

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Troyon Ramon Scott,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 30, 2022

Court of Appeals Case No.
22A-CR-1229

Appeal from the St. Joseph
Superior Court

The Honorable Jeffrey L. Sanford,
Judge

Trial Court Cause No.
71D03-2001-MR-2

Brown, Judge.

[1] Troyon Ramon Scott (“Scott”) appeals his conviction and sentence for murder. He claims the trial court committed fundamental error in conducting voir dire and his total sentence of sixty-five years is inappropriate. We affirm.

Facts and Procedural History

[2] On the evening of September 26, 2020, Scott and two of his brothers, T.J. and Brian, were at the house of Marques Scott (“Marques”) together with Marques, Tristan Gill, and a friend of Marques. At some point, Scott and his brother Brian left the house to pick someone up. While they were gone, Marques learned that his cousin Demarco Barnes had been shot and was in the hospital. Marques called his brother, Huey Hudson, to take him to the hospital. Scott and Brian returned to Marques’s house. Marques asked Scott about Demarco’s shooting, and Scott was “acting sketchy about it.” Transcript Volume II at 140. Huey arrived at the house. Huey stated that Troyae Scott (“Troyae”), who was another of Scott’s brothers, had just shot Demarco. Huey argued with T.J., Brian, and Scott. Scott said “[m]y brother ain’t shot no f--’n body.” Transcript Volume III at 100. Huey said “[y]’all as thick as thieves” and “[y]’all know your brother did it.” *Id.* Marques talked to Huey, they discussed going to the hospital to see Demarco, and “everything calmed down.” Transcript Volume II at 145. “The argument was over,” and “Huey turned to leave” and “was walking out the door.” Transcript Volume III at 108. At that point, and without warning, Scott “turned around and started shooting Huey.” Transcript Volume II at 146. Huey’s “back was to” Scott when Scott shot him. Transcript Volume III at 108. Huey “was immediately hit” and “fell straight to the floor.”

Id. at 104. After Huey fell, Scott continued to shoot him. Marques tackled Scott and was able to take the gun from him. Huey suffered gunshot wounds to his shoulder and arm and two fatal gunshot wounds to the back of the neck. Scott later turned himself in to law enforcement.

[3] On January 28, 2020, the State charged Scott with murder and alleged that he knowingly used a firearm in the commission of the crime. In April 2022, the court held a jury trial. At the start of the proceeding and prior to conducting voir dire, the trial court stated that it respectfully disagreed with this Court’s recent opinion in *Doroszko v. State*, 185 N.E.3d 879 (Ind. Ct. App. 2022), *reh’g denied, trans. pending*.¹ The trial court noted that the parties had submitted sets

¹ In *Doroszko v. State*, issued on March 29, 2022, another panel of this Court addressed “[w]hether the trial court violated Trial Rule 47(D) and denied [Doroszko] the right to a fair trial when it did not allow him to directly question prospective jurors.” 185 N.E.3d at 881. The Court stated the Indiana Supreme Court had previously addressed a similar issue in *Logan v. State*, 729 N.E.2d 125 (Ind. 2000). *Id.* at 884. We noted that, in *Logan*, the trial court ruled that neither party would be permitted to question the prospective jurors during voir dire regarding a sentence of life without parole, that it would conduct that portion of voir dire itself, and that the parties could submit questions which the court would ask if appropriate. *Id.* (citing *Logan*, 729 N.E.2d at 132). We noted the Indiana Supreme Court held that it was error for the court not to permit Logan or his attorney to directly question the prospective jurors regarding their views on life without parole. *Id.* (citing *Logan*, 729 N.E.2d at 133). The Court in *Doroszko* found, “[h]ere, while the court allowed the parties to submit questions for the potential jurors, which the court would ask at its discretion, it did not permit Doroszko or his attorney to directly question the prospective jurors” and held, “[a]s in *Logan*, that was error.” *Id.* (footnote omitted). The Court in *Doroszko* went on to observe that, “[h]owever, in *Logan* the inquiry did not end there,” that the Indiana Supreme Court noted that Logan had failed to indicate what questions he would have asked, did not explain why the court’s procedure was inadequate for purposes of empanelling a fair and impartial jury, failed to show the court’s procedure had adversely impacted his ability to employ his peremptory challenges for cause, and did not allege that any specific juror should have been removed and was not, and that thus the Court in *Logan* concluded that, although it was error for the trial court not to permit Logan to directly question the prospective jurors, Logan had not shown that he was prejudiced and, thus, any error was harmless. *Id.* (citing *Logan*, 729 N.E.2d at 133-134). This Court in *Doroszko* found “[t]he same is true here,” that Doroszko had not indicated what questions he would have asked had he been allowed to directly question the prospective jurors, he failed to show that the court’s procedure adversely affected his ability to exercise his peremptory challenges, and he did not allege that any specific juror should have been removed but was not. *Id.* The Court concluded that Doroszko had not shown that he was prejudiced by the trial court’s voir dire procedure and as such the error was harmless. *Id.*

of questions, and it reviewed the questions which it would ask the prospective jurors. The court indicated it would ask questions about self-defense and firearms. The court also indicated that, if an issue arose, the attorneys could approach and, if the court thought there was an appropriate question, it would present the question to the prospective jurors. The court then conducted voir dire and the jury was sworn. Scott claimed that he had shot Huey in self-defense. Marques testified that he did not see Huey with a gun at any point. Gill testified that Huey had a gun in his hand when he arrived at Marques's house, did not point the gun at anyone but held it in his hand, and was "pretty much intimidating" Scott and that, when the argument started to calm down, Scott shot Huey. Transcript Volume III at 41. T.J. testified that Huey had a gun and confronted Scott as he exited the bathroom. The jury found Scott guilty of murder and that the State had proven the facts supporting the firearm enhancement.

[4] At sentencing, Scott stated: "I just want to say on that day that . . . when I woke up, I wasn't planning on [sic] of this stuff happening. I wasn't looking forward to waking up hurting nobody. I didn't go out looking for trouble that day. The situation came to me. He came to where I was at, confronted me and my brothers over a situation that didn't have nothing to do with us. And he had his gun out, and I felt like I was defending myself and defending my brothers. This

at 884-885. On June 24, 2022, Doroszko filed a petition for transfer. The Indiana Supreme Court held oral argument on September 15, 2022. As of the date of this decision, the Indiana Supreme Court has not ruled on the petition for transfer.

wasn't something that was planned.” Transcript Volume IV at 57. The court stated it agreed that Scott's criminal history was not significant but it was concerning that his most recent case was for carrying a handgun without a license. The presentence investigation report (“PSI”) recommended that Scott be sentenced to sixty-five years for murder and that the sentence be enhanced by ten years due to the firearm enhancement for a total sentence of seventy-five years. The court sentenced Scott to forty-five years for murder and enhanced the sentence by twenty years with respect to the firearm enhancement for a total sentence of sixty-five years.

Discussion

I.

[5] Scott asserts the trial court committed fundamental error because it did not permit the attorneys to personally present questions to the prospective jurors as required by this Court's opinion in *Doroszko v. State*. He argues “this Court has several options,” it could find that he waived any claim of error because he failed to object to the jury panel, it could find that transfer was pending in *Doroszko* and the doctrine of stare decisis did not apply, it could apply a combination of these options, or it could address the trial court's refusal to follow a decision by this Court, and he “would urge this Court to do the latter.” Appellant's Brief at 13. The State argues that Scott did not object to the trial court's voir dire procedure, to its comments regarding *Doroszko*, or to the jury panel before it was sworn and thus that he has waived his claim. It further argues the trial court did not commit fundamental error, this Court's opinion in

Doroszko was not certified, and Scott has failed to show any prejudice, does not indicate what questions he would have asked during voir dire, and does not explain why the court's voir dire was inadequate for purposes of empanelling a fair and impartial jury.

- [6] The record reveals that Scott did not object to the trial court's procedure for conducting voir dire or to the jury panel before it was sworn. Accordingly, Scott has waived his claim. *See Peppers v. State*, 152 N.E.3d 678, 685 (Ind. Ct. App. 2020) (holding the defendant waived his claim where he did not submit additional questions for the jury after his motion to orally examine the prospective jurors was denied or object to the jury panel before it was sworn) (citing *Miller v. State*, 623 N.E.2d 403, 412 (Ind. 1993) (noting that failure to object to the manner in which the jury was chosen resulted in waiver); *Bardonner v. State*, 587 N.E.2d 1353, 1357 n.4 (Ind. Ct. App. 1992) (stating that the proper method to raise a challenge during voir dire is "a motion to strike or discharge the jury panel or [to] challenge the array" (citing *Utterback v. State*, 261 Ind. 685, 310 N.E.2d 552 (1974)), *trans. denied*)).
- [7] Fundamental error is an extremely narrow exception to the waiver doctrine that applies only when the error constitutes a blatant denial of basic due process principles that makes it impossible to receive a fair trial. *Id.* With respect to this Court's opinion in *Doroszko v. State*, 185 N.E.3d 879 (Ind. Ct. App. 2022), *reh'g denied, trans. pending*, we note that the opinion has not been certified and that the Indiana Supreme Court has not ruled on Doroszko's petition for

transfer.² Further, Scott does not indicate the specific questions he would have asked had he been allowed to directly question the prospective jurors, does not allege that any specific juror should have been removed but was not, and does not establish how the trial court's procedure for conducting voir dire adversely impacted the empanelling of an impartial jury. We find that, even if the court erred by not permitting Scott or his attorney to directly question the prospective jurors, Scott has not established that any such error made it impossible for him to receive a fair trial. *See Logan*, 729 N.E.2d at 133-134 (concluding that, although the trial court erred by not permitting the defendant to directly question prospective jurors, the defendant did not show that he was prejudiced by the procedure the court used in selecting the jury and observing that the defendant did not indicate what questions he would have asked, did not explain why the court's procedure was inadequate for purposes of empanelling a fair and impartial jury, did not show the court's procedure adversely impacted his ability to employ his challenges, and did not allege any specific juror should have been removed and was not). We find no reversible error.

II.

[8] Scott next asserts that his sentence is inappropriate. He argues that, while the jury did not find that he acted in self-defense, the facts “certainly establish that

² Ind. Appellate Rule 65 provides in part: “The trial court, Administrative Agency, and parties shall not take any action in reliance upon the opinion or memorandum decision until the opinion or memorandum decision is certified.”

the victim was not an innocent bystander in the facts surrounding his death.” Appellant’s Brief at 18. He argues that he was twenty years old at the time of the offense, had a minimal criminal history consisting of nonviolent misdemeanor offenses, had substantial family support, was remorseful, and was actively involved in his young daughter’s life. He also argues, “[w]hile the trial court did in fact give [him] the minimum sentence for the Murder charge, the enhancement of twenty years resulted in essentially [him] being sentenced for the maximum term allowed for Murder.” *Id.*

[9] Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Ind. Code § 35-50-2-3 provides that a person who commits murder shall be imprisoned for a fixed term of between forty-five and sixty-five years with the advisory sentence being fifty-five years. If the jury finds the State has proved the person knowingly or intentionally used a firearm in the commission of the offense, the court may sentence the person to an additional fixed term of imprisonment of between five years and twenty years. Ind. Code § 35-50-2-11.

[10] Our review of the nature of the offense reveals that Scott shot Huey multiple times without warning as Huey was walking out of the room and continued to

shoot him after he had fallen to the floor and that Huey sustained two fatal gunshot wounds to the back of his neck.

[11] Our review of the character of the offender reveals that Scott was born in August 1999. The PSI indicates that his juvenile history includes an adjudication for possession of marijuana in 2016 and that his adult history includes convictions for operating a motor vehicle without ever receiving a license as a class C misdemeanor and possession of marijuana as a class B misdemeanor on April 26, 2018, operating a motor vehicle without ever receiving a license as a class C misdemeanor and possession of marijuana as a class B misdemeanor on May 6, 2018, and operating a motor vehicle without ever receiving a license as a class C misdemeanor, possession of marijuana as a class B misdemeanor, and carrying a handgun without a license as a class A misdemeanor on May 30, 2018. The PSI further provides that Scott committed the murder while on pretrial release. At sentencing, Scott stated “[t]he situation came to me” and “[t]his wasn’t something that was planned.” Transcript Volume IV at 57. The trial court stated that it was concerning that Scott’s most recent case was for carrying a handgun without a license. Scott reported that he receives a great deal of support from his family and close friends, and his mother submitted a letter stating that Scott has a strong family support system. With respect to dependents, Scott reported that his three-year-old daughter lived with her mother, he maintained contact with her via telephone and video calls, he had a good relationship with her, and he is not ordered to pay child support.

The PSI further states that Scott's overall risk assessment score using the Indiana risk assessment system places him in the high risk to reoffend category.

[12] After due consideration, we conclude that Scott has not sustained his burden of establishing that his total sentence is inappropriate in light of the nature of the offense and his character.

[13] For the foregoing reasons, we affirm Scott's conviction and sentence.

[14] Affirmed.

Altice, J., and Tavitas, J., concur.