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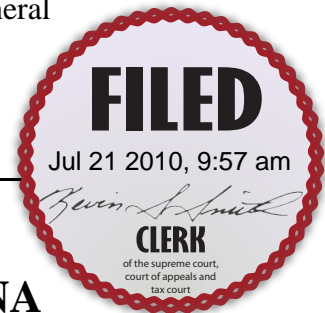
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**IN THE
COURT OF APPEALS OF INDIANA**



JOSHUA ORMAN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 11A04-1003-CR-216

APPEAL FROM THE CLAY CIRCUIT COURT
The Honorable Joseph D. Trout, Judge
Cause No. 11C01-0901-FA-30

July 21, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Joshua Orman (Orman), appeals his sentence following a guilty plea to burglary, a Class B felony, Ind. Code § 35-43-2-1 and aggravated battery, a Class B felony, I.C. § 35-42-2-1.5.

We affirm.

ISSUE

Orman raises one issue for our review, which we restate as: Whether his sentence was inappropriate when the nature of his offense and character are considered.

FACTS AND PROCEDURAL HISTORY

On January 14, 2009, Orman drove to Brazil, Indiana, where he planned to commit a burglary with his twenty-year-old nephew, James Levi Orman (James) and Christopher Craft (Craft). Orman stopped his car in front of the home of seventeen-year-olds Jesse Gillin (Gillin) and Tara Williams (Williams), where they lived with their ten-month-old son.¹

Orman approached the house and said that he needed jumper cables because his car had broken down. Williams told Orman that they did not have any jumper cables. Orman returned to his car, shut the hood, and went back to the house and asked if he could use their phone to call his grandmother for help. Gillin unlocked the door and let Orman into the house. Williams told Orman that they had a friend who lived nearby that could help him with

¹ Tara Williams is referred to as both Tara and Kara Williams in the record. However, she identifies herself as Tara Williams in the transcript. (Transcript p. 70).

his car, but Orman refused and insisted that they not call their friend. As Williams walked back toward her bedroom, James and Craft entered the house wearing masks. When Williams turned around, Orman was pointing a gun at her face and ordered her to stay in the bedroom. One of the men pointed a gun at Gillin, while the other hit Gillin on the head with a pair of brass knuckles, causing a large gash on the top of Gillin's head. Gillin was then forced to locate and disconnect electronic equipment throughout the house. In addition to the electronics, the men stole DVDs, food, Gillin's watch, Williams' purse, and Gillin's wallet. At one point, one of the masked men pointed a gun at Gillin's head and "told him to kiss his son goodbye." (Tr. p. 75). Williams remained in the bedroom with their son, who screamed throughout the burglary.

On January 21, 2009, the State filed an Information charging Orman with Count I, robbery resulting in serious bodily injury, a Class A felony, I.C. § 35-42-5-1(1); Count II, conspiracy to commit robbery resulting in serious bodily injury, a Class A felony, I.C. §§ 35-42-5-1(1); 35-41-5-2; Count III, burglary resulting in bodily injury, a Class A felony, I.C. § 35-43-4-2; Count IV, aggravated battery, a Class B felony, I.C. § 35-42-2-1.5; Count V, theft, a Class D felony, I.C. § 35-43-4-2(a); and Count VI, residential entry, a Class D felony, I.C. § 35-43-2-1.5. On January 13, 2010, Orman entered into a plea agreement, whereby he agreed to plead guilty to Count III, burglary, and Count IV, aggravated battery, as Class B felonies, and in exchange for the State's agreement to dismiss the remaining charges. The plea agreement left sentencing open to the discretion of the trial court.

On March 9, 2010, a sentencing hearing was held. During the hearing, the trial court noted the following: “I consider your past criminal record, albeit slight, to be some evidence of aggravating factor, especially the conviction for carrying a handgun without a license in light of the fact that this crime also involved the use of a handgun.” (Tr. p. 92). Additionally, the trial court, while not explicitly identifying as aggravating circumstances, discussed the following factors as not being in Orman’s favor: Orman initiated the burglary and that he was the oldest of the three men; the victims were seventeen years old with a ten-month-old child in the house; and that Orman exhibited no remorse for the crime or cooperated with law enforcement. The trial court found some evidence of good character based on his military experience and characterized this as a mitigating circumstance. Having determined that the aggravating circumstances substantially outweighed the mitigating circumstance, the trial court sentenced Orman to twenty years for each Count, to be served concurrently, in the Department of Correction.

Orman now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Orman contends that his sentence is inappropriate considering the nature of his offense and his character. Regardless of whether the trial court has sentenced the defendant within its discretion, we have the authority to independently review the appropriateness of a sentence authorized by statute through Indiana Appellate Rule 7(B). *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). That rule permits us to revise a sentence if, after due consideration of the trial court’s decision, we find that the sentence is inappropriate in light

of the nature of the offense and the character of the offender. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). “Ultimately the length of the aggregate sentence and how it is to be served are the issues that matter.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). “The principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived correct result in each case.” *Id.* at 1225. The defendant carries the burden to persuade us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Orman pled guilty to two Class B felonies. A person who commits a Class B felony shall be imprisoned for a fixed term of between twenty and six years, with the advisory sentence being ten years. I.C. § 35-50-2-6. Here, Orman was sentenced to the maximum twenty year sentence for each Count, with sentences to run concurrently.

With regard to the nature of the offense, Orman prepared the way for his accomplices to enter the house by tricking two trusting and unsuspecting seventeen-year-olds into believing that he needed assistance with his car. Once he gained their trust, by returning to their house not once, but twice, Orman made it possible for James and Craft to enter the house wearing masks and pointing guns at the victims. Additionally, the violent nature of the crime occurred while an infant was in the house; when Orman confined Williams to her bedroom at gun point, Williams’ ten-month-old son started screaming and could be heard throughout the house. Meanwhile, James and Craft held Gillin at gunpoint, beat him with brass knuckles which caused substantial bleeding, and forced him to locate valuable property

throughout his house for all three men to steal. Gillin sustained injuries that caused stitching and Williams testified at Orman's sentencing hearing that she felt threatened, intimidated and frightened to the point that she still has nightmares and has difficulty staying alone.

Turning to the character of the offender, Orman's acts in carrying out the planned violent offense demonstrate his poor character. Orman refuses to take responsibility for his actions by arguing that he was not the mastermind of the crime and that he did not participate in beating Gillin. Additionally, Orman points to the fact that he served in the military for four years, and had lived a law abiding life until he left the military and "was unable to find work that paid as well." (Appellant's Br. p. 9). Again, Orman is attempting to justify his actions, and his statement further demonstrates that he took the easy way out and committed burglary instead of lawfully earning money. Finally, we note that Orman took advantage of the young victims' willingness to aid him by tricking them into believing that he needed help and then gaining access to their house. As such, we cannot say that his sentence was inappropriate.

CONCLUSION

Based on the foregoing, we conclude that Orman's sentence was not inappropriate when considering the nature of the offender and the offense.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.