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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES D. IMEL, JR.,)
)
Appellant,)
)
vs.) No. 16A01-1009-CR-471
)
STATE OF INDIANA,)
)
Appellee.)

APPEAL FROM THE DECATUR SUPERIOR COURT
The Honorable Matthew D. Bailey, Judge
Cause No. 16D01-1001-MR-9

March 9, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

James D. Imel (“Imel”) was convicted in Decatur Superior Court of Class C felony reckless homicide and sentenced to eight years incarceration. Imel appeals and claims that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On the evening of January 3, 2010, Imel and his father Dennis Imel, known as “Denny,” were at the home of Wayne Cain (“Cain”) playing euchre with Cain and Denny’s brother Robert Imel (“Bob”). Denny lived with Cain, and Imel had recently begun to stay there too. Imel, Denny, and Cain were drunk. Bob was not intoxicated. At one point in the card game, Imel and Denny began to argue. Although the testimony is unclear as to exactly what happened, Denny either shoved Imel and knocked him out of his chair, or the two got into a shoving match. A bar in the kitchen was knocked over either during the physical altercation, or by Denny shortly thereafter. After Bob separated Imel and Denny, Imel went to the bedroom where he had been staying, and Denny exited through sliding doors from the kitchen onto the patio outside to smoke.

Bob then went into the bedroom to speak with his nephew Imel. There, he observed Imel take a handgun out of his satchel and say, “I’ll shoot him. I’ll shoot the mother f****er!” Tr. pp. 224-25. Imel knew the handgun was loaded, and put it in his jacket pocket. Bob spoke with Imel briefly and left the home after he thought Imel had calmed down.

Cain stayed in the kitchen, cleaning up after the altercation. Cain saw Denny come back into the house, and approximately at the same time, Imel came into the

kitchen from the living room. Imel and Denny met near the entry into the kitchen. Cain saw the men struggle, but he did not see Denny charge, tackle, or attempt to hit Imel. Cain heard Denny say, “God damn it, Dynniss,” referring to his son, Imel. Tr. pp. 194-95. Cain then heard a gun fire, and Denny fell to the floor. Cain called 911 and reported the shooting. Shortly thereafter, Imel fled the house and drove away. He then took the bullets out of the gun and threw them away and disposed of the handgun by throwing it near a creek.

Denny had been shot in the left side of the neck. The bullet entered the left front side of the neck and travelled to the right rear of the neck. It crossed the lingual artery and vein, went through the spinal column between the first and second cervical vertebrae and through the spinal cord, impacted the base of the skull, and then fell down into the spinal canal. Denny died on the scene as a result of this gunshot wound.

The day after the shooting, Imel was arrested. He showed the police where to find the handgun, but he claimed not to have shot his father. On January 6, 2010, the State charged Imel with murder. A jury trial began on July 26, 2010, and on July 28, 2010, the jury found Imel guilty of the lesser-included offense of Class C felony reckless homicide. The trial court held a sentencing hearing on August 26, 2010, and sentenced Imel to the maximum sentence of eight years incarceration. Imel now appeals.

Discussion and Decision

On appeal, Imel’s sole argument is that his sentence is inappropriate in light of the nature of his offense and his character. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence otherwise 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." Although we have the power to review and revise sentences, "[t]he principal role of appellate 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). As explained in Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), it is on the basis of Appellate Rule 7(B) alone that a criminal defendant may now challenge his sentence "where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue." On appeal, it is the defendant's burden to persuade us that the sentence imposed by the trial court is inappropriate. Id. at 494.

With regard to the nature of the offense, Imel claims that his crime was a typical reckless homicide, which by its very nature involves the death of another, and that he therefore should have received the advisory sentence. We do not agree.

After a drunken altercation with his own father, Imel went to the bedroom where he had been staying, grabbed a loaded handgun, and announced his intention to shoot his father. After receiving the advice of his uncle to calm down, instead of leaving the house, Imel then went back into the area of the house where his father had been. And when he saw his father, he took the gun out of his jacket pocket. Although it is difficult to piece together precisely what happened next, Imel and his father again struggled, resulting in

the gun being discharged and Imel's father being fatally wounded in the neck. After the shooting, Imel fled the scene and attempted to dispose of the evidence, but did later help the police recover the handgun. These facts and circumstances justify a sentence greater than the advisory sentence.

With regard to the character of the offender, Imel notes that he cooperated with the police, that he was remorseful, and that he has a minor history of non-violent offenses. Although Imel did ultimately cooperate with the police, his first actions after the shooting death of his father were to flee and attempt to destroy or hide the evidence against him. Further, after his father fell to the floor after having been shot in the neck, Imel did not stay on the scene to attempt to help his father. In fact, when Cain called 911, Imel could be heard in the background saying "let's go." See Tr. p. 321.¹

The trial court did note Imel's professions of remorse as a mitigating circumstance, but obviously chose not to afford this mitigator much weight. The trial court was in the better position to judge the veracity of Imel's remorse. See Mead v. State, 875 N.E.2d 304, 309-10 (Ind. Ct. App. 2007) (noting that the trial court possesses the ability to directly observe the defendant and is therefore in the best position to determine whether the defendant is genuinely remorseful); Stout v. State, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005) (noting that, without evidence of some impermissible consideration by the trial court, we will accept its determination as to remorse).

¹ Imel claimed that he meant that he wanted to take his father to the hospital. But his subsequent act of fleeing the scene seriously undermines this claim.

As to Imel's prior criminal history, while it is not as extensive as some we have encountered, it is focused on the abuse of alcohol. Imel had a juvenile adjudication for underage consumption of alcohol and an adult conviction for Class A misdemeanor operating a vehicle while intoxicated. Importantly, Imel was again intoxicated when he killed his father, and he admitted to regularly drinking alcohol. And when he fled the scene, he again drove a vehicle while intoxicated. Imel's history shows a pattern of alcohol abuse that clearly contributed to the shooting death of his own father. 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. Bryant v. State, 841 N.E.2d 1154, 1156-57 (Ind. 2006). Imel's prior convictions, as they relate to the current offense, reflect poorly on his character. See Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999) (noting that a prior conviction for OWI would be a significant aggravator in a subsequent alcohol-related offense).

It is true that "[t]he maximum possible sentences are generally most appropriate for the worst offenders. Wells v. State, 904 N.E.2d 265, 274 (Ind. Ct. App. 2009), trans. denied (citing Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002)). But this encompasses a considerable variety of offenses and offenders. Moreover, this rule is "not an invitation to determine whether a worse offender could be imagined, as it is always possible to identify or hypothesize a significantly more despicable scenario, regardless of the nature of any particular offense and offender." Id. Instead, we concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is

being sentenced, and what it reveals about the defendant's character. Id. When reviewed under this standard, the maximum sentence Imel received after a jury conviction for this Class C felony reckless homicide is adequately supported by the record.

Conclusion

In light of both the nature of Imel's offense and Imel's character, and giving due consideration to the trial court's discretion in matters of sentencing, we conclude that Imel's sentence is not inappropriate.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.