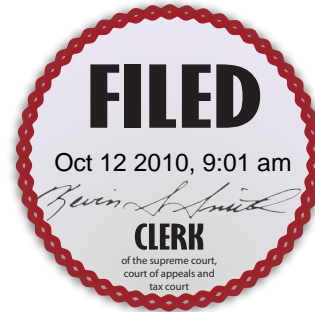


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

EMMANUEL T. WILLIAMS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A04-1003-CR-199

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0405-FA-00024

October 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Emmanuel T. Williams (“Williams”) appeals his sentence for Aggravated Battery, a Class B felony,¹ raising for our review the sole issue of whether his sentence is inappropriate. We affirm.

Facts and Procedural History

On May 1, 2004, in Gary, Williams and Alicia Smith (“Smith”) were drinking heavily. Williams and Smith became engaged in an argument, and at some point Williams stabbed Smith repeatedly in the head, back, and arms. Smith lost the use of her right arm as a result of the attack.

On May 6, 2004, Williams was charged with Attempted Murder, as a Class A felony;² Aggravated Battery; and Battery, as a Class C felony.³ A warrant for Williams’s arrest was issued on May 6, 2004, but Williams had left Indiana for Illinois. Williams was eventually extradited to Indiana and the warrant for his arrest was served on May 16, 2006.

Williams represented himself during a jury trial that commenced on April 29, 2008. A mistrial was declared on evidentiary grounds not related to this appeal.

After Williams consented to the appointment of counsel on his behalf, Williams and the State entered into a plea agreement on July 10, 2009. Williams pled guilty to Aggravated Battery, and the State dismissed the charges of Attempted Murder and Battery.

On December 10, 2009, the trial court accepted the plea agreement and conducted a

¹ Ind. Code § 35-42-2-1.5.

² Ind. Code §§ 35-42-1-1 & 35-41-5-1(a).

³ Ind. Code § 35-42-2-1(a)(3).

sentencing hearing. After hearing testimony from witnesses for Williams and a victim impact statement from Smith, the court sentenced Williams to fifteen years imprisonment.

This appeal followed.

Discussion and Decision

Williams argues that the fifteen year sentence the trial court imposed is inappropriate in light of the nature of his offense and his character. In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

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 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. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to “leaven the outliers.” Id. at 1225. “Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors

that come to light in a given case.” Id. at 1224.

The sentencing range for aggravated battery, a Class B felony, is between six and twenty years, with an advisory sentence of ten years. Ind. Code § 35-50-2-5. Williams’s sentence was five years above the advisory, and he requests either a suspension of some or all of his fifteen year sentence or, in the alternative, a revised sentence of ten years.⁴

Williams argues that the nature of his offense warrants the advisory term of ten years, claiming that the Aggravated Battery statute envisions “multiple stabbings and injury to Smith’s arm” in elevating the offense to a Class B felony. We disagree. The statute elevates a battery to aggravated battery where a defendant “knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes (1) serious permanent disfigurement; (2) protracted loss or impairment of the function of a bodily member or organ; or (3) the loss of a fetus.” I.C. § 35-42-2-1.5 (emphasis added). The impairment of Smith’s right arm is enough to elevate the offense; the numerous wounds Williams inflicted⁵ heighten the grievousness of Williams’s conduct, which is not substantially mitigated by his intoxication at the time of the offense. We also note that Smith’s victim impact statement to the court indicated that the injuries Williams inflicted upon her left her in fear and rendered her unable to work for some time, which caused her to become homeless.

As to his character, Williams notes that the trial court found that he was remorseful,

⁴ While Williams expressly requests a twelve year executed sentence from this Court, (Appellant’s Br. 7, 8), he also asserts that the nature of his offense warranted only the ten year advisory sentence. We therefore assume he requests the lesser, advisory sentence.

⁵ According to the probable cause affidavit, Williams stabbed Smith twenty-seven times.

and produced testimony at the sentencing hearing indicating that he can earn a good living as a bricklayer, is respectful, and has improved himself through involvement in his church, including drinking less and avoiding cursing. These are recent changes, starting in 2007. Prior to this, Williams had been convicted of two prior misdemeanors and two prior felonies, most notably a murder conviction in Illinois in 1991. William's most recent conviction prior to his guilty plea in this case occurred in Illinois on May 27, 2004—less than one month after he committed the present offense.

While we laud Williams's recent progress, this progress does not overshadow his prior conduct or the nature of his offense here. We therefore decline Williams's request for revision of his sentence under Appellate Rule 7(B).

Affirmed.

RILEY, J., and KIRSCH, J., concur.