ATTORNEY FOR APPELLANT:

DAVID BECSEY
Ziegler Cohen & Koch
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TYRONE GRAYSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0704-CR-347
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather Welch, Magistrate
Cause No. 49G01-0108-CF-164749

December 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Tyrone Grayson appeals his sentence for Class B felony attempted robbery and Class B felony unlawful possession of a firearm by a serious violent felon. We affirm.

Issue

Grayson raises two issues, which we consolidate and restate as whether he was properly sentenced.

Facts

On August 8, 2001, Grayson and another person entered a bank on Meridian Street in Indianapolis. Grayson was armed with a loaded semi-automatic weapon. Grayson produced the gun and announced that they were robbing the bank. A number of employees saw the gun, ducked behind the counter or their desks, and pushed alarm buttons. Indianapolis Police Officer Steve DeBois, who was working as a security guard for the bank, was in the back of the bank. Grayson pointed his gun in the direction of Officer DeBois and tried to pull the trigger. Officer DeBois drew his own weapon and shot at Grayson and his companion. The two turned and fled the bank. Grayson was struck by a bullet and apprehended in the parking lot. Grayson's companion was never identified or apprehended.

On August 13, 2001, the State charged Grayson with Class A felony attempted murder, Class B felony attempted robbery, Class B felony unlawful possession of a firearm by a serious violent felon, two counts of Class D felony pointing a firearm, and Class A misdemeanor carrying a handgun without a license.

On August 16, 2002, Grayson pled guilty to Class B felony attempted robbery and Class B felony unlawful possession of a firearm by a serious violent felon. In exchange for his guilty plea, the State dismissed the remaining charges. The plea agreement also called for Grayson's executed sentence to be capped at thirty years.

On October 4, 2002, a sentencing hearing was held. The trial court sentenced Grayson as follows:

> [T]he Court will accept your Plea of Guilty as charged to Count Two, Attempt Robbery, as a Class B felony. On that Count, the Court is going to consider as aggravating your criminal history. The fact that you have a conviction for Robbery in March of 1998, where you received ten (10) years, six executed, four (4) years suspended. You were released from the Department of Corrections September 21, 2000. The Court will consider as aggravating the fact that you have a second felony conviction, April 15th, 1998 for Altering Original Special ID Number, and on that felony – that was a "C" Felony, you received two (2) years suspended, two (2) years probation. The Court will consider as aggravating the fact that you were on – I believe both probation and parole at the time that you committed this crime. You had been out of prison for less than a year for the other robbery when you committed this offense. The Court will find as aggravating, the nature and circumstances of the offense. This bank robbery was particularly violent. This is not one of those bank robberies where somebody comes in with a note in their pocket and hands it to the teller. This is one of those bank robberies, where people strong arm and forcibly enter a bank to terrorize everyone in the bank. They come in brandishing weapons. They come in – this was a bold robbery. There is evidence that – the police officer who was doing security in the bank was in a marked police car. So there was a police car in the lot. There was a uniformed police officer in there. So, when this Defendant went into the bank finally – he knew that there was a police officer in there. This was a very bold and brazen robbery. As they entered the bank, he points the firearm not only at the security – the police office [sic] who's working security, but also female employees that are working

> in the bank. He brandishes the weapon. This one of those kind of bank robberies you see on television. There is evidence that the – the Defendant attempted to fire his weapon back and discharge his weapon, but it – either the safety was on – or the weapon malfunctioned – something happened. We don't know – the Defendant hasn't told us. He has that right. But this was not – this was a bold and aggressive bank robbery, and the Court is going to find the nature and circumstances of the offense to be an aggravating circumstance. The Court will consider as mitigating, the fact that the Defendant has expressed remorse – both to the victims and to his family and the court. And the fact that the Defendant did cooperate with officials when he signed the Plea Agreement. The Court finds that the aggravating circumstances outweigh the mitigating circumstances, and on Count One [sic], the Court is going to sentence the Defendant to twenty (20) years executed in the Department of Corrections . . . . The Court will accept the Defendant's plea of guilty as charged to Count Three – Unlawful Possession of a Firearm by a Serious Violent Felon. The Court considers that same aggravating and mitigating circumstances on Count Three. The Court will find that the aggravators and mitigators on Count Three balance – and the Court is going to sentence the Defendant to ten (10) years executed in the Department of Corrections on Count Three. The Court, based upon [the prosecutor's] interpretation of the law – he believes that statutorily the Court can run these two counts consecutive, so – and the Court is going to run Count Two and Three consecutive for a total executed sentence of thirty (30) years in the Department of Corrections. . . .

Tr. pp. 44-46. Grayson now belatedly appeals.[1]

Analysis

Grayson first argues that the trial court's statement regarding the permissibility of imposing consecutive sentences does not adequately support such. Although the trial

[1] In Grayson v. State, No. 49A05-0512-PC-694 (Ind. Ct. App. July 31, 2006), we reversed the denial of Grayson's petition for permission to file a belated appeal.

court did not specifically explain why it was imposing consecutive sentences, it found as aggravating Grayson's criminal history and the nature and circumstances of the offense. Either one of these aggravators alone would be sufficient to support the imposition of consecutive sentences. See Smylie v. State, 823 N.E.2d 679, 686 (Ind. 2005) ("When sentencing a defendant on multiple counts, an Indiana trial judge may impose a consecutive sentence if he or she finds at least one aggravator."), cert. denied, 546 U.S. 545 (2005). The trial court's imposition of consecutive sentences is adequately supported by its detailed recitation of Grayson's criminal history and the nature and circumstances of the offense as aggravating circumstances.

Grayson also argues that his sentence is inappropriate. We assess whether Grayson's sentence is inappropriate under Indiana Appellate Rule 7(B) in light of his character and the nature of the offense. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). Although Indiana Appellate Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

Grayson argues that his thirty year sentence is inappropriate because "[t]here was essentially one harm: an attempt to rob a bank." Appellant's Br. p. 7. We disagree.

As to the nature of the offense, Grayson entered a bank in which people were present, displayed his weapon, and announced his intent to rob a bank. Employees

sought safety behind the counter and under their desks. Upon seeing an Indianapolis Police Officer, who was working as a security guard, Grayson pointed the gun at Officer DeBois and made "a motion with his hand as if trying to squeeze the trigger." Tr. p. 18. In response, DeBois opened fire in the bank. Grayson then fled and was apprehended outside of the bank. This is not a run-of-the-mill attempted robbery.

Regarding the character of the offender, approximately three and half years prior to the commission of this offense, Grayson was convicted of armed robbery. He was released from the Department of Correction in September 2000, and less than a year later committed this offense. In addition to the prior armed robbery conviction, Grayson has been convicted of two counts of Class C felony altering an identification number. Further, Grayson was on probation when he committed this offense. Although Grayson was only twenty-two at the time he committed the current offense, his criminal history is not indicative of one who intends to lead a law-abiding life.

As for Grayson's guilty plea, it was made almost a year after the State filed charges against him. Further, in exchange for his guilty plea, the State dismissed the Class A felony attempted murder charge, the two Class D felony pointing a firearm charges, and the Class A misdemeanor carrying a handgun without a license charge. Also, a conviction for two Class B felonies could have resulted in a forty-year sentence; however, the plea agreement called for Grayson's executed sentence to be capped at thirty years. Accordingly, his guilty plea is not worthy of substantial mitigating weight.

Even Grayson's statement of remorse made at the sentencing hearing was conditioned on the fact that the truth had not come out. Grayson stated:

> first I'd like to say, you know, I'm sorry for what these people, you know, had to go through at this place. I'd also like to – to say I'm sorry for putting my family through this. And I know during all this – uh – I don't truly feel that – that the whole truth came out in this. But, at this time, there's no – no way for me, you know to explain that, and justify that. So I'm just accepting, you know, what's given to me today.

Tr. p. 38 (emphasis added). Grayson's statement of remorse is not a significant mitigator. Considering the aggravators and mitigators present in this case, we conclude that Grayson's aggregate sentence of thirty years is appropriate.

Conclusion

The trial court's imposition of consecutive sentences is adequately explained by its recitation of the aggravating circumstances. Grayson's thirty-year sentence is not inappropriate. We affirm.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.