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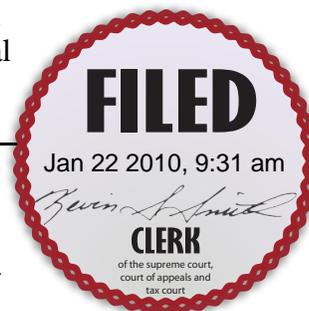
ATTORNEY FOR APPELLANT:

E. PAIGE FREITAG
Jones, McGlasson & Benckart, P.C.
Bloomington, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

TRAVIS G. RABER,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 60A01-0908-CR-428

APPEAL FROM THE OWEN CIRCUIT COURT
The Honorable Frank M. Nardi, Judge
Cause No. 60C01-0901-FB-4

January 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Travis Raber was convicted of Class B felony aggravated battery for killing a man following a physical confrontation. He was sentenced to twenty years incarceration with five years suspended. We conclude Raber's sentence is not inappropriate in light of the nature of the offense and his character. We affirm.

Facts and Procedural History

Raber was eighteen years old and lived in Spencer, Indiana. On the evening of January 1, 2009, Raber, his friend Matt, and Matt's sister Kayla went to a get-together at Erin Ruble's apartment. Victim Richard Tony Pursel and his girlfriend were also in attendance. Raber did not know Pursel but had heard of him before.

Raber and Matt watched a movie and then played videogames. Pursel's girlfriend offered Raber several Klonopin pills. Raber bought approximately ten pills and ingested five or six of them. He gave the rest to Matt. Pursel also offered Raber some peach Xanax, which Raber declined. Raber continued to play videogames as the others drifted off to sleep.

At some point Pursel woke up and began acting belligerently. He told Raber and Matt that they were punks, and he "got in like sort of an uproar." Tr. p. 36. Raber and Matt told Pursel to calm down and said he needed to leave. Pursel refused. Raber and Matt picked Pursel up underneath his arms in order to escort him out. Pursel said he could walk on his own. He approached the door but then again refused to go. Pursel took a swing at Raber and Matt. Raber hit back and struck Pursel in the face. Pursel stumbled out the door and into the hallway.

Pursel stopped at the landing but still would not leave. Matt told Pursel that if he shook hands he could stay. Matt extended his hand but pulled Pursel in and sucker-punched him. Matt told Raber to help hold Pursel down. Raber restrained Pursel while Matt hit him. Raber also kneed Pursel during the scuffle. Pursel fell to the floor. Raber hit Pursel in the head repeatedly while Matt continued to kick him. Meanwhile Kayla captured the fight using her cell phone video camera.

Matt, Pursel, and Raber eventually stood up. Matt again told Pursel to leave. Matt woke up Pursel's girlfriend and told her she needed to go. Pursel's girlfriend drove Pursel home to his mother's apartment.

Pursel fell asleep at his mother's apartment but did not wake up the next morning. His family brought him to the hospital. He died soon thereafter due to swelling within the brain. Incidentally, Pursel had struggled with a number of medical problems throughout his life. He had undergone multiple heart and brain surgeries, and he had been involved in a motorcycle accident that resulted in twenty-seven procedures on his left leg. At the time of the altercation, Pursel was taking several pain medications and the blood thinner known as Coumadin. Raber was unaware of Pursel's health issues.

The State charged Raber with Class B felony aggravated battery. Raber pled guilty without a plea agreement. The trial court imposed the maximum twenty-year sentence with five years suspended. Raber now appeals.

Discussion and Decision

Raber argues that his twenty-year sentence is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4

and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court “may revise a sentence authorized by statute 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.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007)). The defendant has the burden of persuading us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

With regard to the nature of the offense, Raber argues that “this case presents a prime example of unintended consequences.” Appellant’s Br. p. 8. Raber stresses that he had no knowledge of Pursel’s preexisting medical problems and did not intend to kill him. We acknowledge that Raber did not mean to kill Pursel. Nonetheless, we cannot ignore that Raber’s battery resulted in Pursel’s death. The beating itself was also somewhat brutal. Raber and Matt ganged up on Pursel together. Raber restrained Pursel while Matt attacked him. Kayla’s cell phone video shows that Raber delivered repeated and vicious blows while Pursel was on the ground defenseless. For these reasons, we cannot say Raber’s sentence is inappropriate in light of the nature of the offense.

As for his character, Raber emphasizes that (1) he expressed remorse for the crime both after arrest and at sentencing, (2) he accepted responsibility for the offense by pleading guilty even without the benefit of a plea agreement, (3) he completed a G.E.D. and began substance abuse counseling while awaiting sentencing, (4) many of his recent personal problems and criminal activity stem from the untimely death of his father, and

(5) although his criminal history includes several juvenile offenses, including illegal consumption of alcohol, intimidation, and resisting law enforcement, none of his prior offenses is similar to the one involved in this case. We commend Raber for his expression of remorse, acceptance of responsibility, completion of the G.E.D., and efforts at rehabilitation. We acknowledge his difficulty in coping with his father's death. We also recognize that his criminal history is relatively short, although we point out that many of the prior offenses involve components relating to the instant conviction—aggression, violence, and substance abuse. In any event, even if we resolved all of the foregoing factors in Raber's favor, we would not find them so compelling as to depart from the twenty-year term imposed.

In conclusion, Raber's sentence is not inappropriate in light of the nature of the offense and his character.

Affirmed.

RILEY, J., and CRONE, J., concur.