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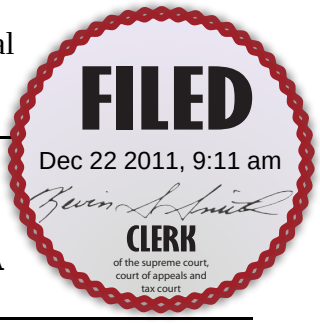

IN THE COURT OF APPEALS OF INDIANA

NATHANIEL BOBO,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1105-CR-224
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-1010-FA-42

December 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Nathaniel Bobo pleaded guilty pursuant to a plea agreement to class B felony aggravated battery. The trial court sentenced him to the sentencing cap set forth in the plea agreement, ten years. On appeal, Bobo argues that his sentence is inappropriate.

We affirm.

On October 3, 2010, Bobo and the victim, both eighteen-year-olds, met for the first time at a gas station in Gary, Indiana. The victim invited Bobo to her home, where they drank alcohol together and Bobo smoked marijuana into the early morning hours. At some point, Bobo became angry and physically attacked the victim. During the attack, he cut the victim on her leg, face, head, and arm. In fact, Bobo acknowledged that he "sawed her leg" with a knife causing severe injuries. *Transcript* at 30.

The following day, the State charged Bobo with class A felony attempted murder, class A felony attempted rape, class A felony attempted criminal deviate conduct, class B felony aggravated battery, and class C felony battery. Bobo entered into a plea agreement with the State, pursuant to which he pleaded guilty to the aggravated battery charge and the remaining charges were dismissed. The agreement also provided for a sentencing cap of ten years. The trial court sentenced Bobo to ten years in prison.

On appeal, Bobo claims that the advisory sentence[1] of ten years is inappropriate in light of his character and the nature of the offense. He asks that we revise his sentence to between six and nine years.

We have the constitutional authority to revise a sentence if, after careful consideration

of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Ind. Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Even if a trial court follows the appropriate procedure in arriving at its sentence, we maintain the constitutional power to revise a sentence we find inappropriate. *Hope v. State*, 834 N.E.2d 713 (Ind. Ct. App. 2005). Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). The burden of persuading us that the sentence is inappropriate is on the defendant. *Rutherford v. State*, 866 N.E.2d 867.

When imposing the sentence, the trial court explained:

> In mitigation, the Court finds that the defendant pled guilty and accepted responsibility to a class B felony, with three A felonies, one class B, one class C felony being dismissed and a cap of ten years in the Department of Correction, being a term of the plea agreement, although the defense does contest the ability of the State to prove those more serious charges. That's where the parties take issue with the facts and circumstances. That is abundantly clear from the record.
>
> In further mitigation, the Court finds that the defendant is an 18-year-old or 19-year-old young male. The Court is expressly rejecting the mitigating factor of the defendant acted under strong provocation. In that all indications in the record are that the defendant recently met this young girl, went over to her home, was in the bedroom with her, was under the influence of alcohol, and marijuana, and the facts and circumstances and the backdrop of the case just don't add up that she would provoke a violent attack in her own bedroom.
>
> And in judging credibility, the credibility judgment that I make is that the defendant went there for a reason. And contrary to his statements, that reason was attempt to have sexual contact with her. And, in fact, when she

[1] A person who commits a class B felony shall be imprisoned for a fixed term of between six and twenty years, with the advisory sentence being ten years. Ind. Code Ann. § 35-50-2-5 (West, Westlaw through 2011 1st Regular Sess.)

> refused his advances is when the situation got out of hand. And I have very little faith in his rendition of the events since he was under the influence of alcohol and marijuana.
>
> In aggravation, the Court finds that the defendant was adjudicated as a juvenile for a Battery charge. That there was in-house arrest ordered…. He ultimately received in-home detention, so placement in the juvenile center, some electronic monitoring. He was sent away to a special school due to his fighting per his grandmother. And that she saw a marked change in his personality when he entered middle school. For whatever reason, the State appears to be correct that at times the defendant acts out violently.
>
> In further aggravation, the Court finds that the defendant is in need of correctional and rehabilitative treatment that can best be provided by his commitment to a penal facility because of his past juvenile adjudications [sic] for Battery, his history of fighting, the seriousness of which appears to be escalating. He fully admits that during the situation in this young lady's bedroom that he held her down and cut her leg with a knife, indicating he sawed her leg as if to cut it with a regular saw. The term used was sawed her leg.
>
> After considering the aggravating factors and the mitigating factors, the Court finds that they are equal to each other….

Transcript at 75-78.

As found by the trial court, the nature of the crime here was clearly aggravating. In addition to several other lacerations, including to the victim's head and face, Bobo sawed a deep gaping wound in the victim's leg. The seriousness of these wounds and the viciousness of the attack are evident in the record. Further, Bobo's claims that the victim was the initial aggressor were expressly rejected by the trial court.

We next turn to Bobo's character. In the five years leading up to his conviction, Bobo exhibited a violent nature that has escalated over time despite intervention by the juvenile justice system. In particular, Bobo had a juvenile adjudication for battery at the age of thirteen, and he was expelled from high school during his junior year for violence. The trial court properly considered his juvenile adjudication and violent tendencies as aggravating.

Juxtaposed to this is Bobo's guilty plea, which is deserving of some mitigation especially in light of the State's acknowledgment that its case against Bobo was not airtight.[2] Finally, we observe that Bobo fails to explain how the fact that he has an infant child (born while he was being held pending trial) reflects positively on his character.[3]

Upon considering the nature of the offense and character of the offender, we conclude that the advisory sentence was not inappropriate in this case.

Judgment affirmed.

RILEY, J., and MATHIAS, J., concur.

[2] It is well established that the significance of a guilty plea as a mitigating factor varies from case to case. *Francis v. State*, 817 N.E.2d 235 (Ind. 2004). For example, a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one. *Wells v. State*, 836 N.E.2d 475 (Ind. Ct. App. 2005), *trans. denied.*

[3] According to Bobo's own statement at sentencing, he has failed to provide for the infant "thus far." *Transcript* at 65.