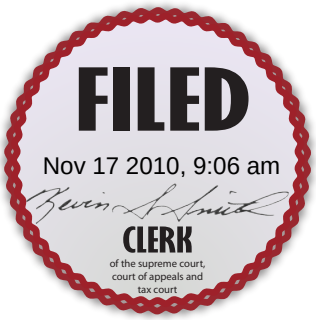

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IN THE COURT OF APPEALS OF INDIANA

MARTY MCCONNELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A02-1004-CR-400
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Robert L. Barnet, Judge
Cause No. 18C03-0010-CF-76

November 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Marty McConnell appeals the sentence imposed by the trial court after his plea of guilty to six class C felony offenses: five counts of robbery and one count of possession of cocaine.

We affirm.

ISSUES

1. Whether McConnell's sentence is inappropriate.

2. Whether the trial court abused its discretion when it ordered that the sentences for the five class C felony robbery convictions be served consecutively.

FACTS

On October 21, 2000, McConnell took money "from an employee of SaveOn Liquors, putting her in fear." (Tr. 15). Two days later, on October 23rd, he took money from an employee of "Speedway . . . , by putting her in fear." *Id.* Also on that date, McConnell took money from a person "employed at Tobacco Depot, putting her in fear." *Id.* The next day, October 24th, he took money from an "employee of Village Pantry, by putting her in fear." *Id.* Also on October 24th, he took money from "an employee of First Merchants Bank by putting her in fear." *Id.* at 15-16. Finally, on October 24th, he also "possess[ed] cocaine in an aggregate weight of more than three (3) grams." *Id.* at 16. All of these acts took place in Delaware County.

On October 30, 2000, the State charged McConnell with five counts of class B felony robbery and with one count of class C felony possession of cocaine. The State alleged that McConnell was armed with a deadly weapon during each of the robberies.

On April 5, 2001, McConnell and the State appeared before the trial court and advised that an agreement had been reached whereby the State would reduce the five class B felony robbery counts and McConnell would plead guilty to five class C felony robberies and the class C felony cocaine possession offense. The State moved to amend the charging information to strike the allegations that in each robbery, McConnell "was armed with a deadly weapon, to wit: a gun." (Tr. 2). The trial court granted the motion. McConnell then expressly admitted the facts of the charged offenses as recounted above. The trial court accepted the guilty pleas; found McConnell guilty of six class C felonies: five counts of robbery and one count of possession of cocaine; and entered judgment of conviction thereon.

On May 20, 2001, the trial court held the sentencing hearing. The trial court specifically found as mitigating circumstances McConnell's "cooperating with law enforcement," his "strong family support," and that long term incarceration would "be a hardship on [his] daughter," while also "not[ing]" his "military service" and his "physical condition" subsequent to a 1987 motorcycle accident. Tr. 44.

The trial court concluded that "these crimes" were "separate and distinct robberies." *Id.* As aggravating circumstances, the trial court found McConnell's "long extensive troubled history of contact with" the judicial system, beginning at age fifteen and continuing for twenty-five years – "six (6) juvenile adjudications, fourteen (14) convictions as an adult, nine (9) misdemeanors, five (5) felonies, forgery, acquiring controlled substances by fraud, auto theft, attempted theft, resisting law enforcement," and currently pending cases. *Id.* at 44-45. It also found that seven probation violations

had been filed, and probation "revoked three (3) times, so you can't say that you haven't been given a chance." *Id.* at 45. It further found that "attempts at rehabilitation ha[d] not worked"; "[a]ttempts at correction ha[d] not worked"; and McConnell was "on probation at the time of this offense." *Id.* at 45. The trial court also found that "plan[ning] and care went into these robberies," which were "not particularly spontaneous" but "over the course of two (2) days" and involved "five (5) separate commercial entities." *Id.* The trial court concluded that given McConnell's "[p]ast extensive contact with the system," the "likelihood of future crimes" by him was "great." (Tr. 44).

The trial court then sentenced McConnell to eight years on each of the six counts, and ordered the eight-year sentences on the five robbery counts to be "served consecutively to each other," and the eight-year sentence on the cocaine offense to "be served concurrently" with the fifth robbery offense sentence. *Id.* at 47. Hence, it imposed an aggregate sentence of forty years.

On March 29, 2010, McConnell filed a petition for permission to file a belated notice of appeal. The trial court granted his petition, and this appeal ensued.

DECISION

1. Inappropriate Sentence

The Indiana Constitution authorizes independent appellate review and revision of a sentence, authority implemented through Appellate Rule 7(B). *Anglemyer v. State*, 868 N.E.2d, 482, 491 (Ind. 2007), *clarified on reh'g on other grounds*, 875 N.E.2d 218 (Ind. 2007). The Rule 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." *Id.* (quoting Ind. Appellate Rule 7(B)). "The burden is on the defendant to persuade" the appellate court that his or her sentence is inappropriate. *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

With respect to his character, by forty years of age, McConnell had a nearly continuous criminal history dating from his fifteenth year, and this history reflected his refusal to conform his actions to the rules of society. This trait is also reflected in his failures to comply with probation terms and his continued illegal drug use despite treatment in multiple programs.

With respect to the nature of his offenses, McConnell argues that although his "offenses put people in fear," he was only armed with "a BB gun." McConnell's Br. at 10. He admits that the gun "looked like a real handgun," but reminds us that it was "shoved . . . in his pants" and he "never actually pulled [it] the BB gun out" of his pants" or "pointed it at anyone." *Id.* When asked by the trial court whether that fact "made" the employees from whom he demanded money "feel better," McConnell admitted, "No." (Tr. 43). Moreover, in his plea hearing, McConnell expressly admitted that in each instance, his actions of displaying what appeared to be a handgun and demanding money evoked fear in the employee.

The standard sentence for a class C felony is four years, with a possible range of two to eight years based on aggravating and mitigating circumstances. *See* Ind. Code § 35-50-2-6. As noted by the trial court, his offenses admittedly evoked fear in the respective employees from whom he demanded money at the five commercial entities.

Moreover, the record supports the trial court's conclusion that McConnell would likely commit future crimes. McConnell has failed to persuade us that the eight-year sentences imposed for each offense are inappropriate. *Reid*, 876 N.E.2d at 1116.

2. Consecutive Sentences

McConnell next argues that the trial court abused its discretion by ordering his sentences for the robberies "to run consecutively, . . . considering that the offenses were the result of an episode of criminal conduct as contemplated by I.C. 35-50-1-2." McConnell's Br. at 11. The subsection upon which McConnell's argument is premised provides that

> except for crimes of violence, the total of consecutive terms of imprisonment, . . . to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

I.C. § 35-50-1-2(c)(2). An "episode of criminal conduct" in this provision "means offenses or a connected series of offenses that are closely related in time, place, and circumstance." I.C. § 35-50-1-2(b). Thus, based on this statutory provision, "McConnell argues that the penalties for his sentences, even if run consecutively, should not have exceeded" the ten-year advisory sentence for a class B felony. McConnell's Br. at 13. We disagree.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer*, 868 N.E.2d at 490. Further, whether "to impose consecutive sentences" is a decision within the trial court's

discretion. *Echols*, 722 N.E.2d 805, 808 (Ind. 2000). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Anglemyer*, 868 N.E.2d at 490. However, the above-cited statute "limit[s] the trial court's authority to impose consecutive sentences if the convictions were not for 'crimes of violence' and the convictions 'arose out of an episode of criminal conduct.'" *Reed v. State*, 856 N.E.2d 1189, 1199 (Ind. 2006) (quoting I.C. § 35-50-1-2(c)).

The proposition of *Tedlock v. State*, 656 N.E.2d 273, 276 (Ind. Ct. App. 1995), that a "single episode of criminal conduct" under the statute existed where a complete account of one charge cannot be related without referring to the details of the other charge, has frequently been cited as an essential factor for application of the statute. *Reed*, 856 N.E.2d 1199, 1200. *Reed* clarified that the facts of the cases applying the statute "showed the timing of the offenses dictated whether the offenses were or were not single episodes of conduct." *Id.* at 1201. Thus, where two counts of attempted murder were based on shots fired within "approximately five seconds," the two offenses were closely related in time, place, and circumstance, and were "a single episode of criminal conduct within the meaning of the statute." *Id.* (quoting I.C. § 35-50-1-2(b)).

Here, McConnell's first robbery was on October 21st; two days later, he committed two more robberies – but demanding money from different employees at different commercial entities; and the day after that, he committed two additional robberies – again demanding money from different employees at different commercial entities. Consistent with *Reed*, we do not find "the timing of the offenses" to establish a single episode of

criminal conduct. *Id.* Moreover, the statute also defines a "single episode of criminal conduct" as meaning "a series of connected offenses that are closely related in . . . place and circumstance." I.C. § 35-50-1-2(b) (emphasis added). Inasmuch as McConnell put in fear five different employees at five different commercial entities, we do not find his five robberies to be "offenses that are closely related in . . . place" or "closely related in . . . circumstances." *Id.* Hence, in this case, the statute does not limit the trial court's authority to impose consecutive sentences.

A trial court may rely on the same reasons to impose a maximum sentence and also to impose consecutive sentences. *Echols*, 722 N.E.2d at 808. McConnell's criminal history was extensive, and the robbery offenses here were committed against five separate commercial entities and evidenced planning and preparation by McConnell. The trial court did not abuse its discretion when it ordered McConnell to serve consecutively the terms imposed for his five robbery convictions.

Affirmed.

BRADFORD, J., and BROWN, J., concur.