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**IN THE
COURT OF APPEALS OF INDIANA**

AARON SPEARS,)

Appellant-Defendant,)

vs.)

No. 29A05-1104-CR-204

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE HAMILTON SUPERIOR COURT

The Honorable William J. Hughes, Judge

Cause No. 29D03-1005-FB-200

November 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Aaron Spears appeals his sentence following his conviction for neglect of a dependent resulting in death, as a Class A felony. Spears raises a single issue for our review, namely, whether his thirty-five year sentence, with twenty years executed followed by four years on work release, one year home detention, and the remaining ten years on probation, is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 16, 2010, Spears was babysitting his girlfriend's nine-month-old son, C.L.M., at his residence while she worked. Spears laid C.L.M. on a couch and left the room. C.L.M. rolled off the couch, onto the floor, and started crying. Spears returned and picked C.L.M. up, but rather than seeking medical treatment for C.L.M., Spears simply held him and rocked him. When C.L.M. continued to cry, Spears tried to put him in his crib. Spears "jerked him off the couch" and C.L.M. "came forward too much and his head bounced off [Spears'] shoulder." Transcript at 24. C.L.M. "started to whine from that," so Spears "tossed him up and was catching him." *Id.* Spears then noticed that C.L.M.'s weight suddenly shifted and "he was like asleep." *Id.* at 24-25. Spears further noticed that C.L.M. "wasn't breathing," but instead of calling 911 Spears "took him back to the couch and laid him down." *Id.* at 25. Spears then called C.L.M.'s mother at work, but she was not available. Shortly thereafter he tried again, successfully, and told her that C.L.M. had stopped breathing. She immediately left work. Eleven minutes after C.L.M.

stopped breathing, Spears called 911. C.L.M. later died of “abusive head trauma.” Appellant’s App. at 9.

On May 24, the State filed an amended charging information against Spears in which the State alleged that he had committed the following crimes: neglect of a dependent resulting in death, as a Class A felony; battery resulting in death, as a Class A felony; and reckless homicide, as a Class C felony. On December 3, Spears entered into a plea agreement with the State. Spears agreed to plead guilty to the charge of neglect of a dependent resulting in death, and in exchange the State agreed to dismiss the remaining charges and to recommend to the court that “the executed portion of the sentence . . . shall not exceed [t]hirty (30) years.” Appellant’s App. at 91.

The trial court accepted Spears’ guilty plea and held a sentencing hearing on April 8, 2011. At the close of that hearing, the trial court identified the following two aggravating circumstances: the victim’s age and the State’s evidence that C.L.M. died as a result of “shaken baby syndrome.” Transcript at 70. The court identified the following mitigating circumstances: Spears’ lack of criminal history, his guilty plea, and the hardship Spears’ incarceration would likely have both on Spears’ son and on Spears himself. The court concluded that the aggravating circumstances “overwhelming[ly]” outweighed the mitigators. *Id.* at 73. The court then ordered Spears to serve thirty-five years. The court ordered that sentence to be subdivided as follows: twenty years at the Department of Correction; five years at the Hamilton County Community Corrections Department, with four of those years on work release and one on home detention; and the remaining ten years on formal probation. This appeal ensued.

DISCUSSION AND DECISION

Spears contends that his sentence is inappropriate in light of the nature of the offense and his character. See Ind. Code § 35-50-2-5. 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.

Spears’ sentence is not inappropriate in light of the nature of the offense. In his brief, Spears states that “[t]he circumstances surrounding C.L.M.’s injury and subsequent death are unclear.” Appellant’s Br. at 4. We fail to grasp how Spears reached that conclusion. The evidence is clear: Spears laid C.L.M. on a couch and left the room. C.L.M. rolled off the couch. Spears then handled C.L.M. roughly, causing C.L.M. to strike his head on Spears’ shoulder. Spears then tossed C.L.M. into the air, and C.L.M. went limp and stopped breathing. Spears then waited eleven minutes before calling 911. And the resulting medical conclusion was that C.L.M. died due to “abusive head trauma.” Appellant’s App. at 9. There is nothing at all unclear about the circumstances surrounding C.L.M.’s injury and death, and Spears’ argument to the contrary is utterly meritless.

Neither is Spears’ sentence inappropriate in light of his character. While we acknowledge that Spears lacks a criminal history and pleaded guilty to this crime, those factors are, as the trial court concluded, “overwhelming[ly]” outweighed by the nature of the offense. See Transcript at 73. Further, C.L.M.’s death is directly attributable to Spears’ lack of attention and reasonable care, which reflects poorly on his character. Spears’ sentence is not inappropriate.

Affirmed.

RILEY, J., and MAY, J., concur.