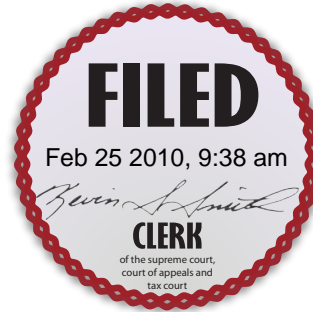


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MATTHEW JAMES WALKER,)

Appellant-Defendant,)

vs.)

No. 60A01-0910-CR-501

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE OWEN CIRCUIT COURT
The Honorable Frank M. Nardi, Judge
Cause No. 60C01-0901-FB-5

February 25, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Matthew James Walker appeals his sentence for aggravated battery as a Class B felony. We affirm.

Issue

Walker raises one issue, which we restate as whether his twenty-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

Facts

On the night of December 31, 2008, nineteen-year-old Walker, Travis Raber, and Walker's sister, Kayla Walker, went to Erin Ruble's apartment in Spencer to play video games. Walker fell asleep but was awakened by thirty-one-year-old Richard Pursel and his girlfriend, Danell Reno Cohen-Goforth, who arrived at the apartment and were being loud. At some point, Walker took four Klonopin pills, and Raber also took a couple of the pills.

Walker and Pursel later got into an argument. Walker "head butted" Pursel on the nose and asked Pursel if he wanted to finish the fight outside. Tr. p. 9. Walker asked his sister to videotape the fight with a cell phone. In the hallway, Pursel said that he did not want to fight. Walker hit Pursel on the jaw and "took him by the shoulders to the ground with [his] knee in [Pursel's] back." *Id.* Raber joined in and started kicking Pursel on the head while Walker kicked Pursel's legs. Pursel did not fight back and never attacked Walker or Raber. Pursel and Danell left the apartment, but Walker was beating on their

car windows as they attempted to leave. After the fight, Walker forwarded the video to his girlfriend.

Pursel had been involved in a serious motorcycle accident in 2000. He had more than twenty surgeries on his leg as a result and also had surgery on his heart and brain. At the time of the fight, he walked with a limp and took several prescription medications, including the prescription blood thinner, Coumadin. Pursel fell into a coma later that morning and died of a subdural hematoma, which resulted from the beating. Walker deleted the video from his cell phone after discovering that Pursel had died.

The State charged Walker with aggravated battery as a Class B felony, and Walker pled guilty as charged without a plea agreement. At the sentencing hearing, the trial court found Walker's guilty plea, remorse, and minor delinquency history as mitigating factors. The trial court found Walker's delinquent activity, the fact that he was released from probation seven months before this offense, the fact that he videotaped the crime, and the significant harm suffered by the victim in excess of that necessary to prove the offense as aggravating factors. The trial court sentenced Walker to twenty years in the Department of Correction with six years suspended to probation.

Analysis

Walker argues that his twenty-year sentence is inappropriate in light of the nature of the offense and the character of the offender. 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, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” When considering whether a sentence is

inappropriate, we need not be “extremely” deferential to a trial court’s sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Walker notes that the trial court gave him the maximum sentence and argues that the maximum sentence should be reserved for the very worst offenses and offenders. The Indiana Supreme Court has observed that “the maximum possible sentences are generally most appropriate for the worst offenders.” Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002).

This is not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Id. Walker argues that he was not one of the worst offenders because he has a minimal criminal history, he pled guilty without a plea agreement, he expressed remorse, and Rader inflicted the worst of the injuries to Pursel.

Our review of the nature of the offense reveals that Walker beat a disabled man, resulting in his death, and videotaped the beating, presumably for entertainment purposes.

After taking four Klonopin pills, nineteen-year-old Walker argued with thirty-one-year-old Pursel, who was disabled as a result of a serious motorcycle accident and walked with a limp. Walker “head butted” Pursel on the nose and then asked Pursel if he wanted to finish the fight outside. Tr. p. 8. Walker also asked his sister to videotape the fight with a cell phone. Although Pursel said that he did not want to fight, Walker hit him on the jaw and “took him by the shoulders to the ground with [his] knee in [Pursel’s] back.” Id. Raber joined in and started kicking Pursel on the head while Walker kicked Pursel’s legs. Pursel did not fight back and never attacked Walker or Raber. After the fight, Pursel and his girlfriend left the apartment, but Walker was beating on their car windows as they attempted to leave. Walker forwarded the video to his girlfriend after the fight. Pursel died as a result of the beating.

Our review of the character of the offender reveals that Walker was expelled from high school during his freshman year. He returned to school during his sophomore year but quit after two or three days. He did not return to school, but he was working on his GED while incarcerated for this offense. Walker was not employed at the time of this offense and had a limited employment history. Walker admitted that he began using drugs at the age of sixteen. Prescription medication was his preferred drug. Walker had a juvenile delinquency history, including a finding of operating a vehicle without ever receiving a license as a Class C misdemeanor, public intoxication as a Class B misdemeanor, and illegal consumption of alcohol as a Class C misdemeanor. Walker finished his probation on May 21, 2008, six months before the instant offense. Walker

pled guilty as charged without the benefit of a plea agreement, and he expressed remorse at the sentencing hearing.

We acknowledge, as the trial court did, that Walker pled guilty without a plea agreement and was remorseful. On the other hand, we note that Walker's previous contact with the court system did little to deter his conduct and that he had completed probation only a few months before the time of this fight. Moreover, the consequences of Walker's actions were severe as Pursel died as a result of the fight. We also find it quite reprehensible that Walker videotaped the fight for entertainment purposes. Given these circumstances, we cannot say that Walker's maximum twenty-year sentence is inappropriate in light of the nature of the offense and the character of the offender.¹

Conclusion

We conclude that Walker's twenty-year sentence is not inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.

¹ The State argues that Walker did not receive the maximum sentence because the trial court suspended six years of the sentence to probation. This court is divided as to whether a suspended sentence should be treated differently from an executed sentence for purposes of Indiana Appellate Rule 7(B). See Davidson v. State, 916 N.E.2d 954 (Ind. Ct. App. 2009), trans. granted. Because we affirm the trial court's imposition of the twenty-year sentence, we need not address the State's argument.