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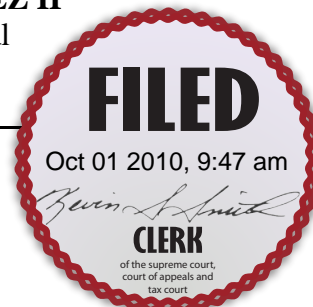
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**IN THE
COURT OF APPEALS OF INDIANA**



CORY A. WALTMIRE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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) No. 44A03-1002-CR-103
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APPEAL FROM THE LAGRANGE SUPERIOR COURT
The Honorable George E. Brown, Judge
Cause No. 44D01-0905-FA-4

October 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Cory A. Waltmire appeals his sentences for two counts of Class C felony reckless homicide. Concluding that the trial court did not abuse its discretion by ordering consecutive sentences and that Waltmire's aggregate twelve-year sentence is not inappropriate in light of the nature of the offenses and his character, we affirm.

Facts and Procedural History¹

In May 2009, Jason Smith called Waltmire and asked if he wanted to smoke marijuana with him. Waltmire agreed, and Smith and Shaun Zimmerman picked him up. As soon as they started driving, Zimmerman drew a knife on Waltmire and demanded his cell phone. Waltmire gave him his cell phone. Smith pulled out a large revolver, and one of the men cocked the hammer and jammed the gun into Waltmire's ribs. They drove around until they reached Smith's grandfather's car dealership. After exiting the vehicle, Smith and Zimmerman repeatedly punched and kicked Waltmire. Waltmire blacked out, and when he regained consciousness, Smith was choking him. Smith wanted to know the location of the marijuana that Waltmire had previously stolen from Smith. Waltmire said the stolen marijuana was at his house. The three men returned to the vehicle and drove to Waltmire's house. Waltmire later said that although he no longer saw the gun, he thought that Smith or Zimmerman still had it. In fact, they had left the gun at the dealership.

¹ Both parties' briefs refer to Waltmire's sentencing hearing in their statement of facts sections. Because the factual basis for the crimes presented during Waltmire's guilty plea hearing does not provide much detail, *see* Guilty Plea Tr. p. 6-7, we also rely on facts taken from the testimony at the sentencing hearing as well as other portions of the record.

When they reached Waltmire's house, Smith and Waltmire exited the vehicle and walked in the house. Waltmire ran to retrieve his gun and told Smith to get the marijuana from the garage. Smith insisted that Waltmire get the marijuana. When Waltmire refused, Smith "came at [him] again." Sent. Tr. p. 21. Waltmire fired four shots at Smith, once in the head and three times in the torso. At this point, Zimmerman was approaching the house. Waltmire fired three shots at Zimmerman, two of which struck his torso. Waltmire then ran to a police officer's house nearby.

Waltmire was charged with two counts of Class A felony voluntary manslaughter and one count of Class D felony possession of marijuana. Waltmire pled guilty to two counts of Class C felony reckless homicide, Ind. Code § 35-42-1-5, and the State dismissed the possession charge. The plea agreement provided for the executed portion of Waltmire's sentences to be capped at twelve years.

In pronouncing the sentences, the trial court first found consecutive sentences to be appropriate: "[T]hese were two separate acts in my opinion. Okay? One act was completed. One shooting was completed prior to the second one being undertaken and so I think consecutive sentences are appropriate here." Sent. Tr. p. 48. The trial court then found Waltmire's prior criminal history and the nature of the offenses as aggravators and his guilty plea as a mitigator. The trial court sentenced Waltmire to four years executed on the first count. The trial court then stated, "The second, count II, rather, one crime was completed and committed prior to the second one being done. As I indicated, these are consecutive sentences, I think the second one is therefore much more aggravated and I would sentence him on count II to eight years incarceration" *Id.* at 49.

Waltmire now appeals his aggregate twelve-year sentence.

Discussion and Decision

Waltmire contends that the trial court erred by ordering consecutive sentences and that his aggregate twelve-year sentence is inappropriate.

I. Abuse of Discretion

Waltmire contends that the trial court erred by ordering consecutive sentences. Sentencing decisions, including whether to impose consecutive sentences on multiple convictions, lie within the sound discretion of the trial court, and we reverse only for an abuse of that discretion. *Jones v. State*, 807 N.E.2d 58, 68-69 (Ind. Ct. App. 2004), *trans. denied*.

When imposing a sentence for a felony offense, a trial court is required to enter a sentencing statement that includes a reasonably detailed recitation of the reasons for imposing a particular sentence. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). The sentencing statement must include: (1) identification of all significant aggravating and mitigating circumstances; (2) the specific facts and reasons that led the court to find the existence of each such circumstance; and (3) an articulation demonstrating that the mitigating and aggravating circumstances have been evaluated and balanced in determining the sentence. *Monroe v. State*, 886 N.E.2d 578, 579 (Ind. 2008).

Waltmire specifically argues that “the trial court failed to explain how the balancing of aggravating and mitigating circumstances warranted ordering Waltmire’s sentences to be served consecutively,” and that because the trial court “merely” stated

that consecutive sentences were warranted because the offenses were two separate acts, the court “failed to apply the proper standard.” Appellant’s Br. p. 13-14.

Waltmire cites *Harris v. State*, 897 N.E.2d 927 (Ind. 2008), for support. In *Harris*, the defendant was convicted of two counts of child molesting. *Id.* at 928. At sentencing, the trial court identified three aggravators and no mitigators, found the aggravators outweighed the mitigators, and sentenced the defendant to two fifty-year consecutive terms. *Id.* at 929. Our Supreme Court found that the trial court failed to explain why the aggravating circumstances warranted consecutive sentences as opposed to enhanced concurrent sentences. *Id.*

The situation here is different. The trial court found Waltmire’s prior criminal history and the nature of the offenses as aggravators and his guilty plea as a mitigator. The court then imposed four years on the first count and, specifically noting the distinct nature of the crimes, a consecutive eight years on the second count. Unlike in *Harris*, where no reason was given for the imposition of consecutive sentences as opposed to enhanced concurrent sentences, the sentences here demonstrate that the trial court found the fact of the distinct crimes itself warranted not only consecutive sentences but also an enhanced sentence on the second count.

Furthermore, it is a well established principle that multiple crimes or victims constitute a valid aggravating circumstance that a trial court may consider in imposing consecutive sentences. *O’Connell v. State*, 742 N.E.2d 943, 952 (Ind. 2001). Here, we have multiple crimes and multiple victims.

There is no abuse of discretion.

II. Inappropriate Sentence

Waltmire also contends that his aggregate twelve-year sentence 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*, 868 N.E.2d at 491). The defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Waltmire pled guilty to two Class C felonies pursuant to a plea agreement that capped his executed sentence at twelve years. The statutory range for a Class C felony is between two and eight years, with the advisory sentence being four years. Ind. Code § 35-50-2-6(a). The trial court sentenced Waltmire to the advisory term of four years on the first count and an enhanced eight years on the second count, for an aggregate sentence of twelve years.

As for the nature of the offenses, Waltmire fired four shots at Smith and three shots at Zimmerman. We acknowledge that Smith and Zimmerman had just threatened and beaten Waltmire; however, the situation escalated when Waltmire chose to retrieve his gun. Although Waltmire argues that the evidence presented at the sentencing hearing suggests that his actions were in self-defense and that he may have suffered a brain injury

during the attack by Smith and Zimmerman causing him to have a “diminished capacity for understanding what he was doing,” Appellant’s Br. p. 12, the fact remains that he pled guilty to recklessly shooting and killing Smith and Zimmerman and admitted to shooting both victims multiple times.

As for Waltmire’s character, his pre-sentence investigation report reflects that as a juvenile, Waltmire has a theft offense and a possession of a switchblade offense that appear to have been resolved informally. As an adult, he has two misdemeanors for minor consumption of alcohol. And at the time of these offenses, Waltmire had a Class D felony theft charge pending. Although Waltmire argues that his past crimes are unlike the current offenses, his record nonetheless indicates that his criminal activity is increasing. Moreover, although Waltmire has been afforded leniency in the past with probation, he has had his probation revoked.

Waltmire has failed to persuade us that his aggregate twelve-year sentence is inappropriate in light of the nature of the offenses and his character.

Affirmed.

MAY, J., and ROBB, J., concur.