

Case Summary

Appellant-Defendant Bryan S. Harper requests this Court conduct an independent review under Indiana Appellate Rule 7(B) of his sentences for Murder¹ and two counts of Theft, as Class D felonies.² We affirm.

Facts and Procedural History

On November 13, 2007, pursuant to a plea agreement, Harper pled guilty to Murder and two counts of Theft in exchange for the State dismissing the Class B felony charge of Burglary.³ Sentencing on each of the charges was left to the discretion of the trial court. After accepting Harper's guilty plea, the trial court sentenced Harper to the maximum sentence for each conviction: sixty-five years for Murder,⁴ and three years for each count of Theft,⁵ which were suspended, and ordered three years of probation for each count of Theft. The trial court ordered the Theft sentences to run concurrent with each other but consecutive to the Murder sentence. Therefore, Harper's aggregate sentence was sixty-eight years with three years suspended and six years of probation.

Discussion and Decision

¹ Ind. Code § 35-42-1-1.

² Ind. Code § 35-43-4-2(a).

³ Ind. Code § 35-43-2-1(1).

⁴ Ind. Code § 35-50-2-3(a): "A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five years (65), with the advisory sentence being fifty-five (55) years."

Our Supreme Court recently reviewed the standard by which appellate courts independently review criminal sentences:

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a 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 burden is on the defendant to persuade us that his sentence is inappropriate.

Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

As to the nature of the offenses, Harper visited his mother in Noblesville on January 13, 2007. While his mother was taking a shower, Harper went downstairs to talk with Carrie Kendall, who lived in the basement with Harper's uncle. Carrie was paralyzed from the waist down and confined to a wheelchair. Harper later left the house with his mother because Harper was not permitted to be in the home unsupervised. Harper returned to the house, climbed through a window, and sat beside Carrie. After he "thought about it and [] thought about it," Harper stabbed Carrie in the chest with a butterfly knife. Then Harper took Carrie's medication and jewelry as well as his uncle's television.

As to the character of the offender, Harper pled guilty to the three offenses in exchange for the State dismissing the Class B felony count of Burglary. Harper's criminal history includes a conviction for Theft, as an A misdemeanor, and a pending charge of Theft, as a Class D felony. Harper committed the current offense only four months after serving the

⁵ Ind. Code § 35-50-2-7(a): "A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years."

sentence for his first Theft conviction. Harper has used marijuana daily since he was fifteen and is also a professed chronic prescription pill abuser. Despite taking a “drug class” after he tested positive for marijuana while on probation, Harper continued to use drugs and admitted to being under the influence of drugs when he committed this offense. Harper is married and has a four-year-old son.

In light of the nature of the offense and the character of the offender, Harper has not convinced this Court that his sentence is inappropriate.

Affirmed.

RILEY, J., and BRADFORD, J., concur.