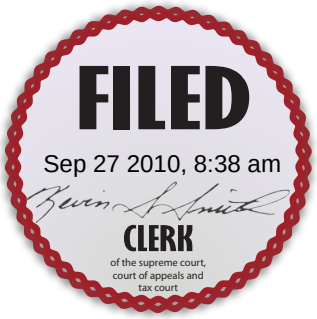

ATTORNEY FOR APPELLANT:

MICHAEL HUNT
Chief Public Defender
Monroe County Public Defender's Office
Bloomington, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

BRIAN P. WHITE,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 53A01-0910-CR-515
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Kenneth G. Todd, Judge
Cause No. 53C03-0806-MR-561

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Brian White appeals following his conviction of and sentence for Murder,[1] a felony. White contends that the State failed to produce evidence sufficient to rebut his claim of self-defense and that his fifty-five-year executed sentence is inappropriately harsh. We affirm.

FACTS

On June 20, 2008, White attended a house party in Bloomington, at which several bands were to play. Chris Johnson was a member of one of those bands, the Useless Wooden Toys. Early in the morning of June 21, after the music had stopped, Bonnie Bergling encountered White, who grabbed her buttocks with enough force to "pick[her] up off the ground a little bit." Tr. p. 214. Bergling slapped White, and Johnson and Levi Thomas, friends of hers, approached. After exchanging some words with White, Johnson and Thomas punched and kicked him for approximately thirty seconds before Lucas Scholl, one of the residents of the house, intervened.

Scholl told White that he needed to leave, and took him into the house. Bergling continued speaking with Johnson and Thomas in the driveway, and White returned after more than ten minutes. Johnson spoke with White, telling him that the fight was over and that he did not want any more trouble, and put his arm around White at some point. White turned, said "you shouldn't have f***** with me[,]" and stabbed Johnson once in the chest, killing him. Tr. p. 227.

[1] Ind. Code § 35-42-1-1 (2007).

On June 24, 2008, the State charged White with murder. On April 30, 2009, a jury found White guilty as charged. On June 30, 2009, the trial court sentenced White to fifty-five years of incarceration.

DISCUSSION AND DECISION

I. Whether the State Produced Sufficient Evidence to Rebut White's Claim of Self-Defense

Although White concedes that he stabbed Johnson, he contends that the State failed to rebut his claim of self-defense. A valid claim of self-defense is legal justification for an otherwise criminal act. *Birdsong v. State*, 685 N.E.2d 42, 45 (Ind. 1997). The defense is defined in Indiana Code Section 35-41-3-2(a) (2007): "A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force."

When a defendant raises a claim of self-defense, he is required to show three facts: (1) he was in a place where he had a right to be; (2) he acted without fault; and (3) he had a reasonable fear of death or serious bodily harm. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). Once a defendant claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt. *Hood v. State*, 877 N.E.2d 492, 497 (Ind. Ct. App. 2007), *trans. denied.* The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by relying upon the sufficiency of its evidence in chief. *Id.* Whether the State has met its burden is a question of fact for the factfinder. *Id.* The trier of fact is not

precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor. *Birdsong*, 685 N.E.2d at 45.

If a defendant is convicted despite his claim of self-defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. *Wilson v. State*, 770 N.E.2d 799, 800-01 (Ind. 2002). The standard on appellate review of a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Id.* at 801. We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* If there is sufficient evidence of probative value to support the conclusion of the trier of fact, the verdict will not be disturbed. *Id.*

At the very least, the State has produced ample evidence to rebut White's claim that he had a reasonable fear of death or serious bodily injury when he stabbed Johnson. Bergling testified that White and Johnson were having a calm conversation, with Johnson assuring White that the fight was over, immediately before the stabbing. Bergling's version of events, which the jury was entitled to believe, contains absolutely no indication that Johnson or anyone else gave White any reason to fear for his safety at the time of the stabbing. Although White's testimony, if believed, might have supported a finding of reasonable fear of death or serious bodily injury, the jury was under no obligation to credit it and did not. The State produced sufficient evidence to rebut White's claim of self-defense.

II. Whether White's Sentence is Appropriate

We "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." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted).

The nature of White's offense was that it represented the tragic culmination of a fight that should have been over. After the initial encounter with Johnson and Thomas, White had over ten minutes to calm himself and remove himself from the situation before it escalated. White was not being pursued by anyone and had every opportunity to simply leave. Instead, White returned, apparently sought out Johnson, and took his revenge after displaying no outward signs that he still posed a threat.

White's criminal record, while not trivial, is not appalling, either. White has five misdemeanor convictions, and although there is no indication that any of them involved violence, they indicate a contempt for the law. White has also violated the terms of probation twice, which also does not speak well of his character. Consequently, in light of the nature of White's offense and his character, we conclude that his fifty-five year advisory sentence for murder is appropriate.

We affirm the judgment of the trial court.

DARDEN, J., and BROWN, J., concur.