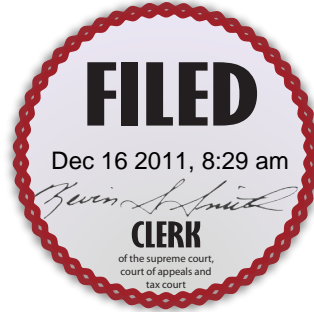


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

THOMAS W. VANES
Crown Point, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ARTHUR DEDRICK GREEN,)

Appellant-Defendant,)

vs.)

No. 45A05-1105-CR-230

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0903-MR-2

December 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Arthur Dedrick Green appeals his forty-nine-year sentence for Class A felony voluntary manslaughter. He contends that the trial court abused its discretion by improperly identifying aggravating factors and that his sentence is inappropriate in light of the nature of the offense and his character. Because we conclude that Green has failed to persuade us that the trial court abused its discretion or that his sentence is inappropriate, we affirm.

Facts and Procedural History

After serving twenty-five years in prison for murder, Green was released from parole in August 2008. Green maintained a relationship with Wanda Davis, and on March 12, 2009, Green and Davis were engaged in an argument. At one point, Green struck Davis in front of her children. Davis's adult son, William Cousinard, who was not present when Green struck Davis, was called to the home by a family member. When Cousinard arrived, he and Green began arguing. During the course of their argument, Green drew a handgun and shot Cousinard twice, killing him.

Green was initially charged with murder. The State subsequently amended the charges to include Class B felony serious violent felon in possession of a firearm and requested life imprisonment without parole. The parties entered into a plea agreement. The agreement provided that Green would plead guilty to an amended count of Class A felony voluntary manslaughter in exchange for the dismissal of the remaining charges and the request for life imprisonment without parole.

During Green's sentencing hearing, the trial court noted Green's guilty plea as a mitigator. *Id.* at 52. As aggravators, the court found that Green had been previously convicted of murder and that the killing of Cousinard occurred only seven months after Green was released from parole for that murder. *Id.* at 50. The court also found that the facts and circumstances of the crime, including the fact that Green made a conscious choice to fire the handgun at Cousinard for what Green believed to be sufficient provocation, constituted significant aggravating factors. *Id.* at 51. The court found as additional aggravators the fact that Cousinard was unarmed at the time he was shot, Green was a convicted felon in possession of a handgun at the time of the offense, and the killing was callous and cold-blooded and committed in the presence of Davis, Cousinard's mother. *Id.*; Appellant's App. p. 69.

The trial court concluded that the aggravating circumstances overwhelmed the mitigating circumstance and sentenced Green to forty-nine years. Green now appeals.

Discussion and Decision

Green contends that the trial court abused its discretion by improperly considering certain aggravators and that his sentence is inappropriate in light of the nature of the offense and his character.

I. Aggravating Factors

Green argues that the trial court abused its discretion by using facts supporting charges that were dismissed under the plea agreement to aggravate his sentence—specifically that Green was a convicted felon in possession of a handgun at the time of the offense and the killing was callous and cold-blooded. The State argues that the trial

court simply considered the nature and circumstances of the crime, which necessarily includes the fact that Green was a convicted felon as well as the fact that Green possessed a handgun at the time of the offense, which he used to shoot the victim twice. The State also notes that Green's possession of a handgun at the time of the offense was part of the stipulated factual basis for Green's guilty plea. Appellant's App. p. 69.

We need not reach this issue because we can say with confidence that the trial court would have imposed the same sentence had it not considered either of the aggravators Green challenges. *See Webb v. State*, 941 N.E.2d 1082, 1092 (Ind. Ct. App. 2011), *trans. denied*. That is, the trial court first noted and relied primarily on the fact that Green killed Cousinard just seven months after being released from parole for murder. *See* Tr. p. 50. In addition, the trial court found three other aggravators: Green made a conscious choice to shoot Cousinard for what Green believed to be sufficient provocation, Cousinard was unarmed when Green shot him, and Green committed the killing in the presence of Davis, Cousinard's mother. Green does not contest these aggravators.

II. Inappropriate Sentence

Green contends that his forty-nine-year sentence is inappropriate in light of the nature of the offense and his character. We disagree.

Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court "may revise a sentence authorized by statute 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." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Green pled guilty to Class A felony voluntary manslaughter and was sentenced to forty-nine years in the DOC. The statutory range for a Class A felony is between twenty and fifty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4.

Regarding the nature of the offense, Green shot and killed the unarmed twenty-one year-old Cosuinard when he came to the aid of his mother.

As to the character of the offender, Green acknowledges his criminal history, including his murder conviction, but argues that it does not warrant the near-maximum sentence because "he does not deserve the 'worst offense' label." Appellant's Br. p. 8-9. We find this argument unavailing. Green shot and killed Cousinard just seven months after being released from parole for murder. The trial court remarked to Green, "you and freedom don't go together too well." Tr. p. 50. Indeed, it appears that Green has not been deterred from criminal activity despite having spent nearly three decades in prison. We conclude that Green's forty-nine year sentence was not inappropriate in light of the nature of the offense and his character.

Affirmed.

ROBB, C.J., and NAJAM, J., concur.