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**IN THE
COURT OF APPEALS OF INDIANA**

JARMARCUS T. LASHLEY,

Appellant-Defendant,

vs.

STATE OF INDIANA.,

Appellee-Plaintiff.

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No. 02A04-0803-CR-159

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Judge
Cause No. 02D04-0706-FA-38

October 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Jarmarcus T. Lashley appeals the aggregate eighty-year sentence imposed by the trial court following his convictions for Burglary,¹ a class B felony, Robbery,² a class A felony, and Robbery,³ a class B felony. Lashley argues that the trial court erroneously failed to consider certain mitigators and that the sentence is inappropriate in light of the nature of the offenses and his character. Finding no error, we affirm.

FACTS

On May 28, 2007, Alfredo and Raymond Calzadillas were playing a videogame in Alfredo's garage in Fort Wayne when Lashley and two accomplices entered the garage and said, "this is a robbery." Tr. p. 103-04. Lashley and his accomplices put their guns in Alfredo and Raymond's faces. Lashley and his accomplices closed the garage door and asked Alfredo and Raymond where the money and drugs were. When Alfredo asked, "Why are you doing this, what are you doing, what do you want," Lashley responded, "We've got to eat too." Id. at 127. One of Lashley's accomplices emptied Alfredo's pockets as Lashley emptied Raymond's pockets. The accomplice hit Alfredo in the back of his head with a gun after discovering that Alfredo's wallet contained no money.

¹ Ind. Code § 35-42-2-1.

² I.C. § 35-42-5-1.

³ Id.

Lashley and the accomplices ultimately stole \$200 from Alfredo and \$40 and a cell phone from Raymond.

As Lashley and one of the accomplices were robbing Alfredo and Raymond in the garage, Jessica Chaney—Alfredo’s girlfriend—and her four-year-old son with Alfredo were preparing to watch a movie inside the house. Lashley’s other accomplice entered the home and held Chaney at gunpoint, asking her where all the money and drugs were located. Chaney replied that she did not know what he was looking for but allowed him to open all the kitchen cabinets and take what he could find, offering him the ATM card in her purse. Eventually, the accomplice returned to the garage with the other two intruders, at which time Chaney ran outside, leaving her son alone in the house to call 911, pleading with the police to hurry because her child was still inside the house. At that point, Chaney heard gunshots.

Alfredo and Raymond had begun to fight with Lashley and his accomplices. As a result of the struggle, Alfredo was shot twice, once in the leg and once in the torso. The bullet that entered his leg eventually passed through his scrotum, and the bullet that entered his torso struck his gallbladder and liver. Raymond was shot by Lashley, and the bullet grazed his ear. Alfredo was able to make his way into the house and find his gun, eventually shooting two of the perpetrators, including Lashley, who was shot twice, once in the arm and once in the leg. Alfredo was taken to the hospital, where they removed his gallbladder.

On June 1, 2007, the State charged Lashley with class A felony burglary, two counts of class A felony robbery, and class C felony carrying a handgun without a

license. Lashley's jury trial began on January 29, 2008, and on January 30, 2008, the jury found Lashley guilty as charged. The trial court held a sentencing hearing on February 25, 2008, at which time it reduced the burglary to a class B felony because of the absence of a connection between the breaking and entering and the injury, and it merged the handgun conviction into the two robbery convictions. The court found Lashley's criminal history and the nature and circumstances of the offense to be aggravating factors, and it found his positive employment history to be a slight mitigating circumstance. Ultimately, the trial court imposed a fifteen-year sentence for burglary, a fifteen-year sentence for class B felony robbery, and a fifty-year sentence for class A felony robbery, to be served consecutively, for an aggregate eighty-year sentence. Lashley now appeals.

DISCUSSION AND DECISION

Lashley first argues that the trial court abused its discretion by failing to consider his age and his lack of a substantial criminal record as mitigating circumstances.⁴ In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (2007), our Supreme Court held that trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. 868 N.E.2d at 490. If the recitation includes the finding of

⁴ Lashley also argues that the trial court should have afforded greater mitigating weight to his employment history, but our Supreme Court has said that the trial court cannot be said to have abused its discretion in failing to "properly weigh" aggravators and mitigators. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (Ind. 2007). Thus, we will not consider this argument.

aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. We review sentencing decision for an abuse of discretion. Id. A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91.

Lashley first argues that the trial court should have considered his youthful age—he was nineteen years old at the time he committed the instant offenses—as a mitigating circumstance. Although a defendant’s youth can be a mitigating factor under certain circumstances, it is not necessarily a significant mitigator. Smith v. State, 872 N.E.2d 169, 178 (Ind. Ct. App. 2007), trans. denied; see also Ellis v. State, 736 N.E.2d 731, 736 (Ind. 2000) (observing that “[t]here are both relatively old offenders who seem clueless and relatively young ones who appear hardened and purposeful”). Whether a defendant’s age constitutes a significant mitigator is a decision that is within the trial court’s discretion. Smith, 872 N.E.2d at 178. Here, the trial court considered and rejected Lashley’s age as a mitigator: “His young age, [inasmuch] as he has this adult criminal history as well as juvenile history it appears, young age is not a mitigator either.” Sent. Tr. p. 18. Given Lashley’s contacts with the judicial system and the nature and circumstances of these offenses, we find that the trial court did not abuse its discretion by declining to find his young age to be a mitigating circumstance.

Lashley next contends that the trial court should have considered his criminal history to be a mitigating, rather than an aggravating, factor. In one year of being an adult, Lashley amassed three misdemeanor convictions—two convictions for resisting law enforcement and one for carrying a handgun without a license. Additionally, as a juvenile, Lashley was arrested for possession of marijuana, received an informal adjustment, and was required to complete a drug and alcohol assessment. PSI p. 3. The trial court considered Lashley’s criminal history and found it to be an aggravator, albeit an insubstantial one. Sent. Tr. p. 18. We cannot say that the trial court abused its discretion in this regard.

Finally, Lashley argues that the aggregate eighty-year sentence is inappropriate in light of the nature of the offenses and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). The sentencing range for a class A felony is twenty to fifty years imprisonment, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4. Lashley received the maximum fifty-year term on his class A felony robbery conviction. The sentencing range for a class B felony is six to twenty years imprisonment, with an advisory sentence of ten years. I.C. § 35-50-2-5. Lashley received enhanced fifteen-year

terms on each of his class B felony convictions. The trial court ordered the sentences to be served consecutively, for an aggregate term of eighty years imprisonment.

As for the nature of the offenses, Lashley and two cohorts entered a garage, held the occupants at gunpoint, stole money and a cell phone, struck one of the occupants on the head with a gun, and eventually shot both of the victims, nearly killing one of them. Meanwhile, one of Lashley's accomplices entered the house, held a woman and child at gunpoint, and eventually put the mother in the position of leaving her child behind to run for help. The nature of these crimes was undeniably severe and does not aid Lashley's inappropriateness argument.

As for Lashley's character, although he was only nineteen years old at the time he committed the offenses, by that time he had managed to amass two convictions for resisting law enforcement and one conviction for carrying a handgun without a license in less than a year. We find that these convictions are precursors to the crimes of which he was convicted herein and are evidence of his character that supports the sentence imposed. Finally, we note that because there were multiple victims, the trial court properly ordered Lashley to serve his sentences consecutively. See Green v. State, 870 N.E.2d 560, 568 (Ind. 2007) (holding that consecutive sentences are necessary to vindicate the fact that there were separate harms and separate acts against multiple victims). Therefore, we find that the aggregate eighty-year sentence imposed by the trial court is not inappropriate in light of the nature of the offenses and Lashley's character.

The judgment of the trial court is affirmed.

MATHIAS, J., concurs.

BROWN, J., dissents with opinion.

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)	
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BROWN, Judge dissenting

I respectfully dissent from the majority’s conclusion that Lashley’s sentence is not inappropriate under Indiana Appellate Rule 7(B). Although the nature of the crimes was severe, I do not find that enhanced sentences are warranted on that basis. As for Lashley’s character, he was nineteen years old at the time he committed the offenses. He had been able to hold down a job and although he had amassed several misdemeanor convictions, he had no felony convictions in his criminal history. Inasmuch as there were multiple victims, however, the trial court

properly ordered Lashley to serve his sentences consecutively. See Green v. State, 870 N.E.2d 560, 568 (Ind. 2007) holding that consecutive sentences are necessary to vindicate the fact that there were separate harms and separate acts against multiple victims. Therefore I would direct the trial court to revise Lashley's sentence as follows: thirty-five years for the class A felony robbery and advisory ten-year terms for each of the two class B felony convictions, to be served consecutively, for an aggregate fifty-five year sentence (which is the advisory sentence for the next higher class of offense, murder.)