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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAMES CALDWELL, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-0705-CR-386  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Grant Hawkins, Judge  
Cause No. 49G05-0606-MR-107299

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**December 14, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant James Caldwell (“Caldwell”) appeals the sentence imposed upon him for his conviction of Voluntary Manslaughter, a Class B felony.<sup>1</sup> We affirm.

### **Issue**

Caldwell presents a single issue for review: whether his eighteen-year sentence is inappropriate.

### **Facts and Procedural History**

On June 6, 2006, Caldwell and James Barr (“Barr”) were inmates at the Marion County Jail, housed in the mental health unit. Caldwell was talking on the telephone, when Barr moved his wheelchair across Caldwell’s foot, saying, “get the fuck out of my way.” (Tr. 239.)

Caldwell began to punch Barr in the face. Barr tried to stand up on one leg and fight back from his wheelchair. His efforts were futile, and he fell to the floor. Caldwell then began kicking and stomping on Barr’s head. Caldwell threw “a couple of the stools” at Barr. (Tr. 243.) Finally, Caldwell picked up Barr’s wheelchair and threw it onto Barr’s upper torso.

Jail officers found Barr unconscious and lying in a puddle of blood. He was transported to Wishard Hospital, where he underwent surgery. Two days later, Barr died of complications from a closed head injury.

On June 12, 2006, the State charged Caldwell with Murder. He was tried by a jury on

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<sup>1</sup> Ind. Code § 35-42-1-3.

April 2 and 3, 2007 and convicted of the lesser offense of Voluntary Manslaughter. On April 11, 2007, the trial court sentenced Caldwell to eighteen years imprisonment. He now appeals.

### **Discussion and Decision**

Caldwell requests that we conduct our independent review of the nature of the offense and character of the offender pursuant to Indiana Appellate Rule 7(B) and revise his eighteen-year sentence to the advisory sentence of ten years or less.<sup>2</sup> In particular, he emphasizes his history of mental illness and the fact that he was initially confronted by the decedent.

Indiana 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.” Nevertheless, our review under Appellate Rule 7(B) is deferential to the trial court, and “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The nature of the offense is that Caldwell brutally beat an infirm man, who had only one leg and was blind in one eye. As Barr lay helpless on the jail floor, Caldwell chose not to summon assistance, but to stomp and strike Barr’s head until his injuries were fatal. The fact that Barr initially confronted Caldwell was found by the jury to be sufficient provocation

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<sup>2</sup> Ind. Code § 35-50-2-5 provides that “a person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.”

that Caldwell was convicted of Voluntary Manslaughter rather than Murder. He has not demonstrated that the nature of the offense of which he was convicted militates toward an advisory or mitigated sentence.

The character of the offender is such that prior attempts at rehabilitation failed. By age twenty-eight, Caldwell had accumulated two convictions for possession of cocaine, three convictions for firearms possession offenses, and one conviction each for battery and resisting law enforcement. His probation had been revoked on four occasions. He also had accumulated a history of Department of Correction conduct violations. At the time he committed the instant crime, Caldwell was incarcerated facing two charges of attempted murder.

In light of the nature of the offense and the character of the offender, we do not find Caldwell's sentence, which exceeds the advisory sentence by eight years, to be inappropriate.

Affirmed.

NAJAM, J., and CRONE, J., concur.