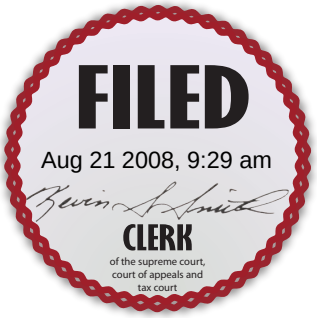

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IN THE COURT OF APPEALS OF INDIANA

ZACHARIAH J. BLANTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 36A01-0802-CR-72
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable William E. Vance, Judge
Cause No. 36C01-0607-MR-1

August 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Zachariah Blanton appeals his forty-two year sentence for Class A felony voluntary manslaughter. We affirm.

Issues

Blanton raises two issues, which we restate as:

I. whether the trial court abused its discretion in sentencing him; and

II. whether his sentence is inappropriate.

Facts

At approximately 11:00 p.m., on July 22, 2006, seventeen-year-old Blanton, who had been hunting with family members in Wheeler Holler, got into an argument with his uncle and great uncle. During the altercation, Blanton's uncles cursed at him, and Blanton's shirt was ripped. The uncles told Blanton to leave the camp and to never return. At 11:30 p.m., an angry Blanton left the camp to return home to Gaston. Approximately forty-five minutes later, in the early morning hours of July 23, 2006, Blanton was still driving home when he stopped his vehicle on an I-65 overpass near Seymour. Blanton loaded his Remington 270 rifle, aimed it at a white pick-up truck traveling southbound on I-65, and fired the rifle, killing Jerry Ross, a passenger in the truck. Blanton also shot at another truck traveling southbound, but did not injure anyone in this vehicle.

On July 26, 2006, the State charged Blanton with murder, Class A felony attempted murder, and three counts of Class D felony criminal recklessness. On

December 3, 2007, Blanton pled guilty to an amended count of Class A felony voluntary manslaughter with a deadly weapon and to one count of Class D felony criminal recklessness. The plea agreement called for the dismissal of the remaining charges and the imposition of discretionary sentences to be served concurrently. Following a hearing, the trial court sentenced Blanton to forty-two years for the manslaughter conviction and two years for the criminal recklessness conviction. The trial court ordered the sentences to be served concurrently for a total executed sentence of forty-two years. Blanton now appeals his sentence.

Analysis

I. Abuse of Discretion

Blanton argues that the trial court abused its discretion in its assessment of the aggravating and mitigating circumstances. In reviewing a sentence imposed under the current advisory scheme, we engage in a four-step process. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal only for an abuse of discretion. Id. Third, the weight given to those reasons—the aggravators and mitigators—is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

Blanton asserts that the trial court wrongly considered as aggravating the impact of the offense on the motoring public. He claims that the record does not support such an aggravator. In describing the offense, the trial court stated:

> It has been reported that well in excess of thirty thousand (30,000) vehicles pass under the Enos Road overpass on any given day. People going to and from work. Families on vacation. Truckers earning a living. Just people, living their lives, and anyone of whom could have been Jerry Ross heading home after a day at the track with his brothers. Mrs. Adams, the mother of the man you killed mentioned this in the statement that she wrote and that was attached to the impact statement filed on December 20th. She pointed out that your action caused people to fear driving on the interstate and that's true. And that is an act of terror.
>
> * * * * *
>
> The impact on others may qualify as an aggravator in certain cases, but the defendant's actions must have an impact on other persons of destructive nature that is not normally associated with the commission of the offense in question and this impact must be foreseeable to the defendant. What you did most definitely had an impact on the motoring public here in Jackson County and in truth across the nation. And an impact of a destructive nature and how one could not foresee that shooting at vehicles on an interstate highway would result in fear throughout the motoring public is beyond reason.

Tr. pp. 119, 120-21.

The trial court was free to consider the circumstances of the offense when sentencing Blanton. The harm to the motoring public is inherent to this offense—randomly and intentionally shooting at cars with a rifle from a highway overpass creates a public fear beyond that of the "ordinary" manslaughter in which the victim is at least associated with creating the sudden heat that results in the death. Jerry Ross was in no

such way connected with Blanton. Because of the random nature of the crime, it was within the trial court's discretion to consider the circumstances surrounding the offense, including the impact on the motoring public, when crafting Blanton's sentence.

Blanton also claims that the trial court improperly considered his extensive pre-trial incarceration disciplinary reports as aggravating because the record does not contain the report. During sentencing, the trial court stated:

> I've also reviewed the disciplinary reports of the Jackson County Sheriff's Department. I got those last evening. And in answer to one of your counsel's questions, there were twenty-three (23) write ups. Ten (10) times the Defendant was put on lock-down for a total of fifty-four (54) days. Thirty-nine (39) of those days since the first of November.

Tr. pp. 121-22. At the sentencing hearing, the State referenced a stipulation to the disciplinary file involving Blanton's time in jail awaiting trial. Blanton's attorney responded, "We've agreed to stipulate to that, Your Honor . . . ." Tr. p. 66. The trial court then indicated that it had reviewed the materials. "A party may not sit idly by, permit the court to act in a claimed erroneous manner, and subsequently attempt to take advantage of the alleged error." Bunting v. State, 854 N.E.2d 921, 924 (Ind. Ct. App. 2006), trans. denied. Because Blanton agreed to the trial court's consideration of the detention report, this claim of error is waived.

Blanton also claims that the trial court improperly considered his lack of remorse as an aggravating circumstance because the record does not support such a finding. Here, the record is silent as to Blanton's remorse because he never expressed remorse. The record supports a finding that he lacked remorse. Further, as the State points out, Blanton

bragged of his crime while incarcerated. For example, he drew a picture of a crosshair on his jail cell wall, he joked to jail officials of the army needing expert snipers, and introduced himself to a new jail official as "Sniper." Tr. p 78. The trial court was free to consider Blanton's lack of remorse as aggravating.

Finally, Blanton claims that the trial court disregarded his psychological reports. To establish that the trial court abused its discretion, Blanton must show that the trial court failed to identify a significant mitigating factor. See Anglemyer v. State, 875 N.E.2d 218, 220-21 (Ind. 2007) (holding on rehearing that an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is supported by the record and that the mitigating evidence is significant). The trial court acknowledged reviewing the psychological assessment. Referring to one particular report upon which Blanton relied, the trial court noted that the report was not very current and did not give "a lot of weight to that report." Tr. p. 123. Blanton has not established that the trial court improperly disregarded his psychological reports.

II. Inappropriateness[1]

Blanton also argues that his sentence is inappropriate given the nature of the offense and the character of the offender. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision.

[1] Blanton does not challenge the appropriateness of his criminal recklessness sentence.

Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). 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.

As for the nature of the offense, Blanton asserts the crime "was a more or less routine act of Manslaughter, if such a thing is said to exist." Appellant's Br. p. 11. To the contrary, Blanton got into an argument with his uncles about whether to clean deer or to go home. Blanton left angrily. Forty-five minutes into his drive home he stopped his car on an overpass. He loaded his gun and proceeding to shoot randomly at cars driving southbound on I-65. At the guilty plea hearing, Blanton admitted that he knew there were people in the truck he was aiming at, that he knew anyone he hit would be killed, and that he knowingly and intentionally fired his rifle. Even if Blanton was still acting in sudden heat forty-five minutes after the initial altercation, the victims in this case were completely unrelated to the altercation and were not at all responsible for creating the sudden heat. The victims were simply in the wrong place at the wrong time. This was not an "ordinary" manslaughter.

Blanton suggests that the evidence of his "character paints a portrait of a psychologically disturbed youth . . . ." Appellant's Br. 12. Although that may be the case, there are many people who have psychological problems who do not randomly shoot people from highway overpasses. Further, Blanton had a juvenile adjudication for theft and admitted to being suspended from school several times for fighting. We are also convinced that his guilty plea was more of a pragmatic decision to avoid murder

charges than it was a showing of responsibility for his actions. This is evidenced by Blanton's pride associated with the crime and his behavior in jail, which one jail official stated was disrespectful, hostile, and threatening. Given the nature of the offense and the character of the offender, Blanton's forty-two year sentence is appropriate.

Conclusion

The trial court did not abuse its discretion in sentencing Blanton, and his sentence is appropriate. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.