

James Roberson appeals the denial of his motion to withdraw guilty plea and his sentence for robbery resulting in serious bodily injury as a class A felony. Roberson raises two issues, which we revise and restate as:

- I. Whether the trial court abused its discretion in denying his request to withdraw his guilty plea;
- II. Whether the court abused its discretion in sentencing him; and
- III. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. Tiffany Potts leased a residence owned by Dale and Pat Roberts, and Roberson and his girlfriend lived at the residence for about two weeks until Potts told them they would have to move. During his stay, Roberson had paid \$200 towards rent, and after Roberson was asked to leave he asked Potts and Pat Roberts for a refund. Potts told Roberson that he was not entitled to a refund, and Pat told Roberson that he was not going to pay him the money. On or about January 9, 2009, Roberson and another man went to the Roberts' residence and, after Pat answered the door, Roberson asked for two hundred dollars. After Pat again said no, Roberson and the other man pushed Pat into the house and knocked him to the floor. Roberson shoved Dale to the floor, causing her fibula bone to break. Roberson forcibly took three hundred dollars from Dale, put a gun to the side of her head, said "I'll [s]hoot you bitch," and Dale "heard the gun click twice." Appellant's Appendix at 108. Roberson and the other man forced Dale and Pat into separate bathrooms. After the men left, the Roberts discovered that their two vehicles were missing.

On March 26, 2009, the State charged Roberson with attempted murder as a class A felony, robbery resulting in serious bodily injury as class A felony, burglary resulting in bodily injury as a class A felony, criminal confinement as a class B felony, and auto theft as a class D felony. A pre-trial conference was held on September 15, 2009, at which Roberson stated that he intended to file a complaint against his court-appointed counsel and asked for a continuance to hire private counsel. The court denied the motion for continuance and did not allow defense counsel to withdraw. A guilty plea hearing was held later the same day, at which Roberson pled guilty to robbery resulting in serious bodily injury as a class A felony and the State agreed to dismiss the other charges. The court accepted Roberson's plea.

New counsel filed an appearance on October 28, 2009, and on October 30, 2009, Roberson by counsel filed a motion to withdraw guilty plea, which the court denied the same day following a hearing. Roberson filed a renewed motion to withdraw guilty plea on December 11, 2009. At the start of the scheduled sentencing hearing on December 14, 2009, the court heard arguments from both parties and the testimony of Roberson in connection with the renewed motion. The court denied Roberson's renewed motion and sentenced Roberson to fifty years with four years suspended to probation. Additional facts will be provided as necessary.

I.

The first issue is whether the trial court abused its discretion in denying Roberson's request to withdraw his guilty plea. Ind. Code § 35-35-1-4(b) governs motions to withdraw guilty pleas filed after a defendant has pled guilty but before the

trial court has imposed a sentence. The trial court must allow a defendant to withdraw a guilty plea if “necessary to correct a manifest injustice.” Brightman v. State, 758 N.E.2d 41, 44 (Ind. 2001) (quoting Ind. Code § 35-35-1-4(b)). By contrast, the trial court must deny the motion if withdrawal of the plea would “substantially prejudice” the State. Id. (quoting Ind. Code § 35-35-1-4(b)). In all other cases, the trial court may grant the defendant’s motion to withdraw a guilty plea “for any fair and just reason.” Id. (quoting Ind. Code § 35-35-1-4(b)).

“Manifest injustice” and “substantial prejudice” are necessarily imprecise standards, and an appellant seeking to overturn a trial court’s decision faces a high hurdle under the current statute and its predecessors. Coomer v. State, 652 N.E.2d 60, 62 (Ind. 1995). “The trial court’s ruling on a motion to withdraw a guilty plea arrives in this Court with a presumption in favor of the ruling.” Id. We will reverse the trial court only for an abuse of discretion. Id. In determining whether a trial court has abused its discretion in denying a motion to withdraw a guilty plea, we examine the statements made by the defendant at his guilty plea hearing to decide whether his plea was offered “freely and knowingly.” Id. See Davis v. State, 770 N.E.2d 319, 326 (Ind. 2002) (holding that a trial court’s decision on a request to withdraw a guilty plea is presumptively valid, and a party appealing an adverse decision must prove that the court has abused its discretion), reh’g denied.

Roberson argues that the court abused its discretion when it refused to allow him to withdraw his plea. Roberson argues that he “consistently complained that his counsel was not representing him adequately” and that the trial court and Roberson’s public

defender presented Roberson with a choice: drop his bar complaint against his attorney or proceed pro se if he did not hire a private attorney, although the court was unwilling to grant a continuance for ten days until Roberson could secure funds. Id. at 7. Roberson argues that “[s]ignificantly, [his] plea came on that same day” and that “[t]his evidences coercion, Roberson’s claims that his plea was voluntary notwithstanding.” Id. Roberson further argues that his “claim at the plea hearing that he was satisfied with his attorney and that his plea was voluntary defies credulity” Id. at 9. Roberson alleges “that his public defender told him just prior to the plea that he would be able to withdraw it if he so chose and that the plea would buy him time and he ‘wouldn’t be rushed to trial.’” Id. at 11 (citing Transcript at 108).

Roberson also argues that “[p]art and parcel of [his] argument is that the trial court abused its discretion when it denied [his] motion to continue so that he could obtain new counsel.” Id. Roberson argues that the court asserted that he “was attempting to manipulate and delay the proceedings” and that “[t]here is no factual basis for this claim.” Id. Roberson argues that “[t]he tally is as follows: the State got a 42 day continuance. Roberson’s defense got a total of a 42 day continuance for defense counsel and 7 days for Roberson himself. This parity should demonstrate that Roberson was not dragging out the proceedings by attempting to get another attorney.” Id. at 12.

The State argues that “[t]he trial court engaged in a thorough colloquy with [Roberson] during the guilty plea hearing in which the court ascertained that [Roberson] understood all of his constitutional rights,” that the court “provided [Roberson] with an opportunity to express any concerns with his counsel prior to accepting his guilty plea,”

and that Roberson “expressed only satisfaction.” Appellee’s Brief at 11. The State argues that Roberson “presented nothing more than his self-serving assertions to support his claims, arguing that [defense counsel] would not have provided adequate representation.” Id. at 12. In support of its argument, the State points to Roberson’s testimony at a September 9, 2009 pre-trial conference that he had “no personal problem” with his former counsel but felt like he was not getting “the most lenient deal or plea” Id. (citing Transcript at 42). The State further argues that Roberson’s former defense counsel “was not called to testify at either the motion to withdraw hearing or the renewed motion to withdraw hearing” Id. at 13. The State argues that “[t]he trial court and [former defense counsel’s] advisements do not amount to improper conduct, let alone a manifest injustice requiring reversal.” Id. at 14.

The State also argues that the court did not abuse its discretion by denying Roberson’s motion for a ten-day continuance. The State argues that the court “accommodated [Roberson’s] attempts to retain counsel, and although [Roberson] claimed that his grandmother was going to receive a pension check to use as a retainer, the trial court was not required to provide [Roberson] with additional time.” Id. at 15. The State argues that Roberson “requested appointed counsel at his initial hearing and had approximately five months to retain private counsel.” Id.

In this case, the transcript of the pre-trial conference on September 15, 2009, reveals that Roberson indicated to the court that he intended to file a complaint against his counsel. At the start of the hearing, Roberson’s defense counsel stated he had a meeting with Roberson the previous day at which Roberson stated his dissatisfaction with

defense counsel's representation as an appointed public defender and his intention to file a bar complaint. Defense counsel further stated:

[I]n a nutshell, I suggested that if I am entitled to . . . withdraw from this matter . . . because I would have to motion to withdraw if he's going to file a bar complaint, the Court would be faced with really the, the unfortunate alternatives of, of either [Roberson] going pro se or hiring private counsel, because it would be unlikely, in light of some statements he's made on the record about the public defender's office in, in general, that another public defender would be appointed.

Transcript at 59-60. Defense counsel further stated that Roberson had "some serious, serious reservations about going forward pro se" and that "we have struggled with . . . whether or not private counsel is ever going to be retained." Id. at 60. Defense counsel then stated:

I have spoken with [Roberson] and . . . articulated . . . that I would be willing to represent [him] in this case . . . [and] go to trial on Monday, . . . but that I can only do it, in light of what appears to be now a conflict of interest because of his intention to file a bar complaint, is if he -- without me telling him not to, obviously, I want to make that very clear on the record: I am not trying to dissuade him from doing what he absolutely is entitled to do -- but if he truly does . . . not want to file a bar complaint, and wants me to represent him, . . . to the extent that it's possible . . . I would be willing to stay on the case if the Court . . . wished me to do so, and [Roberson] wished me to do so.

Id. at 61. Roberson then stated to the court that it was "true that [he] wanted to file the bar complaint" and that he did not want "to go pro se." Id. at 62. Roberson then asked if he "could have a little more time just to, to get my, my lawyer, you know, to hire him." Id. at 63. The prosecutor stated that Roberson was "well aware of his trial dates" and "[f]or him to decide now, on the eve of trial, whether or not he wants to get a private lawyer . . . is . . . really disingenuous of the whole process." Id. The prosecutor also

stated that Roberson's defense counsel "has been representing [Roberson] through this process" and that Roberson is "just playing a lot of games with us right now, and this is serious business, and he needs a lawyers [sic] that's been with him all this period of time to help him through this process." Id. at 63-64.

The court noted that trial was originally set for June 22, 2009, and was continued at Roberson's request and rescheduled for August 3, 2009. The trial was later continued at the State's request and rescheduled for September 14, 2009. On August 21, 2009, trial was continued at Roberson's request and rescheduled for September 21, 2009. On September 9, the court denied Roberson's oral motion to continue the jury trial. The court then noted that "both parties . . . received opportunities to continue the case, . . . to make efforts to negotiate the case, and to conduct discovery with regard to this case" and that the court "has maintained fully the integrity of the Court process throughout [Roberson's] case . . . and ensured his right to a fair trial by making sure that he is appointed competent counsel." Id. at 67. The court also stated: "to be perfectly honest, [Roberson], I think your efforts to force the Court to discharge [defense counsel] because of reasons that you have previously explained to the Court . . . I find those reasons . . . arbitrary, at best." Id. The court stated that Roberson's appointed counsel would remain the court's appointed counsel until Roberson hired a private attorney and gave Roberson until the end of the following day to do so. The court also declined to continue the jury trial. The court told Roberson:

[I]f this Court were to enter a judgment of conviction on all offenses as have been charged against you, your very best day, if you were sentenced on these, after mitigating circumstances would be applied . . . would be an

actual thirty-three years incarcerated. . . . [O]n your very worst day, you'd never get out. So, I say that so you can be mindful . . . of what the possible penalties are . . . and how serious this is . . . and to take this seriously . . . as the Court does.

Id. at 68.

The transcript of the guilty plea hearing which was held later on the day of September 15, 2009, reveals that Roberson, represented by court-appointed counsel, pled guilty to robbery resulting in serious bodily injury as a class A felony and the State agreed to dismiss the other charges. Roberson indicated that he was not under the influence of alcohol, drugs, or medication and that he was thinking clearly. The court questioned Roberson regarding his understanding that he would be giving up certain rights by pleading guilty and the possible minimum and maximum sentences he could receive. Roberson also indicated that he knowingly and voluntarily made his guilty plea. Near the end of the hearing, the court questioned Roberson regarding his satisfaction with his defense counsel, and the following exchange occurred:

Judge: [Do] you feel satisfied that [defense counsel] has properly represented you?

[Roberson]: Yes.

Judge: Has he done everything that you've asked him to do?

[Roberson]: He has. [I]f he couldn't get it done, he at least attempted to. So, yes.

Judge: [I]s there anything that he's refused to do for you?

[Roberson]: No.

Judge: Do you have any complaints that you would like to make about his representation of you at this time?

[Roberson]: No, ma'am.

Id. at 84-85.

At the October 30, 2009 hearing on Roberson's motion to withdraw his guilty plea, the parties presented arguments, and the court found that the motion was not appropriately filed as required by Ind. Code § 35-35-1-4 and noted that it was "fully satisfied that the plea that was . . . taken [at the guilty plea hearing] was knowingly and voluntarily taken [sic] by [Roberson]" and that there was not "any manifest injustice to correct" Id. at 96-97.

On December 11, 2009, Roberson filed a renewed motion to withdraw guilty plea in which he argued that "under the circumstances of the afternoon of September 15, 2009, and with [Roberson] having due regard for the comments of the Court that he could spend the rest of his life in prison, that [Roberson's] plea of guilty was not voluntarily made but was a produce [sic] of threats and coercion." Appellant's Appendix at 60-61.

At the beginning of the sentencing hearing on December 14, 2009, the court heard arguments from both parties and the testimony of Roberson on the renewed motion. Roberson testified that he indicated to the court on September 15, 2009, that he requested time to hire private counsel and that he expected his grandmother to be able to help hire private counsel when she received her pension check several days later. Roberson testified: "I felt I was misrepresented, and I [was] intimidated by being forced into taking a plea, and if I wouldn't have took [sic] the plea, I would have been forced to go to trial, either pro se, without him being my representative, or with him, and be assured that I

would have 33 years to serve.” Transcript at 106. Roberson testified that, after the pre-trial conference on September 15, 2009, his former defense counsel came to him “with an open plea” and stated if Roberson “would sign it . . . it would just buy [him] time to not be rushed to trial, but it would buy [him] time to . . . hire . . . counsel” Id. at 107. Roberson testified that his former counsel had told him that “it wouldn’t be a problem to get [the guilty plea] withdrawled [sic]” Id. at 108. Roberson further testified that he had told his former counsel that he “wasn’t here at the time” of the offense and that he had witnesses or statements “saying where [he] was.” Id. at 109-110. Roberson indicated that he did not know, when talking to his former counsel on September 15, 2009, that he would not be allowed to offer any proof that he was not at the scene of the crime.

Roberson’s defense counsel argued at the hearing that the situation leading to Roberson’s guilty plea “in those several hours beforehand . . . were certainly unusual, not the kinds of things we see every day” and that Roberson had said that there was a conflict of interest. Id. at 120. Defense counsel argued that the court “added significantly to the very high pressure of this situation . . . by indicating to [Roberson that] his best-case scenario if he would be convicted, was to spend thirty-three actual years in prison” Id. at 122. Defense counsel argued that no right is more valued than the right to trial by jury and that Roberson was unaware of some of the technical aspects of an alibi defense. Defense counsel argued that the better course was to allow Roberson to withdraw his guilty plea and have a trial on all of the issues. The State argued that Roberson’s motion was “for the purpose of delay” and that Roberson has “gotten cold feet and [is] figuring

out a way to play the system so that he doesn't have to face the ultimate judgment of this Court." Id. at 126. The State argued that Roberson did not make a showing "that he was under duress, under coercion, no one was twisting his arm . . . to . . . enter into this plea." Id. at 127.

The court denied Roberson's renewed motion and stated: "I don't feel that advice of [former] counsel or . . . the Court's review of the possible penalty, or any of the other factors, would indicate to the Court that . . . there was a fair and just reason to withdraw the guilty plea at this point" Id. at 129. In its written order, the court found in part that, at the pre-trial conference on September 15, 2009, Roberson "confirmed that he intended to file a bar complaint against his attorney," that Roberson "did not specify any basis for such complaint," and that "[t]he Court did not learn of any conflict of interest that existed between [Roberson] and [defense counsel] or the Floyd County Public Defender's Office." Appellant's Appendix at 65. The court also found that, at the guilty plea hearing, Roberson's "responses indicated to the Court that his dissatisfaction with [his defense counsel] was resolved." Id. at 66.

A defendant has the burden to prove by a preponderance of the evidence and with specific facts that he should be permitted to withdraw his plea. Ind. Code § 35-35-1-4(e); Smith v. State, 596 N.E.2d 257, 259 (Ind. Ct. App. 1992). While Roberson testified that his former appointed counsel had advised him that a guilty plea would provide time to hire private counsel and could be withdrawn, we note that Roberson did not call his former attorney as a witness during the hearing on the renewed motion to withdraw, and that "[t]he trial court was entitled to infer that counsel would have testified otherwise had

he been called.” See Coomer, 652 N.E.2d at 63.¹ Further, Roberson essentially contends that he lied under oath at the guilty plea hearing. The court was permitted to find Roberson’s testimony at the hearing on the renewed motion to withdraw to be less than credible. See Gipperich v. State, 658 N.E.2d 946, 949 (Ind. Ct. App. 1995) (holding that “[t]he trial court did not abuse its discretion in determining that [the defendant’s] self-serving statements after the guilty plea hearing were incredible and constituted an attempt to manipulate the system” where the defendant alleged that he had lied at the plea hearing when he admitted to the charges), trans. denied.

Roberson succeeded in convincing the court at the guilty plea hearing that he knew what he was doing when he pled guilty and that his decision was not prompted by undue pressure or coercion. While there is always some chance that a defendant might give less than candid responses, we cannot say under the circumstances presented that the contradiction between Roberson’s testimony at the guilty plea hearing and his subsequent claims of undue pressure and coercion present the factual basis necessary to overcome the presumption favoring the trial court’s ruling. See Coomer, 652 N.E.2d at 62-63 (noting that the defendant’s testimony did not provide the necessary factual basis to overcome the presumption favoring the trial court’s ruling where there was a contradiction between the defendant’s testimony at the guilty plea hearing and his

¹ Roberson cites to Coomer and argues that “[t]his case is factually distinguishable,” that his “attorney himself applied the pressure before Roberson in open court,” and that therefore “Roberson’s claim of coercion did not rely upon his word alone, unlike the defendant’s claim in Coomer.” Appellant’s Brief at 10. Although Roberson’s former defense counsel stated at the September 15, 2009 pre-trial conference that he could not represent Roberson if Roberson filed a complaint against him, Roberson did not call his former defense counsel as a witness during the hearing on the renewed motion to withdraw or otherwise point to the record to show that his former counsel had advised him that it would not be a problem to withdraw the guilty plea later or that he should plead guilty to provide time to hire private counsel. We do not find Roberson’s argument that Coomer is distinguishable to be persuasive.

subsequent claims of coercion); see also Brightman, 758 N.E.2d at 46 (holding that the trial court did not abuse its discretion in denying the defendant's request to withdraw his guilty plea where the trial court observed the defendant's testimony at the guilty plea hearing and the hearing on his request to withdraw and found that his testimony at the latter was not credible).

Based upon our review of the record, we conclude that Roberson has not overcome the presumption of validity accorded the court's denial of his renewed motion to withdraw guilty plea. Such a denial was within the discretion of the court, and we cannot say its refusal to allow Roberson to withdraw his guilty plea constitutes manifest injustice. See Coomer, 652 N.E.2d at 63 (holding that the refusal to allow defendant to withdraw his guilty plea did not constitute manifest injustice).

In addition, to the extent that Roberson argues that "the trial court abused its discretion when it denied Roberson's motion to continue so that he could obtain new counsel," see Appellant's Brief at 11, we note that, at the September 15, 2009 pre-trial conference, Roberson by former counsel stated that "the money will be here in ten days" and requested "a ten day continuance." Transcript at 64-65. The court gave Roberson until the close of business on September 16, 2009, to hire private counsel and stated that it was "not inclined to continue the jury trial that's set . . ." Id. at 68. The record shows that Roberson was charged on March 26, 2009, that on April 14, 2009 a jury trial was scheduled for June 22, 2009, and that after several continuances the trial was ultimately rescheduled for September 21, 2009. Based upon the record and circumstances of this case, including that Roberson had sufficient time prior to September 15, 2009 to prepare

for trial and to hire private counsel and requested a continuance approximately one week before the trial was scheduled to begin, we cannot say that the court abused its discretion in denying Roberson's motion for a continuance. See Schmid v. State, 804 N.E.2d 174, 178 (Ind. Ct. App. 2004) (holding that the trial court properly exercised its discretion in denying the defendant's motion to continue and noting that the case had been pending for quite some time when private counsel entered his appearance, that the defendant had the benefit of appointed counsel during the pendency of the case and had adequate time to prepare for trial, and that private counsel requested a continuance just over a month before the trial was scheduled to begin), trans. denied.

II.

The next issue is whether the court abused its discretion in sentencing Roberson. The Indiana Supreme Court has held that “the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.” Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances before the court.” Id. A trial court abuses its discretion if it: (1) fails “to enter a sentencing statement at all;” (2) enters “a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons;” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration;” or (4) considers reasons that “are improper as a matter of law.” Id. at

490-491. If the trial court has abused its discretion, we will remand for resentencing “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491. However, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. Id.

The court identified the following aggravating circumstances: (i) the nature and circumstances of the crimes; (ii) Roberson’s criminal history, which the court assigned modest weight because it included misdemeanor rather than felony offenses; (iii) Roberson’s lack of remorse, which the court assigned modest weight; (iv) that Roberson is in need of rehabilitative treatment best provided by a penal institution; and (v) that a reduced sentence would depreciate the seriousness of the offense. The court also found the fact that Roberson pled guilty to be a mitigating circumstance, but assigned modest weight to that circumstance because the State dismissed four other charges.

Roberson argues that a defendant “lacks remorse when he displays disdain or recalcitrance” and that “[t]here is no evidence that [he] was ever disdainful regarding the charged offenses, so the finding that he was not remorseful should be considered an abuse of discretion.” Appellant’s Brief at 14 (citation omitted). The State argues that “remorse or lack thereof is best considered by the trial court and its ability to observe a defendant’s demeanor” and that “[w]hile [Roberson] may not have expressly stated, ‘I don’t care,’ the trial court could determine that [he] exhibited disdain through an evaluation of his behavior and attitude.” Appellee’s Brief at 18 (citation omitted). The State further argues that “[e]ven assuming that the trial court had erred by finding

[Roberson's] lack of remorse an aggravating circumstances [sic], such error would be harmless" and that the court's "assignment of 'modest weight' to lack of remorse demonstrates that it would have imposed a maximum sentence even in the absence of the challenged aggravating circumstance." Id. (citation omitted).

Generally, a trial court may find a defendant's lack of remorse to be an aggravating factor. Gale v. State, 882 N.E.2d 808, 819 (Ind. Ct. App. 2008) (citing Veal v. State, 784 N.E.2d 490, 494 (Ind. 2003)). Here, even assuming that the court erred in finding that Roberson was not remorseful and identifying Roberson's lack of remorse as an aggravating factor, we note that "a single aggravating circumstance may be sufficient to support the imposition of an enhanced sentence." Deane v. State, 759 N.E.2d 201, 205 (Ind. 2001). As previously noted, the court identified four other aggravating circumstances, and Roberson does not challenge the court's findings as to these aggravators or their use to enhance his sentence.

Based upon the record, we can say with confidence that the court would have imposed the same sentence if it considered only the remaining aggravating circumstances. We therefore conclude that the court did not abuse its discretion in sentencing Roberson. See Flickner v. State, 908 N.E.2d 270, 274-275 (Ind. Ct. App. 2009) (holding that based upon the record, even if, *arguendo*, the defendant's criminal history was mischaracterized by the trial court as an aggravating circumstance, the defendant's sentence enhancement was based on the other aggravator identified, which the defendant did not challenge and concluding therefore that the trial court did not abuse its discretion); see also Shafer v. State, 856 N.E.2d 752, 758 (Ind. Ct. App. 2006)

(affirming the defendant's sentence and holding that even if the court erred by finding the defendant's lack of remorse to be an aggravator, the court found four other aggravators, none of which the defendant challenged), trans. denied.

III.

The next issue is whether Roberson's sentence is inappropriate in light of the character of the offender and the nature of the offense. Ind. 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." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Roberson argues that his "maximum sentence is inappropriate in light of [his] character." Appellant's Brief at 15. He cites that "[e]ven though there is not a support order in Alabama, [he] still provides clothing, shoes, and diapers for his children, and he otherwise provides whatever the mother requests. Moreover, the level of the offense in this cause is a dramatic change in Roberson's history. To be sure, he has a criminal history, but it does not contain anything close to the instant offense" and that "[i]t should also be noted that, while Roberson attempted to withdraw his plea, the State got the benefit of his plea." Id. (citation omitted). Roberson further argues that "[w]hile this constitutes a violent offense, [his] conviction for a class A felony reflects the gravity of this offense." Id. at 16. Roberson "concedes that a sentence in excess of the advisory is appropriate" but argues that "the maximum possible sentence is inappropriate" and

“urges this Court to consider a sentence of forty (40) years with four (4) year suspended.” Id. He asserts that “[s]uch a sentence would reflect the fact that Roberson has some criminal history, and to the extent that the State would argue that the fact may be more aggravated than inherent in the nature of the offense, it would reflect that possibility as well.” Id. at 16-17.

The State argues that Roberson’s sentence is appropriate and that Roberson “terrorized Dale and Pat Roberts,” that he “placed a gun to Dale’s head,” and that she “heard the clicking of the gun as [Roberson] pulled the trigger twice.” Appellee’s Brief at 19. The State argues that Roberson’s “accomplice used a taser on Pat Roberts over thirty times” and Roberson “was twenty-five years old at the time [of] sentencing in December 2009 and has five prior convictions spanning only four years.” Id. at 20. The State also argues that “[w]hile [Roberson’s] prior convictions may not rise to the significant level of violence exhibited in the instant offense, his criminal history demonstrates his contempt for the law and a pattern of dangerous activity increasing in severity.” Id. Further, the State asserts that Roberson received a significant benefit from pleading guilty “with the dismissal of two class A felonies, a class B felony, and a class D felony.” Id. at 21.

Our review of the nature of the offense reveals that Roberson forcibly took three hundred dollars from Dale Roberts by pushing her to the floor causing serious bodily injury including a broken fibula. He put a gun to the side of her head and said “I’ll [s]hoot you bitch,” and Dale “heard the gun click twice.” Appellant’s Appendix at 108.

Roberson and the other man forced Dale and Pat into separate bathrooms. After the men left, the Roberts discovered that their two vehicles were missing.

A letter by Dale Roberts was read at the sentencing hearing, in which Dale stated that due to the injury to her leg she “can walk very little,” that she is “always in pain and suffer[s] from muscle spasms in [her] leg to the foot,” and that she has “tissue damage that will take at least a year to heal.” Transcript at 189. In the letter, Dale stated: “I’d like to see [Roberson] sentenced to 50 years or more because he ruined the rest of my life, because I’m always in pain, on rainy or cold days I can’t even walk, it brings tears to my eyes. It is a reminder every day of my life of that day. I will never forget or ever get over it.” Id. The letter also stated that Roberson’s accomplice “tased [Pat Roberts] over 39 times on his body, with burn marks and his head was cut with two deep gashes and he was kicked in the stomach and his ribs repeatedly.” Id. Dale “cried ‘stop you’re going to kill him’ and [Roberson’s accomplice] said to [Roberson] ‘shoot that bitch’ and [Roberson] pulled his hand out of his pocket and put the gun to [Dale’s] head, and shot it twice.” Id. at 190-191. Roberson and his accomplice made Dale and Pat crawl into separate bathrooms, and Roberson’s accomplice “kept on tasing [Pat] while he was in the tub.” Id. at 191. Dale stated that “[t]hey even asked if we had any guns so they could finish the job.” Id.

Our review of the character of the offender reveals that Roberson pled guilty to robbery resulting in serious bodily injury as a class A felony and in exchange the State dismissed its charges of attempted murder as a class A felony, burglary resulting in bodily injury as a class A felony, criminal confinement as a class B felony, and auto theft

as a class D felony. The record further reveals that Roberson was convicted of menacing as a misdemeanor in 2005, resisting arrest as a misdemeanor in 2007, receiving stolen property in 2008, and theft by unlawful taking/shoplifting as a misdemeanor in 2009. The presentence investigation report indicates that Roberson reported that he violated his probation on two occasions and that “[Roberson] reports 2 to 4 jail write-ups for insolence towards staff, stealing a tray, and fighting; reports self defense” and “[Roberson] reports he is currently in segregation . . . [and] previous segregations, for 3 months from May to August.” Appellant’s Appendix at 91.

Given the facts of the case and after due consideration of the sentencing court’s decision, we cannot say that the sentence imposed by the court is inappropriate in light of the nature of the offense and the character of the offender. See Patterson v. State, 846 N.E.2d 723, 731 (Ind. Ct. App. 2006) (holding that the defendant’s sentence of fifty years for robbery resulting in serious bodily injury as a class A felony was not inappropriate).

For the foregoing reasons, we affirm the court’s denial of Roberson’s motion to withdraw plea agreement and Roberson’s sentence for robbery resulting in serious bodily injury as a class A felony.

Affirmed.

ROBB, C.J., and RILEY, J., concur.