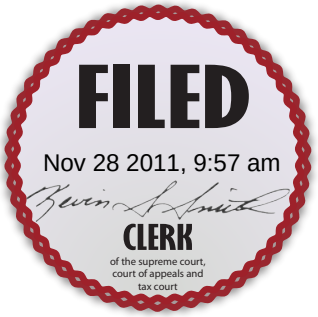

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IN THE COURT OF APPEALS OF INDIANA

JASPER FRAZIER,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A02-1101-CR-126
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0801-FA-18535

November 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Jasper Frazier pleaded guilty to attempted robbery, a Class A felony; conspiracy to commit robbery, a Class B felony; and carrying a handgun without a license, a Class A misdemeanor. Pursuant to the plea agreement, sentencing was open to the discretion of the trial court. The trial court sentenced Frazier to fifty years for the attempted robbery conviction, to be served consecutive to twenty years for the conspiracy to commit robbery conviction, and concurrent with one year for the carrying a handgun without a license conviction. Frazier appeals his sentence, contending the aggregate seventy-year sentence is inappropriate in light of the nature of the offenses and his character. Concluding the sentence is not inappropriate, we affirm.

Facts and Procedural History

On the evening of January 14, 2008, Zarumin Coleman, Ronald Davis, and Tommy Warren hatched a plan to rob a home on Hovey Street in Indianapolis where Warren said money and marijuana could be found. When Coleman and Davis later tried to meet up with Warren to go to the home, however, they were unable to locate him. They contacted Donte Hobson and Frazier, Coleman's next-door neighbor, to assist instead. The men acquired two guns, a crowbar, and a duffle bag to use in the robbery. Davis, armed with a 40 caliber Glock handgun, and Frazier, armed with a TEC-9 handgun, forcibly entered the residence, which was then occupied by two women and two children. Davis shot and killed all four occupants.

Although Coleman had threatened to kill Frazier if he told anyone about the murders, Frazier told a friend, who advised him to seek advice from his family. Frazier went to his sister's residence in Toledo, Ohio, and told her that he had been involved in

the murders. He went to the police in Toledo and arranged to turn himself in to the authorities in Indianapolis. Without benefit of counsel, Frazier confessed to his role in the crime. The Marion County prosecutor made an agreement with Frazier that if he cooperated fully in the investigation, murder charges would not be filed against him. Frazier took police to various relevant locations and identified the other perpetrators, identifying Davis as the shooter. Frazier's statements were corroborated by Coleman. The State charged Frazier with burglary, conspiracy to commit robbery, attempted robbery, all Class A felonies, and carrying a handgun without a license, a Class A misdemeanor. The State and Frazier later reached a plea agreement pursuant to which Frazier agreed to plead guilty to attempted robbery as a Class A felony, conspiracy to commit robbery, reduced to a Class B felony, and carrying a handgun without a license, a Class A misdemeanor, and the State agreed to dismiss the burglary charge. The sentence was open to the trial court's discretion, with a possible range of twenty to seventy-one years. Following a sentencing hearing, the trial court sentenced Frazier to an aggregate sentence of seventy years. Frazier now appeals his sentence. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

This court has authority to revise a sentence "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." Ind. Appellate Rule 7(B). "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."

Patterson v. State, 909 N.E.2d 1058, 1062-63 (Ind. Ct. App. 2009). We understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. at 1063. The principal role of Rule 7(B) review "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case. Id. at 1224.

In conducting an inappropriate sentence review, we assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate, Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006), but may look to any factors appearing in the record, Schumann v. State, 900 N.E.2d 495, 497 (Ind. Ct. App. 2009). The "nature of the offense" portion of inappropriate sentence review concerns the advisory sentence for the class of crimes to which the offense belongs; therefore, the advisory sentence is the starting point in our sentence review. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). The "character of the offender" portion of the sentence review involves consideration of the aggravating and mitigating circumstances and general considerations. Williams v. State, 840 N.E.2d 433, 439-40 (Ind. Ct. App. 2006). The defendant bears the burden of persuading this court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

II. Inappropriate Sentence

Frazier was sentenced to an aggregate of seventy years for the crimes to which he pleaded guilty, which represents the maximum sentence for Class A felony attempted robbery, see Ind. Code § 35-50-2-4, consecutive to the maximum sentence for Class B felony conspiracy to commit robbery, see Ind. Code § 35-50-2-5.[1] The trial court's lengthy, well-articulated sentencing statement identified Frazier's mental health history and acceptance of responsibility – including his plea of guilty, his willingness to cooperate in his own and his co-defendants' cases, and his remorse – as "substantial" mitigating factors, and the circumstances of the crime – namely, the number of victims and the age of the children – and his criminal history as "significant" aggravating factors. Tr. at 156.

Frazier does not seriously challenge his sentence on the basis of the nature of this offense. Two young women and their children were senselessly and violently murdered for the sake of Frazier and his compatriots stealing drugs and/or money allegedly present at the Hovey Street house. There is no question this is among the worst of offenses.

Frazier does, however, challenge his sentence on the basis of the nature of his character, claiming he is not among the worst of offenders. Frazier points out his "miserable" childhood, see Brief of Appellant at 4, that he has been diagnosed as bipolar and paranoid schizophrenic, and that he has abused alcohol and drugs for years. He also points out that he came forward very soon after the crime, cooperated in the cases against his co-defendants, and pleaded guilty himself.

[1] Frazier's aggregate sentence is not technically the maximum. His one-year sentence for the Class A misdemeanor carrying a handgun without a license conviction was ordered to be served concurrent with his other sentences. As the trial court acknowledged, "[t]here is a difference between seventy and seventy-one [years], which really doesn't make any difference at all . . . ." Transcript at 164-65.

We acknowledge, as does the State,[2] that Frazier did have an extremely difficult childhood. The youngest of fifteen children, he lost his mother with whom he was very close when he was nine years old. His father sent him to live with an older sister, and from then on, he shuttled between older siblings' homes and homeless shelters in various states. Frazier was in special education classes in school and dropped out of high school with a 0.88 grade point average. As a teenager, Frazier began abusing drugs, including marijuana, cocaine, and alcohol. At seventeen, Frazier was diagnosed with bipolar disorder and schizophrenia. Frazier's sister, testifying at the sentencing hearing, stated Frazier "was a follower" who "always tried to fit in" and was easily influenced by others. Tr. at 52, 57-58. Nonetheless, Frazier clearly knows right from wrong, as evidenced by his cooperation after the fact, and he therefore fails to show how his admittedly painful childhood or mental health diagnoses in any way reduce his culpability for participating in this crime. See Ritchie v. State, 875 N.E.2d 706, 725 (Ind. 2007) (in reviewing a death row inmate's claim that his appellate counsel was ineffective for failing to make a 7(B) argument, holding that defendant's "unfortunate childhood and mental health issues," although relevant if they could have been tied to his culpability, would have been entitled to little, if any, mitigating weight).

Frazier has amassed twenty-two convictions, including eight felony convictions, in his thirty-nine years. The trial court meticulously detailed Frazier's prior convictions and the significance of each in relation to this crime. See Tr. at 156-62 (noting, in particular, that the property and drug crimes of which Frazier had been convicted were directly

[2] "There is no dispute that [Frazier] experienced a difficult childhood, with more than its fair share of upheaval and instability." Brief of Appellee at 6.

related to the facts of this case); see also Harris v. State, 897 N.E.2d 927, 930 (Ind. 2008) ("The significance of a defendant's criminal history varies based on the gravity, nature and number of prior offenses as they relate to the current offense.") (quotation omitted). Although murder is a significantly more serious crime than any Frazier had committed before, the murders arose out of circumstances Frazier had found himself in time and time again: "taking of property or attempting to take property that does not belong to him." Tr. at 159. Frazier was also on probation at the time he committed these crimes.

As for Frazier's acceptance of responsibility, we note that Frazier came forward on his own initiative after the murders. According to his sister, he wanted to turn himself in because "it was the right thing to do." Id. at 56. In fact, it was difficult for him to turn himself in, because police had not identified him as a suspect and he was not wanted for any crime. We also note that the State offered on its own accord the agreement by which Frazier cooperated with the investigation and prosecution of the case in exchange for not being charged with murder. The lead detective testified at Frazier's sentencing hearing that Frazier had been "very consistent" in all of his statements and testimony about the crime, id. at 108-09, and the State acknowledged in its argument on sentencing that "we wouldn't be here without the cooperation of Jasper Frazier," id. at 142. We do not diminish the significance of Frazier's cooperation in solving this crime and providing some measure of resolution to the families of the victims, nor do we overlook the fact that he came forward before he had any assurance of an incentive to do so. Nonetheless, Frazier clearly could have been charged with four counts of felony murder, and he received a substantial benefit when the State agreed not to file murder charges in exchange for his cooperation.

Frazier may have had a difficult childhood marked by abandonment and mental illness and his cooperation may have been a significant benefit to the authorities in prosecuting each person responsible for this crime, but given his criminal history, the significant concessions offered by the State for his cooperation, and the particularly heinous nature of the crime, we conclude, as the trial court did, that we cannot in good conscience say a seventy-year sentence is inappropriate.

Conclusion

Frazier's seventy-year sentence for Class A felony attempted robbery, Class B felony conspiracy to commit robbery, and Class A misdemeanor carrying a handgun without a license is not inappropriate in light of the nature of the offenses or Frazier's character. The sentence is affirmed.

Affirmed.

BARNES, J., and BRADFORD, J., concur.