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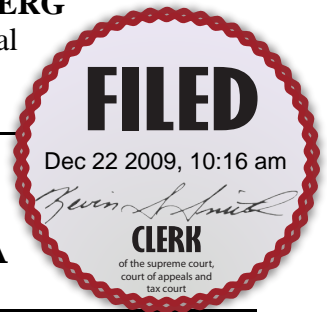
ATTORNEY FOR APPELLANT:

DAVID W. STONE
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

NATHANIEL M. WHITE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 48A02-0909-CR-843

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0902-FB-110

December 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Nathaniel White appeals his eighteen-year executed sentence following a guilty plea to one count of criminal recklessness, a Class C felony, and one count of unlawful possession of a firearm by a serious violent felon, a Class B felony. White raises one issue for our review: whether the sentence is inappropriate in light of the nature of the offense and White's character. Concluding White's sentence is not inappropriate, we affirm.

Facts and Procedural History

White was dating Orlena Simonds and staying at her apartment "off and on" when he was in town, allegedly using her apartment to sell drugs. Appellant's Appendix at 29. White and Simonds got into an argument after she found out he was seeing other women. During the argument Simonds told White she was going to have her cousin "beat him up and rob him" and also threatened to turn him in to the police. *Id.* White threatened to kill Simonds. White arrived at Simonds's apartment the day after the argument and fired three or four gunshots through Simonds's apartment door. White then exited the apartment building and fired two more gunshots through the window. A juvenile boy was in the apartment when White fired the shots.

On February 27, 2009, the State charged White with criminal recklessness, a Class C felony, carrying a handgun without a license, a Class A misdemeanor, and unlawful possession of a firearm by a serious violent felon, a Class B felony.¹ The parties entered

¹ White was previously convicted of dealing in a controlled substance less than fifty grams in the Third Circuit Court in Wayne County, Michigan, qualifying him as a serious violent felon in Indiana. *See* Ind. Code § 35-47-4-5(a),(b).

a plea agreement whereby White would plead guilty to counts one and three, and the State would dismiss count two. The lengths of the sentences were left to the trial court's discretion, but it was agreed they would be concurrent. At the sentencing hearing, the trial court found the dangerous nature of the incident and White's criminal history as aggravating circumstances and found no significant mitigating circumstances. The trial court imposed concurrent sentences of seven years for count one and eighteen years for count three, for an aggregate sentence of eighteen years. White now appeals.

Discussion and Decision

I. Standard of Review

White's eighteen-year sentence for unlawful possession of a firearm by a serious violent felon is eight years over the advisory and two years under the statutory maximum sentence for a Class B felony.² See Ind. Code § 35-50-2-5. This Court has authority to revise a sentence "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." Ind. Appellate Rule 7(B). We recognize 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). When examining the nature of the offense and the character of the offender, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006)

² Because the sentences on counts one and three run concurrently leaving White's aggregate sentence at eighteen years, we need only address the eighteen-year sentence on count three. We note, however, White's seven-year sentence for criminal recklessness is three years over the advisory and one year under the statutory maximum sentence for a Class C felony. See Ind. Code § 35-50-2-6(a).

("[I]nappropriateness review should not be limited . . . to a simple rundown of the aggravating and mitigating circumstances found by the trial court."). Ultimately, the burden is on the defendant to demonstrate his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

II. Inappropriate Sentence³

A. Nature of the Offense

White fired six gunshots into an occupied dwelling. Four shots were fired through the door of the apartment. Had someone been standing behind the door he or she would likely have been seriously injured, perhaps killed. In fact, a juvenile boy was in the apartment when White fired the shots, and the shots missed the boy by just a few feet. White's actions were senseless, dangerous, and demonstrate an alarming disregard for the safety of others. As the trial judge noted, White provided not "one syllable of any kind of reason or justification or excuse for this extreme recklessness with a deadly weapon." Transcript at 28. Therefore, we conclude White's sentence is not inappropriate in light of the egregious nature of his offense.

B. Character of the Offender

White argues his prior, unrelated, and non-violent drug and property offenses do not justify imposing a near-maximum sentence.⁴ We disagree. The significance of a

³ White seemingly attempts to challenge the trial court's consideration of mitigating and aggravating circumstances. Specifically, White seems to argue the trial court improperly failed to consider his plea bargain as a mitigating circumstance. White has waived the issue by failing to develop a cogent argument. See Appellate Rule 46(A)(8)(a). Notwithstanding waiver, the trial court need only include significant mitigating factors in its sentencing statement. Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied. Where, as here, the evidence against the defendant is such the decision to plead guilty is merely a pragmatic one, a guilty plea does not rise to the level of a significant mitigator. Id.

⁴ We note the real thrust of White's argument is the trial court placed too much emphasis on his criminal history. This argument asks us to reconsider the weight given to a particular aggravating circumstance, which we

defendant's criminal history "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999). White has an extensive criminal history, including the following convictions: loitering at a house of ill fame and identity theft, both misdemeanors, and receiving and concealing a stolen motor vehicle, fleeing a police officer, and dealing in a controlled substance less than fifty grams,⁵ all felonies. While the nature of White's prior convictions may not directly relate to the current offense, we observe a pattern of escalating criminal activity. All of White's convictions have occurred in the last five years, and it appears his criminal activities have become more diversified. In sum, White has an extensive and fast-growing criminal history that does not reflect favorably on his character. White has no stable employment history. According to the pre-sentence investigation report, White began smoking marijuana and consuming alcohol when he was thirteen. The probable cause affidavit alleges at the time of the instant offense White "ha[d] been bringing crack cocaine and other drugs from Michigan and selling them in Anderson" and was "using several young girls to stay with so he can deal his dope." Appellant's App. at 29. None of this reflects well on White's character. Therefore, we conclude White's sentence is not inappropriate in light of his character.

will not do. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007).

⁵ White is correct to point out his conviction for dealing in a controlled substance, which served as the basis for the serious violent felon determination, cannot also be used as an aggravator in sentencing. Hatchett v. State, 740 N.E.2d 920, 928 (Ind. Ct. App. 2000), trans. denied. However, "[a] sentence enhancement may still be upheld when a trial court improperly applies an aggravator but other valid aggravators exist." Davis v. State, 796 N.E.2d 798, 807 (Ind. Ct. App. 2003), trans. denied. Further, as the reviewing court we are not foreclosed from considering the controlled substance conviction because inappropriateness review allows us to consider any factor appearing in the record. Roney, 872 N.E.2d at 206.

White has the burden of persuading this Court his sentence is inappropriate, Childress, 848 N.E.2d at 1080, and he has not carried that burden. The egregious nature of the instant offense, White's extensive and fast-growing criminal history, and other factors indicative of White's character persuade us White's eighteen-year sentence is not inappropriate.

Conclusion

White's sentence is not inappropriate in light of the nature of the offense and his character.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.