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IN THE
COURT OF APPEALS OF INDIANA

RODNEY MAJORS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0601-CR-61
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael Jensen, Judge
Cause No. 49G05-0504-FB-58600, 0504-FB-65559, -0506-FB-92758

December 28, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

KIRSCH, Chief Judge

Rodney Majors pled guilty to two counts of robbery[1] as a Class B felony, one count of escape[2] as a Class B felony, and admitted he was a habitual offender.[3] The trial court sentenced Majors to a total of seventy years. On appeal, Majors raises several issues regarding his sentence of which we find one dispositive: whether his sentence was appropriate in light of his character and the nature of the offenses.

We reverse and remand with instructions.

FACTS AND PROCEDURAL HISTORY

On October 9, 2004, Majors entered the Family Dollar store on Madison Avenue in Indianapolis just prior to closing. There, he pointed a gun at an employee, ordered her into the store office, and demanded she open the safe and place the money in a plastic bag. After the employee handed him approximately $4,000, Majors ordered her to lie on the floor and threatened to shoot her if she looked up. He then fled from the store.

On April 5, 2005, Majors entered the Big Lots store on Madison Avenue in Indianapolis just before closing and pretended to shop. When he reached the register, he drew a gun. He forced a store employee to open the safe and give him the money it contained. While she complied, another employee called police. With the police in pursuit, Majors fled by car, then abandoned his car, and was finally apprehended on foot in a residential neighborhood. Both the money and gun used in the robbery were found in Majors' car. Majors was arrested and charged with two counts of robbery from these merchants and several other charges.

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[1] *See* IC 35-42-5-1.

[2] *See* IC 35-44-3-5.

[3] *See* IC 35-50-2-8.

On June 1, 2005, Majors was placed in a holding cell. When a deputy opened the holding cell, Majors pushed him against a wall, fled the cell, and shoved an attorney into the deputy to block the deputy's pursuit. The deputy and several others gave chase. Majors kicked one deputy and punched a second deputy. The two deputies finally subdued Majors and returned him to a cell. As a result of this incident, Majors was charged with escape as a Class B felony.

Pursuant to a plea agreement, Majors pled guilty to two counts of robbery as Class B felonies and one count of escape as a Class B felony and agreed not to contest a habitual offender finding in exchange for having the remaining charges dropped. Additionally, Majors waived his right to have aggravating and mitigating circumstances determined by a jury and left sentencing to the trial court's discretion. The trial court sentenced Majors to fifteen years for each of the two robberies, twenty years for the habitual offender enhancement, and twenty years for escape, with all sentences to run consecutively. Majors now appeals.

DISCUSSION AND DECISION

"The Indiana Constitution authorizes independent appellate review and revision of a sentence imposed by the trial court." *Buchanan v. State*, 767 N.E.2d 967, 972 (Ind. 2002). On review, an otherwise statutorily authorized sentence may be revised if it is found to be inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Generally, "'the maximum possible sentences are generally most appropriate for the worst offenders.'" *Buchanan*, 767 N.E.2d at 973. (quoting *Evans v. State*, 725 N.E.2d 850, 851 (Ind. 2000)).

Majors is neither the worst offender, nor are his crimes the most egregious in nature. Although both robberies were committed with a deadly weapon, the use of a deadly weapon is contemplated by the statute and is recognized in the elevation of the charge to a Class B felony. A material element of an offense cannot be used as an aggravating circumstance. *Henderson for State*, 769 N.E.2d 172, 186 (Ind. 2002). No one was physically harmed in either robbery. Although a deputy was injured during Majors' escape, that injury is an essential element of the elevation of escape to a Class B felony. Finally, Majors' previous criminal history cited by the trial court as an aggravator consisted of two convictions for auto theft that occurred between fifteen and nineteen years prior to the incidents in this case. Under these circumstances we find a seventy-year combined sentence to be inappropriate. Therefore, we revise Majors' sentence as follows: for the two robbery convictions – the presumptive sentence of ten years each, with one count enhanced by twenty years for the habitual offender finding; for the escape conviction – the advisory sentence of ten years; all sentences shall run consecutively for a total of fifty years.

Reversed and remanded with instructions.

SHARPNACK, J., and MATHIAS, J., concur.