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IN THE COURT OF APPEALS OF INDIANA

MATTHU R. SANDERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 17A05-1012-CR-756
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEKALB SUPERIOR COURT I
The Honorable Kevin P. Wallace, Judge
Cause No. 17D01-0905-MR-2

July 26, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Matthu R. Sanders (Sanders), appeals his conviction and sentence for robbery while armed with a deadly weapon, a Class A felony, Ind. Code § 35-42-5-1.

We affirm.

ISSUES

Sanders raises two issues on appeal, which we restate as follows:

(1) Whether the trial court failed to establish a factual basis to support Sanders' guilty plea; and

(2) Whether the trial court's sentence was appropriate in light of the nature of the offense and his character.

FACTS AND PROCEDURAL HISTORY

Sanders was out on bond for a pending charge when he violated the terms of his bond by traveling to Florida for a couple of months. While in Florida, he met Jeffrey Cain (Cain), a man with a "tough reputation." (Transcript p. 77). In early May of 2009, Sanders brought Cain back with him to Indiana and they lived with Sanders' friend, Matthew Nelson (Nelson), for a week. Cain then decided to return to Florida but lacked the money to do so. Sanders, along with Cain and Sanders' other friend, Daniel Hess (Hess), discussed robbing someone to get money for Cain. Hess told Cain about Raymond Morrow (Morrow), who owned a flea market in DeKalb County, Indiana. He suggested that Morrow always carried a

significant amount of money but also carried a gun. In response, Cain said that he would "just have to get the drop on him." (Tr. p. 79).

Following their conversation, Sanders asked Nelson for a "throw away gun" that Cain could use to rob Morrow, which Nelson provided on the condition that Sanders would give him a snow plow if Cain did not return the gun. (Tr. p. 78). Sanders also told Cain how to get to Morrow's flea market. Later that week, Cain went to Morrow's flea market, killed Morrow, and brought four guns back to Nelson's house– three guns that were proceeds from the robbery and the gun that Sanders had given to Cain previously. Cain also put money bags from the robbery in a trash barrel outside of Hess' house. When Cain told Sanders about killing Morrow, Sanders told him to burn the money bags in the trash barrel, and Sanders sold two of the guns Cain had brought home in exchange for drugs.

On May 27, 2009, the State filed an Information charging Sanders with Count I, murder, a felony, I.C. § 35-42-1-1(1); Count II, murder, a felony, I.C. § 35-42-1-1(2); and Count III, robbery while armed with a deadly weapon, a Class B felony, I.C. § 35-42-5-1. On November 25, 2009, the State and Sanders filed a plea agreement with the trial court. However, on the date scheduled for sentencing, the trial court rejected the plea agreement and set the matter for trial. On February 18, 2010, the State and Sanders filed a second plea agreement with the trial court. Before sentencing, both the State and Sanders filed motions to withdraw the plea of guilty and proceed to trial. On July 23, 2010, the trial court granted the motions and again set the matter for trial.

On November 19, 2010, the State and Sanders filed a third plea agreement with the trial court. Under the terms of this agreement, Sanders pled guilty to an amended Count III, robbery resulting in serious bodily injury, as a Class A felony. In exchange, the State agreed to dismiss both Counts I and II, as well as Sanders' probation violation of another charge. The agreement also specified that the sentence would be open to the trial court and that the sentencing hearing could occur on the same day as the trial court reviewed the plea agreement because a pre-sentence investigation had already been completed. On November 19, 2010, the trial court accepted the plea agreement and sentenced Sanders to fifty years executed in the Indiana Department of Correction.

Sanders now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Sanders' Guilty Plea*

On appeal, Sanders first argues that the trial court failed to establish a factual basis to support his plea of guilty. In Indiana, a trial court "shall not enter judgment upon a plea of guilty . . . unless it is satisfied from its examination of the defendant or the evidence presented that there is a factual basis for the plea." I.C. § 35-35-1-3(b). Here, the trial court held a guilty plea hearing on November 19, 2010, and heard Sanders' testimony regarding the facts underlying the guilty plea. At the conclusion of Sanders' testimony, neither party objected to the facts, and the trial court accepted both the factual basis underlying the plea and the agreement itself.

Based on this procedural history, we cannot agree with Sanders' argument. It is well-settled that a person who pleads guilty cannot challenge the propriety of the resulting conviction on direct appeal; he or she is limited on direct appeal to contesting the merits of a trial court's sentencing decision, and then only where the sentence is not fixed in the plea agreement. *Alvey v. State*, 911 N.E.2d 1248, 1249 (Ind. 2009). "This is one of the consequences of pleading guilty. After all, '[a] defendant's plea of guilty is [ ] not merely a procedural event that forecloses the necessity of trial and triggers the imposition of sentence. It also, and more importantly, conclusively establishes the fact of guilt, a prerequisite in Indiana for the imposition of criminal punishment.'" *Id.* (quoting *Norris v. State*, 896 N.E.2d 1149, 1152 (Ind. 2008)).

Based on this standard, we conclude that Sanders has not presented an argument that we can address on direct appeal. His argument specifically relates to the nature of the evidence resulting in his guilty plea and conviction, which is an argument that was foreclosed for direct appeal when he pled guilty. *See id.* Accordingly, we conclude that the trial court did not fail to establish a factual basis to support Sanders' guilty plea.

I. *The Nature of the Offense and Character*

Next, Sanders argues that the trial court inappropriately sentenced him in light of the nature of his offense and his character. Under Indiana Appellate Rule 7(B), this 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. *Childress v. State*, 848 N.E.2d 1073, 1079-80 (Ind. 2006).

Although this court is not required to use "great restraint," we nevertheless exercise deference to a trial court's sentencing decision, both because Appellate Rule 7(B) requires that we give "due consideration" to that decision and because we recognize the unique perspective a trial court has when making decisions. *Stewart v. State,* 866 N.E.2d 858, 865-66 (Ind. Ct. App. 2007). The "principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell v. State,* 895 N.E.2d 1219, 1225 (Ind. 2008). In addition, the defendant bears the burden of persuading this court that his sentence is inappropriate. *Childress,* 848 N.E.2d at 1080.

As to the nature of Sanders' offense, Sanders claims that the trial court should not have given him the maximum possible sentence for a Class A felony because he was only an accessory to the crime. He also argues that the trial court inappropriately considered Morrow's death in relation to the gravity of his offense because "serious bodily injury" was already included as an element of the offense. *See* I.C. § 35-42-5-1-1(2). However, in *Patterson v. State,* 846 N.E.2d 723, 731 (Ind. Ct. App. 2006), we held that persons guilty of aiding and abetting crimes may receive maximum sentences under Indiana's sentencing laws. We also determined that it was not improper for the trial court to consider the nature of the serious bodily injury as a factor justifying the imposition of the maximum sentence, even though serious bodily injury is also an element of the crime. *Id.*

In addition, Sanders' other actions contributed to the gravity of his offense. Sanders obtained and guaranteed a throw away gun for Cain; told Cain how to find Morrow; and helped Cain dispose of the evidence by selling two of the guns and telling him to burn the money bags. We agree with the State that Sanders was inextricably involved in Cain's robbery of Morrow and Morrow's resulting death. Therefore, the trial court's sentence is appropriate in light of the nature of Sanders' offense.

In regards to his character, Sanders argues that the trial court inappropriately sentenced him with the maximum sentence allowed for a Class A felony because, as we stated in *Haddock v. State*, 800 N.E.2d 242, 248 (Ind. Ct. App. 2003), maximum sentences should be reserved for the worst offenders. However, we find that Sanders has misconstrued this standard. In *Buchanan*, the Indiana Supreme Court clarified that:

> 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.

Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002).

Here, there is evidence in the record that Sanders' character warranted the maximum sentence. Sanders' criminal history, as documented in the pre-sentence investigation report,

was extensive. He had three prior felony convictions and was on felony probation at the time of the instant offense. In addition, "[a]s a juvenile, [Sanders] had his probation modified several times and eventually revoked. As an adult, [Sanders] [] had two (2) terms of probation revoked and was ordered to serve additional jail time." (Appellant's App. p. 43). He also had a pending probation violation and a pending suspended sentence violation at the time the pre-sentence investigation report was written. We conclude that the trial court's evaluation of Sanders' character was not inappropriate in light of this criminal history. We especially find it notable that Sanders received several opportunities for probation and suspended sentences in the past and had a history of violating the terms of those sentences.[1]

As an additional note, Sanders also argues that the trial court failed to give enough weight to the psychological evaluations in the pre-sentence investigation report that detail that Sanders had "long standing mental deficiencies" such as attention deficit hyperactivity disorder and tendencies towards impulsiveness, aggressiveness, and low confidence. (Appellant's Br. p. 15). We will not address this argument, because it is an improper ground for appellate review. *Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on*

[1] Sanders argues that the trial court inappropriately considered his probation violations because none of the violations were admitted by Sanders or proven by the State, but we cannot agree with this argument. The violations were documented in the pre-sentence investigation report, and Sanders told the trial court that he did not have any new evidence to add to the report.

reh'g, 875 N.E.2d 218. Under the current sentencing scheme, a trial court cannot be said to have abused its discretion by failing to properly weigh or balance sentencing factors. *Id.*

CONCLUSION

Based on the foregoing, we conclude that Sanders cannot challenge the factual basis for his guilty plea on direct appeal, and the trial court properly sentenced him in light of the nature of his offense and his character.

Affirmed.

DARDEN, J., and BARNES, J., concur.