

Arron L. DeClue appeals his aggregate sentence of twenty years with five years suspended for aggravated battery and criminal confinement, both class B felonies. He presents two issues for review, which we restate as follows:

1. Did the trial court abuse its discretion by relying on aggravating circumstances not found by a jury beyond a reasonable doubt?
2. Is DeClue's sentence inappropriate in light of the nature of the offense and his character?

We affirm.

On the night of December 13, 2007, DeClue and his live-in girlfriend, Elizabeth Walker, were drinking vodka and playing video games while their six-month-old son was sleeping. When the game was not “quite going his way”, DeClue became upset and threw the vodka bottle at the computer screen, breaking the screen. *Trial Transcript* at 77. Walker left the apartment to give DeClue time to cool down because she “knew something was gonna happen.” *Id.*

Upon returning a short while later, Walker discovered that DeClue had set their bed on fire. Walker put the fire out with a fire extinguisher and then immediately left with the intention of walking to the nearby police station.

Walker was about two blocks away when DeClue came after her and demanded that she return to the apartment. When Walker refused, DeClue kicked her in the ankle so hard that she had difficulty walking. He then dragged her by the hair back to the apartment. DeClue forced Walker into the bedroom and began beating her with a wooden baseball bat. Walker screamed, cried, and begged DeClue to stop. She eventually managed to escape the bedroom, but DeClue followed her into the kitchen, where the beating continued. While he

had her on the floor, DeClue jumped on Walker's stomach and stomped on her head, leaving tread marks from his shoe on her face and causing her immense pain. At some point, DeClue also pushed Walker into their infant's crib. The baby awoke and began crying, and DeClue told Walker to say goodbye to her son.

In sum, the beating lasted one and one-half to two hours. During this time, in addition to stomping on her and pushing her, DeClue struck Walker with a wooden bat ten to fifteen times. Walker suffered significant bruising to her face, thighs, legs, buttocks, back, and arms. Her injuries included defensive wounds to her arms, indicative of her blocking strikes from the bat to her head. Walker also suffered a perforated eardrum in her right ear.

On December 19, 2007, the State charged DeClue with class B felony aggravated battery, class B felony criminal confinement, and class D felony domestic battery. Following a jury trial, on October 29, 2009, he was convicted as charged. On December 14, 2009, the trial court sentenced DeClue to concurrent sentences of twenty years in prison with five years suspended to probation for the aggravated battery and criminal confinement convictions. The court also sentenced him to three years for the domestic battery conviction to run concurrently with the two class B felonies. On appeal, DeClue challenges only his sentences for aggravated battery and criminal confinement.

1.

Relying on *Blakely v. Washington*, 542 U.S. 296 (2004), DeClue argues that the trial court "abused its discretion in enhancing [his] sentences for Aggravated Battery and Criminal Confinement beyond the advisory sentences by relying on aggravating circumstances not found by a jury beyond a reasonable doubt." *Appellant's Brief* at 11. *Blakely's* analysis,

however, does not apply here because DeClue committed the instant offenses after Indiana's legislature enacted the present advisory sentencing scheme in 2005. *See Marbley-El v. State*, 929 N.E.2d 194, 195 (Ind. 2010) (“[c]ourts may now impose any sentence within the statutory range for the crime; a sentence at the high end of the range under the present scheme is not an “enhanced sentence” for *Blakely* and *Smylie* purposes”). Therefore, his claim that the trial court abused its discretion in this regard is entirely without merit. *See id.* (“Marbley-El was not entitled to a jury determination of the factors that led to his six-year sentence”).

2.

DeClue contends his aggregate sentence is inappropriate and asks us to revise his sentence. We have the constitutional authority to revise a sentence if, after careful consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See Ind. Appellate Rule 7(B); Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Even if a trial court follows the appropriate procedure in arriving at its sentence, we maintain the constitutional power to revise a sentence we find inappropriate. *Hope v. State*, 834 N.E.2d 713 (Ind. Ct. App. 2005). Although we are not required under App. R. 7(B) to be “extremely” deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). On appeal, DeClue bears the burden of persuading us that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

Initially, we address DeClue's claim that he received a maximum sentence and that

such sentences should be reserved for the worst offenses and offenders. DeClue did not receive a maximum executed sentence in this case. Rather, he received *concurrent* twenty-year sentences with five of those years suspended to probation.¹ *See Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010) (declining to “narrowly interpret the word ‘sentence’ in Appellate Rule 7 to constrict appellate courts to consider only the appropriateness of the aggregate length of the sentence without considering also whether a portion of the sentence is ordered suspended”).

With respect to the nature of his offenses, DeClue baldly asserts: “there is nothing about the offenses themselves that would justify the sentences imposed by the trial court.” *Appellant’s Brief* at 9. Further, he makes this unsupported claim without setting forth in his appellate brief any of the facts underlying his convictions. Thus, DeClue essentially provides us with no argument or factual basis to support his claim that the sentence is inappropriate in light of the nature of the offenses. We remind DeClue that he bears the burden of establishing that his sentence is inappropriate in light of both the nature of the offenses and his character. *See Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (“revision of a sentence under Indiana Appellate Rule 7(B) requires the appellant to demonstrate that his

¹ Ind. Code Ann. § 35-50-2-5 (West, Westlaw through 2010 2nd Regular Sess.) provides in relevant part as follows: “A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.”

sentence is inappropriate in light of *both* the nature of his offenses and his character”) (emphasis in original). He has not done so here with only a cursory discussion of his character and a total failure to address the nature of the offenses.

Contrary to DeClue’s assertion on appeal, the record reveals the particularly egregious nature of his offenses. DeClue engaged in a sustained beating of his girlfriend (also the mother of his child) after a video game did not go his way. He physically dragged her by her hair for two blocks after kicking her so hard she could not walk, stomped on her head and stomach, and beat her about the body with a wooden baseball bat. The crying of his six-month-old infant did not even cause him to stop the attack. Rather, when his son awoke and began crying, DeClue told Walker to say goodbye to their son. The trial court properly observed that the facts in this case were particularly “appalling”. *Sentencing Transcript* at 12. DeClue’s twenty-year sentence with five years suspended is not inappropriate in light of the nature of the offenses.

Finally, the fact that his criminal history is not, as DeClue puts it, “extreme”,² *Appellant’s Brief* at 10, does not change our view that the sentence is not inappropriate. *See Laux v. State*, 821 N.E.2d 816, 823 (Ind. 2005) (“[a]lthough we agree that Laux’s lack of criminal history, work ethic, educational achievement, and remorse have value; we cannot ignore the brutality of the crime that he committed”).

Judgment affirmed.

BARNES, J., and CRONE, J., concur.

² In 1994, at the age of seventeen, DeClue was convicted of theft and burglary and sentenced to eighteen months and nine years, respectively. This is his only criminal history.