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**IN THE
COURT OF APPEALS OF INDIANA**

BRUCE FIVECOAT,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 03A01-1003-CR-132

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0907-FB-957

October 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Bruce Fivecoat appeals his aggregate forty-year sentence with five years suspended for two counts of Class B felony armed robbery and one count of Class B felony criminal confinement. Fivecoat argues that his sentence is inappropriate in light of the nature of the offenses and his character. We conclude that his sentence is not inappropriate. We affirm.

Facts and Procedural History

On June 19, 2009, Fivecoat and accomplice Eric Warren entered a Walgreens in Columbus, Indiana. Fivecoat kept a lookout at the front of the store while Warren proceeded to the pharmacy counter. Warren handed the pharmacist a note indicating that he was robbing her. He then revealed a gun underneath his shirt and ordered the pharmacist to give him Oxycontin. She complied.

On July 22, 2009, Fivecoat and Warren robbed the Walgreens once more. Fivecoat first asked his wife Jessica to go inside and count the number of employees on duty. She did so while Fivecoat waited in the car. Jessica then went home. About an hour later, Fivecoat and Warren entered the Walgreens. Warren proceeded to the pharmacy counter. Fivecoat drew a gun from his waistband and ordered the assistant manager and store cashier to move back to the pharmacy. Fivecoat pointed the gun at them several times and told them not to look at him. At some point he removed zip ties from his pocket and ordered the assistant manager to tie the cashier's hands. Fivecoat tied the assistant manager's hands. Fivecoat then ordered the assistant manager and cashier to get down on their knees. Warren brandished a gun and gave the pharmacist a

list of drugs to retrieve. Fivecoat ultimately tied the pharmacist's hands as well and ordered the three victims to lay on the floor face-down. A newspaper deliverywoman soon showed up and triggered the front door alarm. Fivecoat and Warren left the store.

The State charged Fivecoat with Count I, Class B felony armed robbery (July 22 / pharmacist); Count II, Class B felony armed robbery (June 19 / pharmacist); Count III, Class B felony criminal confinement (July 22 / assistant manager); Count IV, Class B felony criminal confinement (July 22 / cashier); and Count V, Class B felony criminal confinement (July 22 / pharmacist).

Fivecoat pled guilty to Counts I, II, and V pursuant to a plea agreement with the State. Counts III and IV were dismissed.

At his sentencing hearing, Fivecoat testified as follows:

First, I would like to apologize to [the three victims] for putting them through everything I've put them through. And I hope someday that they can forgive me because I am truly sorry. I know that what I've done is truly horrible. And I will have to be punished for it. I also know that there is no good reason for what I did, but I would like to explain why. In July of 2008, I lost my job. Two weeks later, my youngest daughter was born. For almost a year, I tried to find work and couldn't. At that time I got behind in child support on my oldest daughter and was . . . getting ready to go back to jail for the second time for child support. On top of not being able to take care of my family, I've been fighting an addiction of pain medication for about ten years. I know that none of this gives me the right to do what I did. I just felt backed into a corner and did something really stupid. I'm gonna have to live with what I've done for the rest of my life. I just pray for forgiveness for what I've done.

Tr. p. 30-31. He also acknowledged to the court, "I know I deserve to go to prison." *Id.* at 30.

According to his presentence investigation report, Fivecoat was convicted in 2000 of Class A misdemeanor resisting law enforcement and Class B misdemeanor disorderly

conduct. In 2006, he was convicted of Class A misdemeanor driving while suspended. And in 2008, Fivecoat was convicted of Class A misdemeanor resisting law enforcement and Class B misdemeanor public intoxication.

The trial court sentenced Fivecoat to fourteen years on Count I with two years suspended to probation, twelve years on Count II with one year suspended to probation, and fourteen years on Count V with two years suspended to probation. The sentences were imposed consecutively for an aggregate term of forty years with five years suspended.

Fivecoat now appeals.

Discussion and Decision

Fivecoat argues that his sentence is inappropriate in light of the nature of the offenses and his character.

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 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)). In assessing whether a sentence is inappropriate pursuant to Rule 7(B), appellate courts may take into account whether a portion of the sentence is

ordered suspended or is otherwise crafted using any of the variety of sentencing tools available to the trial judge. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

The sentencing range for a Class B felony is between six and twenty years, with the advisory term being ten years. Ind. Code § 35-50-2-5.

As for the nature of his offenses, Fivecoat participated in two armed robberies of a drug store. He acted only as a lookout during the first robbery, but he nonetheless aided an accomplice in robbing a store pharmacist at gunpoint. Fivecoat and his accomplice returned to the store one month later to rob it for a second time. Fivecoat was personally armed during the second robbery. He corralled his victims at gunpoint before incapacitating them with zip ties. Fivecoat also enlisted his wife to case the store beforehand. We believe this conduct was grave and egregious and sufficiently justifies the enhanced, consecutive sentences imposed.

With regard to his character, we recognize Fivecoat's financial hardships, prescription addiction, expression of remorse, and minimal criminal history. However, we do not find these factors so compelling as to warrant a downward sentence revision.

For the reasons stated, we cannot say Fivecoat's aggregate term is inappropriate.

Affirmed.

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