ATTORNEY FOR APPELLANT:

PATRICIA CARESS MCMATH
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

DAVID DUNLAP,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1104-CR-333
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0607-FB-128398
Cause No. 49G02-0606-PC-112737
Cause No. 49G02-0606-PC-108323

November 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Under three separate cause numbers, David Dunlap pleaded guilty to a total of seven counts of robbery, all as class B felonies, and was subsequently sentenced to an aggregate term of thirty years imprisonment. Dunlap presents the following restated issue for review: Is the sentence imposed by the trial court inappropriate in light of the nature of the offenses and the character of the offender?

We affirm.

The facts as admitted by Dunlap are that on June 1 Dunlap took money from a Family Dollar store by threatening Tameika Banks, a store employee, with a knife. On June 5, he took money from a Kentucky Fried Chicken Restaurant by threatening Aaron Hunt, a restaurant employee, with a knife. On June 6, he took money from a Super Seven store by threatening Phillip Schweine, a store employee, with a knife. On June 8, he took money from a Meijer store by threatening Shawn McInery and David Mink, store employees, with a knife. On June 12, he took money from a Village Pantry store by threatening Janet Smith, a store employee, with a knife. Also on June 12, he took money from another Village Pantry store by threatening Julie Eibert, with a knife. Lastly, on June 13, he took Money from a Subway restaurant by threatening Debra Sinks, a store employee, with a knife. All of the aforementioned incidents occurred in Indianapolis in 2006.

The State charged Dunlap under three separate cause numbers with a total of seven counts of class B felony robbery, i.e., one count under Cause No. 49G02-0607-FB-128398 (No. 398), five counts under Cause No. 49G02-0606-FB-112737 (No. 737), and one count under Cause No. 49G02-0606-FB-108323 (No. 323). He was also charged under these cause numbers with criminal recklessness as a class D felony, criminal confinement as a class B

felony, and attempted robbery as a class B felony. Under a fourth cause number, 49G02-0606-FB-117177, he was charged with another count of attempted robbery as a class B felony. The parties thereafter reached a plea agreement whereby Dunlap agreed to plead guilty to seven counts of class B felony robbery in exchange for the State's agreement to dismiss all of the remaining charges under all four cause numbers. The parties further agreed that sentencing would be left to the trial court's discretion, subject to a forty-year cap on the aggregate sentence. Following a sentencing hearing, the trial court imposed a ten-year sentence for each of the convictions, with the five sentences in No. 737 to run concurrently to each other but consecutively to the sentences under No. 398 and No. 323, with those two to run consecutively to each other. This resulted in an aggregate sentence of thirty years.

Dunlap contends his sentence was inappropriate in light of his character and the nature of his offenses. Article 7, section 4 of the Indiana Constitution grants our Supreme Court the power to review and revise criminal sentences. Pursuant to Ind. Appellate Rule 7, the Supreme Court authorized this court to perform the same task. *Cardwell v. State*, 895 N.E.2d 1219 (Ind. 2008). Per App. R. 7(B), we may 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." *Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009), *cert. denied*, 131 S.Ct. 414 (2010). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d at 1223. Dunlap bears the burden on appeal of persuading us

that his sentence is inappropriate.[1] *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

The nature of the offense is to be found in the details and circumstances relating to the commission of the offense and by examining the defendant's participation therein. *See Treadway v. State*, 924 N.E.2d 621 (Ind. 2010). We agree with Dunlap that the robberies of which he was convicted were not more egregious than other offenses of this nature, i.e., not worse than that contemplated by the robbery statute. Thus, the nature of each individual offense is not particularly aggravating. We note, however, that there were seven separate offenses with seven separate victims during Dunlap's two-week crime spree. This clearly is an aggravating fact.

Turning now to Dunlap's character, the trial court found that Dunlap had accepted responsibility for his actions, clearly referring to the fact that he had pleaded guilty. We note, however, that the court assigned low weight to this mitigator "because he did get the benefit of a very generous plea offer in this case." *Transcript* at 42. The court also found as a mitigator that Dunlap showed remorse. Finally, the court noted that Dunlap's family, and especially his seven-year-old daughter, would suffer hardship as a result of his imprisonment, and found this to be a mitigating factor. On the other hand, the court noted Dunlap's criminal

[1] We note also that Dunlap contends the aggravators found by the trial court do not outweigh the mitigators – which contravenes the express finding of the trial court in sentencing Dunlap. To the extent this represents a challenge to the trial court's weighing of the aggravators and mitigators, it is unavailing. Our Supreme Court has determined that a claim of improper weighing is no longer available, viz.,

> Because the trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to "properly weigh" such factors. *See, e.g., Jackson v. State*, 728 N.E.2d 147, 155 (Ind. 2000) (finding that the Court could not determine from the sentencing statement whether the trial court "properly weighed" the aggravating and mitigating factors).

history, which "although not horribly nasty … [was] an aggravating circumstance." *Id*. According to the presentence investigation report, his criminal history included convictions of possession of alcohol by a minor, a class C misdemeanor, public intoxication, a class A misdemeanor, two convictions for driving while suspended, both as class A misdemeanors, possession of marijuana, a class A misdemeanor, and battery, a class A misdemeanor.

With this in mind, we consider the sentence imposed. The trial court imposed the advisory, ten-year sentence for each of the seven class B felony convictions. Our courts view the advisory sentence as "a helpful guidepost for ensuring fairness, proportionality, and transparency in sentencing." *Hamilton v. State*, -- N.E.2d -- (Ind. Oct. 19, 2011), slip op. at 5; *see also* Ind. Code § 35-50-2-1.3(a) (West, Westlaw through end of 2011 1st Regular Sess.) (defining advisory sentence as "a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence"). Dunlap does not challenge this aspect of his sentence. Rather, he contends that those sentences should be served concurrently, for an aggregate executed sentence of ten years.

Our Supreme Court has indicated that multiple victims is an aggravating circumstance that supports the imposition of consecutive sentences, noting that doing so "seems necessary to vindicate the fact that these were separate harms and separate acts against more than one person." *Serino v. State*, 798 N.E.2d 852, 857 (Ind. 2003); *s ee also Estes v. State*, 827 N.E.2d 27, 29 (Ind. 2005) (defendant "committed the offenses against two victims, so at least one consecutive sentence is appropriate"). Here, the sheer number of robberies and victims merits an aggregate sentence in excess of the advisory sentence for only one of the incidents,

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Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218.

which is what Dunlap is asking this court to impose upon appeal. The nature of these offenses and Dunlap's character clearly do not merit the maximum aggregate sentence that could be imposed. We conclude, however, that the thirty-year sentence resulting from the order to run the aggregate sentence for each of the three separate cause numbers consecutive to each other is not inappropriate.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.