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IN THE
COURT OF APPEALS OF INDIANA

PAUL VEST,
Appellant-Defendant,
vs.
STATE OF INDIANA,
Appellee-Plaintiff.

No. 49A02-0603-CR-218

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael Jensen, Judge
Cause No. 49G06-0511-FA-194076

December 11, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Paul Vest appeals his sentence for robbery as a class A felony.[1] Vest raises two issues, which we restate as:

I. Whether the trial court abused its discretion in sentencing Vest; and

II. Whether Vest's fifty-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On November 5, 2005, forty-one-year-old Vest approached his roommate, seventy-four-year-old Hollis Tharp, and demanded that Tharp give him $200.00. When Tharp refused, Vest picked up an aluminum baseball bat and struck Tharp several times. Tharp lost consciousness, and when he later regained consciousness, Tharp noticed that Vest had taken $200.00 from him. Tharp suffered broken cheekbones, multiple injuries to his head, and bleeding in his brain.

The State charged Vest with robbery as a class A felony, aggravated battery as a class B felony,[2] and battery as a class C felony.[3] Vest agreed to plead guilty to robbery as a class A felony, and the State agreed to dismiss the remaining charges, not to file an habitual offender charge, and to dismiss class A misdemeanor charges for resisting law enforcement in a separate cause. The plea agreement called for a sentence of forty to fifty years executed in the Indiana Department of Correction. After a sentencing hearing,

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[1] Ind. Code § 35-42-5-1 (2004).

[2] Ind. Code § 35-42-2-1.5 (2004).

[3] Ind. Code § 35-42-2-1 (Supp. 2005).

the trial court found two aggravators: (1) Vest's criminal history; and (2) the age of the victim, and three mitigators: (1) the fact that Vest accepted responsibility; (2) Vest's employment history; and (3) Vest's substance abuse. The trial court found that the aggravators outweighed the mitigators and imposed a sentence of fifty years in the Indiana Department of Correction.

I.

The first issue is whether the trial court abused its discretion by sentencing Vest. Vest argues that the trial court abused its discretion because "[t]he aggravating circumstances, when balanced against the mitigating circumstances, were not so weighty as to support the maximum available sentence." Appellant's Brief at 7.

We note that Vest's offense was committed after the April 25, 2005, revisions of the sentencing scheme. We recently discussed sentencing under the revised scheme and observed the following:

> Under our post-*Blakely* statutory scheme, the trial court may impose any sentence that is authorized by statute and permissible under the Indiana constitution "*regardless of* the presence or absence of aggravating circumstances or mitigating circumstances." *Banks v. State*, 841 N.E.2d 654 (Ind. Ct. App. 2006) (May, J., concurring in result), *trans. denied*; I.C. § 35-38-1-7.1(d), *as amended by* P.L. 71-2005, Sec. 3 (emphasis supplied). . . . As noted, the trial court identified three aggravators, but did not identify as mitigating the fact that [the defendant] pled guilty to each of the charges. Under the statutory scheme applicable to crimes committed prior to April 25, 2005, such would have constituted an abuse of discretion, as we found above. Under the new statutory scheme, however, any such error in sentencing is harmless. Put simply, the new statutory scheme does not require the finding and balancing of aggravating and mitigating circumstances. *See* I.C. § 35-38-1-7.1(d). We cannot say, therefore, that the trial court abused its discretion.

Creekmore v. State, 853 N.E.2d 523, 531 (Ind. Ct. App. 2006), reh'g pending.

Similarly, here, the trial court could impose any sentence authorized by statute and the plea agreement and permissible under the Indiana Constitution regardless of the presence or absence of aggravating or mitigating circumstances. Any error in the balancing of the aggravators and mitigators was harmless.[4] See, e.g., id.

II.

The next issue is whether Vest's fifty-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Vest requests that we revise his sentence to forty years.

Our review of the nature of the offense reveals that Vest used a baseball bat to beat his seventy-four-year-old roommate when his roommate would not give Vest $200.00. After beating the roommate, Vest took the $200.00. The roommate suffered extensive injuries, including a loss of consciousness, broken cheekbones, head injuries, and bleeding in the brain. The incident stemmed from Vest's drug problems.

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[4] Even if we were required to consider the trial court's balancing of the aggravators and mitigators, we would find no abuse of discretion here. Given Vest's significant criminal history, the age of the victim, the fact that Vest received a significant benefit from his guilty plea, and the minimal mitigating weight of his employment history and substance abuse, the trial court did not abuse its discretion by finding that the aggravators outweighed the mitigators and imposing the maximum fifty-year sentence. See, e.g., Ketcham v. State, 780 N.E.2d 1171, 1181 (Ind. Ct. App. 2003) (holding that the defendant failed to prove that the trial court abused its discretion in assessing his lack of remorse too

Our review of the character of the offender reveals that forty-one-year-old Vest has a significant criminal history. Vest self-reported a juvenile history of burglaries, thefts, and trespass. As an adult, in 1989, Vest was found guilty of aggravated assault with a firearm in Florida and was sentenced to two years "community control followed by 2 years probation." Presentence Investigation Report ("PSI") at 3. Vest violated his probation and was sentenced to two years in the Florida state prison. In 1999, Vest was found guilty of burglary of a dwelling, grand theft 2nd degree, possession of cocaine, and possession of drug paraphernalia. Vest was sentenced to "2 years community control follow[ed] by 1 year probation on Cts. 1-3 and one year probation on Ct. 4 all to run concurrent." Id. at 4. Vest violated his probation and was sentenced to serve two year and six months in the Florida state prison. In 2000, he was also convicted of grand theft 3rd degree. Vest also notes that, in the PSI, he reported a "bad" childhood due to his parents' substance abuse problems. Id. at 6. Vest reported that his parents gave Vest and his brother alcohol starting at the age of five and that he was molested by an aunt from the age of ten until the age of fourteen. Vest also reported that he had been diagnosed with depression and anxiety, that he began consuming alcohol and marijuana at the age of ten, and that he later began using heroin and cocaine. Vest participated in a substance abuse rehabilitation program in the 1990's while he was in Florida.

As the State points out, Vest agreed that the trial court could sentence him to between forty and fifty years. Although Vest had a difficult childhood, Vest has not

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much aggravating weight and in not assessing his troubled childhood enough mitigating weight), trans.

taken advantage of efforts to provide him leniency. Rather, he has escalated his criminal activity to the instant savage attack and robbery of his elderly roommate. After due consideration of the trial court's decision, we conclude that Vest's fifty-year sentence is not inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Patterson v. State, 846 N.E.2d 723, 731 (Ind. Ct. App. 2006) (holding that the defendant's fifty-year sentence for robbery as a class A felony was not inappropriate).

For the foregoing reasons, we affirm Vest's sentence for robbery as a class A felony.

Affirmed.

KIRSCH, C. J. and MATHIAS, J. concur

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denied.