

Under cause number 49G04-0705-FA-91604, Jonathan Castillo pled guilty to Class A felony burglary,¹ Class A felony child molestation,² Class D felony battery,³ and two counts of Class C felony criminal confinement.⁴ Under cause number 49G04-0706-FA-101489, Castillo pled guilty to Class A felony rape,⁵ Class B felony burglary, and being an habitual offender.⁶ His aggregate sentence for these offenses is 180 years. Castillo argues his sentence is inappropriate in light of his character and the nature of his offenses. We affirm.

FACTS AND PROCEDURAL HISTORY

On the morning of January 8, 2007, E.S., who was five months pregnant, was asleep with her two-year-old son lying next to her. She awoke to find Castillo standing over her bed, wearing a mask and wielding a knife. When E.S. screamed, Castillo held the knife to her chest and said, “Shut up or I will kill you.” (Tr. at 11.) Castillo then raped E.S. E.S.’s son woke and witnessed the rape.

On the evening May 22, 2007, Castillo donned a mask, rubber gloves, and dark clothing, and then broke into the home of a seven-year-old girl, L.G. Castillo carried L.G. to his apartment, where he inserted his fingers into her vagina. Castillo then started to carry L.G. back to her home, but when she started screaming, Castillo dropped her and ran back to his apartment. By that time, L.G.’s mother realized L.G. was gone and had begun looking for her outside. L.G.’s mother saw Castillo drop L.G. and notified the police. L.G. suffered a

¹ Ind. Code § 35-43-2-1.

² Ind. Code § 35-42-4-3.

³ Ind. Code § 35-42-2-1(a)(2).

⁴ Ind. Code § 35-42-3-3.

⁵ Ind. Code § 35-42-4-1.

⁶ Ind. Code § 35-50-2-8.

laceration to her cervix that required surgery.

At the guilty plea hearing, Castillo admitted the foregoing facts to establish he raped and burglarized E.S. and burglarized, molested, battered, and twice confined L.G. Castillo also admitted he had two prior unrelated felony convictions, theft and residential entry, thus making him a habitual offender. At the sentencing hearing, Castillo admitted he had been deported after his previous felony convictions, and he had re-entered the United States illegally.⁷

The court found as mitigating circumstances that Castillo pled guilty and appeared to be remorseful. As aggravating circumstances, the court found Castillo had committed numerous offenses in a relatively short time, he had been deported and returned illegally, he did not successfully complete probation in previous cases, and he prepared for his crimes by wearing a mask, gloves, and dark clothing. For the crimes against L.G., the court imposed fifty years for burglary, three years for battery, and eight years for each count of criminal confinement, all concurrent with each other but consecutive to fifty years for child molestation. For the crimes against E.S., the court imposed fifty years for rape, enhanced by thirty years for being a habitual offender, all concurrent with twenty years for burglary. The court ordered the aggregate sentences in each cause number to run consecutively, for a total sentence of 180 years.

⁷ There was no plea agreement; however, after Castillo pled guilty to these crimes, the State dismissed charges of theft and domestic battery. The theft charge alleged Castillo took \$400 from E.S. The domestic battery was charged under a separate cause number and alleged Castillo battered his former girlfriend.

DISCUSSION AND DECISION

Castillo argues his sentence is inappropriate. We may revise a sentence if it is “inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). We give deference to the trial court, recognizing its special expertise in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied*. The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Castillo compares his case to *Serino v. State*, 798 N.E.2d 852 (Ind. 2003). Serino received a 385-year sentence for several counts of child molesting and sexual misconduct with a minor that were committed against the same victim over a period of years. Finding this sentence was “outside the typical range of sentences imposed for child molesting in any reported Indiana decision,” *Serino*, 798 N.E.2d at 857, our Indiana Supreme Court reduced the sentence to ninety years. The Court noted several witnesses had testified to Serino’s positive character traits, and the victim’s mother did not “want him put away for the rest of his life.” *Id.* at 858.

Serino is distinguishable on several grounds. No witnesses testified to any positive character traits of Castillo, nor did the victims or their family members request leniency. There are also aggravating factors in Castillo’s case that were not present in *Serino*. Unlike Serino, Castillo has a substantial criminal history. Between 2001 and 2005, Castillo was convicted under separate cause numbers of residential entry, theft, battery, and operating while intoxicated. He was given probation in each of these cases, but he did not successfully

complete probation in any of them.⁸ Castillo was deported because of his felony convictions, but he illegally re-entered the United States and then committed the instant felonies within a period of a few months. There was no indication Serino injured his victim, but Castillo caused serious injury to L.G., requiring a two-hour surgery and three days of hospitalization.⁹

In *Serino*, the Court noted two factors may drive the potential for lengthy cumulative sentences:

First, when the perpetrator commits the same offense against two victims, enhanced and consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person.

Second, the prosecutor may elect to charge multiple aspects of the same event as separate counts defined by separate criminal statutes.

798 N.E.2d at 857 (citations omitted).

The sentences for rape and burglary against E.S. were ordered to be served concurrently. The habitual offender enhancement had to be attached to one of these convictions. *Rickert v. State*, 876 N.E.2d 1139, 1142 (Ind. Ct. App. 2007). For the crimes against L.G., the sentences for burglary, criminal confinement, and battery were ordered to be served concurrent with each other, but consecutive to the sentence for child molestation. We cannot say this is inappropriate given the heinous nature of Castillo's offenses against L.G. Castillo prepared for the crimes by wearing a mask, rubber gloves, and dark clothing.

⁸ Following his operating while intoxicated conviction, Castillo violated the conditions of his probation, and his probation was revoked. Following the battery conviction, Castillo never reported to probation. In two other cases, Castillo was administratively withdrawn after he was deported.

⁹ For many of the same reasons, we can also distinguish *Estes v. State*, 827 N.E.2d 27 (Ind. 2005). Estes received a sentence of 267 years for several sex offenses perpetrated against two victims. Our Supreme Court reduced his sentence to 120 years, noting he had "no substantial criminal history," expressed remorse, and

He snatched L.G. from the safety of her home and molested her in a manner that caused severe injury. Finally, as recognized by *Serino*, it is appropriate for the sentences under the two cause numbers to be served consecutively, because there are two victims. 798 N.E.2d at 857.

Given Castillo's criminal history and the heinous nature of his offenses, we cannot say his sentence is inappropriate.

Affirmed.

KIRSCH, J., and DARDEN, J., concur.

promptly pled guilty. *Id.* at 29. Castillo's criminal history is substantial. Also, there was no indication Estes injured any of his victims, which cannot be said of Castillo.