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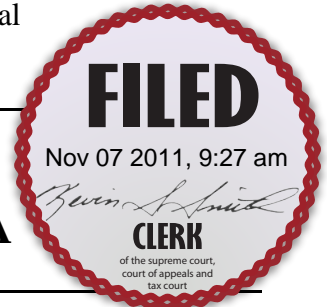
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**IN THE
COURT OF APPEALS OF INDIANA**



JAMES HENRY LaFRAMBOISE,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 16A05-1104-CR-220

APPEAL FROM THE DECATUR CIRCUIT COURT
The Honorable John A Westhafer, Judge
Cause No. 16C01-1007-MR-128

November 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant James LaFramboise appeals following his guilty plea to and conviction for Class A felony Voluntary Manslaughter.¹ On appeal, LaFramboise challenges the appropriateness of his sentence. We affirm.

FACTS AND PROCEDURAL HISTORY

The stipulated factual basis entered during the February 11, 2011 guilty plea hearing provides that on July 8, 2010, Greensburg Police officers were dispatched to Vista Village subdivision after receiving a non-emergency phone call from a man stating that he had just killed his aunt by slitting her throat. The caller requested an ambulance go to the residence where he had committed the murder and that the police meet him at the entrance to the subdivision where he would turn himself in. The caller identified himself as LaFramboise, provided the dispatcher with a description of the clothing he was wearing, and told the dispatcher that he had killed his aunt by slitting her throat approximately five to ten minutes before placing the non-emergency call to the police department. LaFramboise surrendered himself to police and was transported to the Greensburg Police Department where he was interviewed by the investigating officers. LaFramboise was forthright with the investigating officers during his interview and indicated that he understood what had happened.

Meanwhile when officers arrived at the residence specified by LaFramboise, they found the body of a female lying face-down on the bed in a pool of blood. The body was partially covered by a blanket. Officers found a blood-stained steak knife on the corner of a nearby dresser. The victim was later identified to be seventy-six-year-old Mary Alice

¹ Ind. Code § 35-42-1-3 (2010).

Simonson. Simonson suffered from a mental defect, had a limited ability to read and write, and lived with LaFramboise's family, who provided for her daily care. An autopsy determined that Simonson's cause of death was a "sharp forced injury of the neck." Tr. p. 25.

On July 8, 2010, the State charged LaFramboise with murder. LaFramboise subsequently filed an insanity defense and was evaluated by a psychologist and two different psychiatrists. After completing a psychiatric evaluation, Dr. Philip M. Coons opined that that LaFramboise suffered from depressive disorder but was competent to stand trial. Dr. Coons further opined that LaFramboise understood the charges against him and would be able to cooperate with an attorney in formulating his defense. Dr. Coons additionally opined that LaFramboise was aware of the wrongfulness of his actions at the time he committed the instant crime, and thus, did not meet the legal criteria for insanity. Upon completing a psychological evaluation, Dr. Lawrence Ewert opined that LaFramboise was competent to stand trial and assist in the preparation of his defense. Dr. Ewert further opined that at the time Simonson was killed, LaFramboise suffered from a mental disease or defect, and may have been unable to appreciate the wrongfulness of the crime he committed. Upon completing a second psychiatric evaluation, Dr. George Parker opined that LaFramboise was competent to stand trial and was capable of understanding the legal proceedings against him and assisting counsel in his defense. Dr. Parker further opined that while LaFramboise did suffer from a mental disease at the time he committed the instant offense, LaFramboise did appreciate the wrongfulness of his actions at the time.

On February 11, 2011, LaFramboise pled “guilty but mentally ill” to the crime of Class A felony voluntary manslaughter. Appellant’s App. p. 42-44. Pursuant to the terms of his plea agreement, LaFramboise would be sentenced to thirty-two years,² with the trial court having the discretion to decide whether the entire sentence would be executed or if part would be suspended to probation. The trial court accepted LaFramboise’s guilty plea, and on April 8, 2011, imposed a thirty-two-year executed sentence. This appeal follows.

DISCUSSION AND DECISION

Initially we note that pursuant to the terms of his plea agreement, LaFramboise waived his right “to any direct appeal of [his] sentence.” Appellant’s App. p. 44. However, the trial court advised LaFramboise that he would “have the right to appeal [his] sentence” at the outset of the February 11, 2010 guilty plea hearing, before LaFramboise received the benefit of his plea bargain. The State did not object to this advisement. Therefore, we must conclude that LaFramboise did not knowingly and intelligently waive his right to appeal his sentence, and we will accordingly address his contention that his sentence was inappropriate. *See Holloway v. State*, 950 N.E.2d 803, 805-06 (Ind. Ct. App. 2011) (providing that Holloway did not knowingly and intelligently waive his right to appeal his sentence because the trial court’s advisement that Holloway had the right to appeal occurred at his combined guilty plea and sentence before he received the benefit of his plea bargain); *see also Bonilla v. State*, 907 N.E.2d 586 (Ind. Ct. App. 2009), *trans. denied*; *Ricci v. State*, 894 N.E.2d 1089

² The thirty-two year sentence represented “the advisory sentence of thirty (30) years” plus two years “for the aggravating factor of [LaFramboise’s] juvenile and criminal history.” Appellant’s App. p. 42.

(Ind. Ct. App. 2008), *trans. denied*.

In arguing that his thirty-two-year executed sentence is inappropriate, LaFramboise contends that some portion of his sentence should have been suspended to probation. Indiana Appellate Rule 7(B) provides that “The 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 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). We cannot, however, agree that LaFramboise’s sentence is inappropriate.

With respect to the nature of his offense, LaFramboise challenges the trial court’s description of Simonson as being mentally disabled, arguing that Simonson “had the capacity to learn.” Appellant’s Br. p. 9. LaFramboise, however, concedes that Simonson had a diminished mental capacity and was unable to care for herself. LaFramboise also challenges the trial court’s description of the killing as savage or hideous. In making this challenge, LaFramboise asserts that “the cutting of one’s throat is one of the quicker ways to die” and “there are certainly more painful ways to die.” Appellant’s Br. pp. 9, 10. While we realize that “it will always be possible to identify or hypothesize a significantly more despicable scenario,” we are unpersuaded by LaFramboise’s attempt to marginalize the savage and hideous nature of his act of killing his elderly, mentally disabled aunt who relied, at least in part, on him for her daily care. *See Harris v. State*, 897 N.E.2d 927, 929-30 (Ind. 2008).

With respect to his character, LaFramboise argues that his fully executed sentence is

inappropriate in light of his own mental illness. The record reveals that the trial court considered LaFramboise's mental illness in sentencing him. While the report from psychological evaluation suggested that LaFramboise may not have been able to comprehend the wrongfulness of his actions, the psychiatric evaluations completed by Doctors Coons and Parker indicated that he did appreciate the wrongfulness of his actions at the time he committed them, despite his mental illness. The trial court also considered the fact that LaFramboise was on probation at the time he committed the instant offense and his apparent remorse. The trial court, however, found that LaFramboise's apparent remorse was counter-balanced by the fact that Simonson suffered from a mental illness.³ Like the trial court, we acknowledge LaFramboise's mental illness, but, in light of the savage nature of the crime, must conclude that the trial court's order that the entire thirty-two-year-sentence be executed, rather than suspended to probation, is wholly appropriate.

The judgment of the trial court is affirmed.

ROBB, C.J., and BARNES, J., concur.

³ To the extent that LaFramboise argues that the trial court abused its discretion in weighing the above-stated aggravating and mitigating factors, such a claim is not available for appellate review. *See Anglemeyer v. State*, 868 N.E.2d 482, 493-94 (Ind. 2007), *modified on other grounds on reh 'g*, 875 N.E.2d 218 (Ind. 2007).