence Douglas to twenty (20) years, which is the statutory maximum for a robbery as a class B felony,[10] and order it served concurrently with the sentence for attempted burglary but

[9] Instead of alleging bodily injury, the State may charge a defendant with robbery as a class B felony by alleging that the defendant committed the burglary while armed with a deadly weapon. *See* Ind. Code § 35-43-2-1(1). In this case, the State fulfilled that requirement by alleging in the information that Douglas used a deadly weapon in the robbery, specifically a handgun. Appellant's App. p. 19.

[10] *See* Ind. Code § 35-50-2-5.

consecutively with Douglas's sentence for murder. *See Pierce*, 761 N.E.2d at 830 n.5 (stating that there is no need to remand for resentencing when it is clear that the trial court would impose the maximum sentence for the corrected conviction and order it served consecutively).

V. SENTENCING

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion if the sentence is within the statutory range. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified 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). 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.

Id. at 490-491.

Douglas contends that the trial court erroneously considered his juvenile criminal record as an aggravator. Specifically, Douglas asserts that the trial court did not have before it sufficient details of his juvenile criminal behavior to cite his juvenile record as

an aggravating circumstance. We disagree. The presentence report identified each of the juvenile charges and dispositions against Douglas, including four true findings for incorrigibility, one true finding for battery, one true finding for being a runaway, one true finding for trespass, one true finding for possession of marijuana, and one true finding of driving without a valid license. The presentence report also contains a probation history report which discusses the details of the dispositions of these juvenile proceedings. Furthermore, during the sentencing hearing Douglas' sister and mother testified as to the circumstances of some of these juvenile charges. Based upon this evidence, there is sufficient detail in the record regarding the facts and dispositions of Douglas' juvenile criminal behavior for the trial court to cite his juvenile record as an aggravating circumstance. *See Davies v. State*, 758 N.E.2d 981 (Ind. Ct. App. 2001), *transfer denied* (determining that the record revealed the underlying facts and dispositions of the appellant's juvenile offenses, so the trial court did not err by considering the appellant's juvenile history).

Douglas argues in the alternative that the trial court should not have cited his juvenile history as an aggravating factor because the juvenile charges were minor in nature and dissimilar to these convictions. The significance of a defendant's criminal history varies based on the gravity, nature, and number of prior offenses as they relate to the current offense. *Field v. State*, 843 N.E.2d 1008, 1011 (Ind. Ct. App. 2006), *transfer denied*.

In this case, as is noted above, Douglas' juvenile record includes numerous true findings. In addition, after Douglas turned eighteen, he was charged in one case with

disorderly conduct and criminal mischief, and in another case with resisting law enforcement and carrying a handgun without a license. Those charges were pending at the time of sentencing in this case. The trial court considered Douglas' juvenile record together with his adult charges and stated:

> Your criminal history of multiple Incorrigibilities show[s] a disdain for authority and the arrest while on probation shows disdain for the judicial system and an unwillingness or an inability to comply.
> Your criminal history since 2002 is continuous. It shows no respect for authority and shows an unwillingness to comply. The Court system has obviously had no deterrent effect on you and prior lenient treatment has had no deterrent effect either. The Court finds your prior criminal history to be an aggravating factor.

Tr. p. 2088. Based on this discussion, we conclude that the trial court articulated a proper basis for citing Douglas' juvenile criminal history, which was relatively lengthy for his age, as an aggravating factor.

Next, Douglas argues that the trial court improperly cited the nature and circumstances of the offense as an aggravating factor. Specifically, Douglas argues that: (1) the evidence does not support the trial court's statement that Douglas shot James four times in the back as he lay on the ground; and (2) the evidence does not support the trial court's statement that Douglas entered the apartment with the intention of killing James.

Although elements of a crime cannot be used to enhance a sentence, particularized circumstances of a criminal act may constitute separate aggravating circumstances. *Vasquez v. State*, 762 N.E.2d 92, 98 (Ind. 2001). To enhance a sentence in this manner, the trial court must detail why the defendant deserves an enhanced sentence under the particular circumstances. *Id.*

In this case, the trial court twice noted during sentencing that Douglas shot James in the back, but, contrary to Douglas' assertion, the trial court did not state that James was shot as he lay on the ground. Tr. pp. 2086, 2087. Instead, the trial court noted that Douglas "ambushed" and "executed" James. *See id.* The trial court also told Douglas that James "was shot multiple times including multiple shots in the back and then left to die while you fled to Louisville." Tr. p. 2086. The record supports the trial court's findings that James was shot in the back and that James went to Louisville after the murder.

In addition, Douglas' claim that the record proves that he did not enter the apartment with the intention to kill James is incorrect. Douglas cites a witness who testified that Douglas told him, "I-I shouldn't have been there. It shouldn't have happened. All I wanted was the money." Tr. p. 1690. This evidence indicates that Douglas expressed regret for killing James, but it does not bar a conclusion that Douglas was prepared and willing to kill James when Douglas entered the apartment.

For these reasons, the trial court did not abuse its discretion when it cited the facts and circumstances of the crime as an aggravating circumstance.

Douglas also asserts that the trial court abused its discretion by failing to find Douglas' age as a mitigating factor. We disagree. As our Supreme Court has stated, "Age is neither a statutory nor a per se mitigating factor. There are cunning children and there are naïve adults." *See Sensback v. State*, 720 N.E.2d 1160, 1164 (Ind. 1990). Focusing on chronological age, while often a shorthand for measuring culpability, is

frequently not the end of the inquiry for people in their teens and early twenties. *Monegan v. State*, 756 N.E.2d 499, 504 (Ind. 2001).

In this case, Douglas was nineteen years old when he killed James, so he was no longer a minor. In addition, the record indicates that Douglas has a steady history of criminal conduct. The trial court determined that Douglas' character was "dishonest, manipulative, cold and violent." Tr. p. 2092. Finally, the trial court made specific reference to Douglas' age, concluding: "it is unfortunate and tragic that to sentence you to a number of years greater than you've even been alive indicates the Court has little hope for you and that is simply the case here." Tr. pp. 2094-2095. Under these circumstances, the trial court did not abuse its discretion by choosing not to find Douglas' age as a mitigating factor.

Next, we address Douglas' claim that his sentence is inappropriate. Where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, the appellant may still ask this Court to revise the sentence pursuant to Indiana Appellate Rule 7(B). *Anglemyer*, 868 N.E.2d at 491. Rule 7(B) provides: "[t]he 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." We may look to any factors appearing in the record to conduct the examination. *Schumann v. State*, 900 N.E.2d 495 (Ind. Ct. App. 2009). The burden is on the defendant to persuade

us that his sentence is inappropriate. *Major v. State*, 873 N.E.2d 1120, 1130 (Ind. Ct. App. 2007), *transfer denied*.

The "nature of the offense" portion of the standard articulated in Appellate Rule 7(B) speaks to the statutory presumptive sentence for the class of crimes to which the offense belongs. *Id.* That is, the presumptive sentence is intended to be the starting point for the court's consideration of the appropriate sentence for the particular crime committed. *Id.* at 1130-1131. The character of the offender portion of the standard refers to the general sentencing considerations and the relevant aggravating and mitigating circumstances. *Id.* at 1131.

In this case, as is noted above, the trial court sentenced Douglas to sixty-five (65) years for murder, which is the statutory maximum and is ten (10) years greater than the presumptive sentence. *See* Ind. Code § 35-50-2-3. The trial court also sentenced Douglas to fifty (50) years for attempted robbery, which is the statutory maximum and is twenty (20) years greater than the advisory sentence for a class A felony. *See* Ind. Code § 35-50-2-4. Finally, the trial court sentenced Douglas to thirty (30) years for burglary as a class A felony, which is the advisory sentence for a class A felony. *Id.* The trial court ordered Douglas to serve the robbery and burglary sentences concurrently but consecutive to the sentence for murder, for an aggregate sentence of 115 years.[11]

Douglas contends that he should not be sentenced to the maximum sentences for murder and robbery. We disagree. Regarding the nature of the offense, this case presents

[11] In Section IV of this opinion, we direct the trial court to enter a conviction for robbery as a class B felony, thereby reducing Douglas' sentence to ninety-five (95) years. Douglas' arguments regarding the appropriateness of his sentence remain applicable to his revised sentence, so we address them here.

heinous factual circumstances. Douglas and his underage companion, Deloney, armed with a gun, forcibly entered an apartment to ambush James, who was in an incapacitated condition due to consuming crack cocaine. Douglas then shot James multiple times, including four (4) shots in James' back. Douglas was shot in the foot during the incident, and the multiple gunshots doubtlessly endangered Deloney, a minor. Afterwards, Douglas fled the scene and took steps to conceal his crime, including going so far as to seek medical treatment in Louisville for his gunshot wound. The offenses indicate calculation and complete disregard for an incapacitated individual's life.

Turning to Douglas' character, the trial court noted at sentencing that Douglas comes from a good family and had been a good friend in the past. However, Douglas' friends did not continue to associate with Douglas during the time when he became involved in the juvenile justice system. Furthermore, Douglas' criminal record reflects consistent criminal conduct. Individually, none of his juvenile offenses or the crimes with which he had been charged after becoming an adult are particularly serious, but as a whole Douglas' record indicates that he was unable to comply with the law and has refused to take advantage of repeated opportunities to reform his behavior. Furthermore, Douglas' record prior to this case indicates an escalation in the seriousness of his criminal conduct, beginning with incorrigibility as a juvenile and ending with being charged with possessing a handgun without a license and resisting law enforcement. Finally, the convictions at issue reflect poorly on Douglas' character. He and Deloney burst in on an incapacitated man and killed him, shooting him multiple times, including four (4) shots to James' back.

For these reasons, we conclude that Douglas' sentence, as it will be corrected on remand, is appropriate in light of the nature of the offense and the character of the offender.

CONCLUSION

We affirm in part, reverse in part, and remand with for further proceedings consistent with this opinion.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.