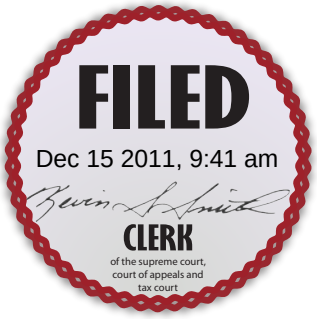

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IN THE
COURT OF APPEALS OF INDIANA

ROBERT D. SPANGLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 26A01-1106-CR-284
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GIBSON CIRCUIT COURT
The Honorable Jeffrey F. Meade, Judge
Cause No. 26C01-1011-MR-1

December 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Robert D. Spangler appeals his sixty-year sentence, which the trial court imposed after he pleaded guilty but mentally ill to the State's charge of murder. Spangler raises a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character. We affirm.

FACTS AND PROCEDURAL HISTORY

On November 2, 2010, Spangler beat his girlfriend of two years to death inside his home with a steel crowbar after she had told him that she was interested in having an open relationship. Spangler then called some family and friends and told them what he had done while indicating a desire to commit suicide. His friends and family convinced him to turn himself over to police instead, which he did later that day. That same day the State filed its information against Spangler, charging him with murder. Spangler subsequently requested a mental evaluation, and the trial court appointed two disinterested doctors to perform such an evaluation.

On June 3, 2011, Spangler pleaded guilty but mentally ill pursuant to a plea agreement. The court then heard the parties' arguments regarding sentencing, including the two medical evaluations of Spangler's mental health, which concluded that he suffers from depression and bipolar disorder. On June 14, the trial court entered the following amended sentencing order:

> **Mitigating Factors**
>
> **1. Documented History of Mental Illness.** Well-documented mental illness should be considered a mitigating factor, and was specifically in this case. The defendant's history of mental illness is well-documented and goes back for a considerable number of years.

2. No significant History of Prior Criminal Conduct. I.C. [§] 35-50-2-9(c)(1). The lack of criminal history should be given substantial mitigating weight, and was. The defendant had no history of delinquency or criminal activity.

3. Defendant turned himself in[ ]to authorities, was cooperative, remorseful, and has accepted responsibility. The defendant's alleged remorse, confession, cooperation, and acceptance of responsibility was considered a modest mitigator. Regarding remorse, the court explained to the defendant that it is often very difficult for judges to determine if a defendant is sincerely remorseful for the incident[] or for just getting caught and prosecuted. The aggregate list above was considered a modest mitigator.

4. Guilty Plea. Defendant pled guilty but mentally ill without necessity of trial and spared family of emotion and distress associated with trial. The court considered this a valid mitigator; however, significant weight was not given as the circumstances indicated that the plea was more likely the result of pragmatism than acceptance of responsibility and remorse.

Aggravating Factors

1. Nature and circumstances of the crime. Court considered this a proper aggravator. The defendant, obviously driven by jealousy, violently murdered his girlfriend, apparently attacking her from behind with a two[-]foot long steel crowbar. The defendant violently brutalized, mutilated, and nearly decapitated the victim with a number of blows to her head.

2. Victim of the crime was at least sixty-five (65) years of age. The victim was at least sixty-five (65) years of age, being approximately seventy (70), when she was murdered. Court finds this is a proper aggravator while recognizing and considering the Defendant's argument that he is only a few years younger.

3. Violation of a Position of Trust. While typically arising in child molest cases, the trial court finds this could be a modest aggravator in this case given the two-year dating relationship of the Defendant and his victim.

4. Defendant is in Need of Correctional or Rehabilitative Treatment That Can Best Be Provided by Commitment to a Penal Facility. Court finds this a proper aggravator under the circumstances of

this case given the Defendant's history of mental/emotional health and the brutal manner in which he murdered his victim.

5. Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the Seriousness of the Crime. The court finds that any sentence less than an enhanced sentence would depreciate the seriousness of the crime, again, given the nature of the circumstances.

6. Pain and Suffering of the Family[.] The State . . . points to the pain and suffering of the family. However, the impact of others may only be considered if the impact was beyond that normally associated with the offense and that impact was foreseeable to the defendant. Under these facts, the impact[,] while tragic, was not beyond that normally associated with the offense of murder.

7. Lack of Remorse. The State argued the Defendant has no remorse and that his focus has been on himself and his particular situation. . . . [N]o aggravating weight was given to this factor.

Appellant's App. at 114-117 (citations omitted; emphases original). The court then ordered Spangler to serve sixty years, five years above the advisory sentence of fifty-five years for murder. See Ind. Code § 35-50-2-3. This appeal ensued.

DISCUSSION AND DECISION

Spangler contends that his sixty-year sentence is inappropriate in light of the nature of the offense and his character. We initially note that the State has not filed an appellee's brief. In such circumstances, we do not undertake to develop an argument on the appellee's behalf, and we may reverse upon an appellant's prima facie showing of reversible error. Morton v. Ivacic, 898 N.E.2d 1196, 1199 (Ind. 2008). Prima facie error means error "at first sight, on first appearance, or on the face of it." Id. (quotation omitted).

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 imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offense and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration original).

Moreover, "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. The principal role of appellate review is to attempt to "leaven the outliers." Id. at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case." Id. at 1224.

On appeal, Spangler asserts that a sentence less than the advisory sentence is appropriate in light of his longstanding mental illnesses, his remorse, his lack of criminal history, his quick surrender, and his guilty plea. The trial court considered all of those factors in its thorough and balanced sentencing order, and we agree with the trial court's assessment.

Spangler's sixty-year sentence is not inappropriate under Appellate Rule 7(B). Spangler has an established history of mental illness, a lack of criminal history, and he quickly surrendered himself to police and pleaded guilty, all of which are entitled to a degree of mitigating weight. But, regarding the nature of the offense, as the trial court stated, Spangler brutally murdered his girlfriend of two years, which is entitled to a degree of aggravating weight. See Haas v. State, 849 N.E.2d 550, 555 (Ind. 2006) (nature and circumstances would warrant an enhanced sentence where defendant repeatedly struck the victim with a crowbar). Having considered the nature of the offense and Spangler's character, we cannot say that a slightly aggravated sentence of sixty years for murder is inappropriate. As such, we affirm his sentence.

Affirmed.

ROBB, C.J., and VAIDIK, J., concur.