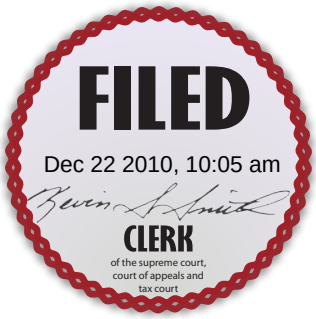

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IN THE COURT OF APPEALS OF INDIANA

MARK RICHMOND,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 45A03-0607-CR-293
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0309-FA-25

December 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Mark Richmond appeals the ninety-three-year aggregate sentence imposed following his convictions for Rape, a Class B felony; Criminal Deviate Conduct, a Class B felony; Burglary, a Class B felony; and Confinement, a Class D felony, as well as the finding that he is a habitual offender. We affirm.

FACTS AND PROCEDURAL HISTORY

Our opinion in Richmond's prior appeal instructs us as to the underlying facts leading to the instant appeal:

> Sometime after midnight on September 18, 2003, Richmond arrived home to find his wife, DeeDee Richmond (DeeDee), in the kitchen. An argument ensued when DeeDee refused his sexual advances. The argument escalated when she informed Richmond she wanted a divorce. DeeDee decided it would be best if she left and took their baby with her. Richmond took her house key off her key ring making it impossible for her to reenter the marital residence after leaving. When Richmond would not return the keys, DeeDee called the police. Before the police arrived, DeeDee finished packing a bag for herself and the baby. When the police arrived they advised her not to worry about the keys. She took their advice and left with the baby. The two spent the night in a parking lot under the belief that Richmond would not be able to locate them, as he would if she took refuge at a friend or relative's home.
>
> Later that morning, DeeDee's sister, Yvonne, awoke to Richmond's hand over her mouth and a knife to her neck. Richmond motioned for her to rise and directed her into the living room. Yvonne asked where DeeDee was, to which he responded, they had a fight and she was leaving him. He also told Yvonne that he had always wanted her and now he could have her while hurting his wife at the same time. Richmond proceeded to pull up Yvonne's slip and perform oral sex on her. Then he cut her underwear off with the knife and penetrated her with his penis. When Richmond left Yvonne called her mother and 911. Richmond entered Yvonne's home by cutting a screen in her daughter's bedroom window.
>
> On September 19, 2003, the State filed an Information charging Richmond with Count I, rape, a Class A felony, I.C. § 35-42-4-1; Count II, criminal deviate conduct, a Class A felony, I.C. § 35-42-4-2; Count III, burglary, a Class B felony, I.C § 35-43-2-1; and Count IV, confinement, a Class D felony, I.C. § 35-42-3-3. The Information was later amended to include Count V, habitual offender, I.C. § 35-50-2-8.

> February 27, 2006 through March 2, 2006, a jury trial was held. At the close of evidence the jury found Richmond guilty of Count I, rape, a Class B felony; Count II, criminal deviate conduct, a Class B felony; Count III, burglary, a Class B felony, Count IV, confinement, a Class D felony, and Count V, habitual offender. On March 21, 2006, a sentencing hearing was held. The trial court found two aggravating factors: (1) Richmond's criminal history which included four felony convictions and one misdemeanor conviction, and (2) Richmond violated the conditions of his probation by committing the instant offenses. Richmond was sentenced to twenty years on each of the three Class B felonies and three years on the Class D felony, to be served consecutively, with a thirty year enhanced sentence for the habitual offender adjudication, totaling a sentence of ninety-three years.

Richmond v. State, No. 45A03-0607-CR-293 slip op. pp. 2-4 (Ind. Ct. App. March 29, 2007). Richmond appealed.

In Richmond's prior appeal, this court concluded that the trial court's sentencing order erroneously treated the habitual offender finding as a separate conviction. This court was therefore was unable to conduct a review as to whether Richmond's sentence was inappropriate. *Id*. pp. 4-5. Accordingly, this court remanded the matter to the trial court with instructions for the trial court to "provide a more explicit sentencing statement, including (1) to which felony conviction Richardson's habitual offender adjudication attaches, and (2) unambiguously provide which prior convictions were relied upon to aggravate and run his sentences consecutively, in addition to any other aggravators and mitigators recognized by the trial court." *Id*. p. 5.

On May 29, 2007, the trial court submitted an explicit sentencing statement in which it noted that Richmond's habitual offender finding was attached to his Class B felony rape conviction and clearly noted three convictions upon which it relied to aggravate and run

Richmond's sentences consecutively. Richmond now appeals.[1]

DISCUSSION AND DECISION

On appeal, Richmond contends that his aggregate ninety-three-year sentence is inappropriate in light of the nature of his offenses and his character. Indiana Appellate Rule 7(B) provides that 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." The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

With respect to the nature of Richmond's offenses, our review reveals that Richmond, after being informed by his wife that she wanted a divorce, took her house keys so that she could not return to the marital residence if she left. Fearing for both her child's safety and her own, Richmond's wife left, taking the couple's small child with her, and spent the night in a parking lot so that Richmond could not locate them. Richmond then went to his sister-in-law's home, cut a screen in her daughter's bedroom window, entered the home, and threatened his sister-in-law by holding his hand over her mouth and a knife to her neck, before proceeding to orally violate and rape her. Although Richmond argues his actions did not warrant a maximum sentence, we are persuaded that Richmond's actions are among the

[1] On October 13, 2010, this court granted Richmond permission to file a supplemental brief and supplemental appendix and to obtain a ruling on appeal after Richmond's counsel demonstrated that the delay in seeking an appeal following the trial court's submission of its explicit sentencing statement was no fault of the defendant's.

worst of the worst. In addition, we find Richmond's actions to be especially heinous because he told his rape victim that he knew that by raping her, he would not only be hurting her, but also his wife.

With respect to Richmond's character, our review reveals that Richmond had previously been convicted of similar offenses in Oklahoma, including rape and forcible oral sodomy, which would amount to criminal deviate conduct if committed in Indiana. In addition to these prior convictions, Richmond also has prior convictions for battery, kidnapping, auto theft, operating while intoxicated, and driving without having a license in his possession. Moreover, Richmond was on probation at the time he committed the instant offense. We acknowledge that Richmond appears to be remorseful for his actions. However, despite his apparent remorse, Richmond has amassed a substantial criminal record that demonstrates a disregard for the laws of this state. In light of the heinous nature of Richmond's offenses, which were carried out with the intent to cause harm to multiple victims, and Richmond's poor character, we are unconvinced that the maximum aggregate sentence of ninety-three years is inappropriate.

The judgment of the trial court is affirmed.

KIRSCH, J., and CRONE, J., concur.