



Appellant/Defendant Michael L. Yates appeals following his conviction of Class B felony Attempted Armed Robbery.<sup>1</sup> Yates contends that the trial court abused its discretion by denying his motion for a continuance and that his twenty-year sentence is inappropriate. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

At some point, Launden “L-Stone” Luckett met Yates, also known as “Foolish”, while living in Chicago. In February or March of 2008, Luckett moved from Chicago to Kokomo with the intent to sell drugs. Yates also moved to Kokomo around that time. Upon arriving in Kokomo, Luckett and Yates started spending time together.

On April 4, 2008, Luckett received a phone call from Sean “Fifty” Landrum who informed Luckett that “there was a guy over in Gateway Gardens<sup>[2]</sup> [who] had some jewelry on [and] had some money.” Tr. p. 153. Landrum asked if Luckett and Yates “wanted to get some money.” Tr. p. 154. Landrum gave Luckett the apartment number and indicated that he would “leave the door open” for them. Tr. p. 154. Before entering the apartment, Luckett and Yates put on masks in an attempt to disguise themselves.

When Luckett and Yates entered the apartment, Landrum, Keith “Evil” Taylor, and Taneka Dunn were upstairs in a bedroom playing a video game, and Shanika Smith was sitting on a couch downstairs. Luckett held his gun to Smith’s head while Yates went upstairs to find the intended victim. Dunn attempted to close the bedroom door, but Yates

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<sup>1</sup> Ind. Code § 35-42-5-1(2) (2007) and Ind. Code § 35-41-5-1 (2007).

<sup>2</sup> Gateway Gardens is a public housing complex located in Kokomo.

forced his way into the bedroom as Taylor, who had a diamond necklace, earrings, and watch, and \$500 in cash jumped out of the second-story window. After Taylor jumped out of the window, Lockett lowered his gun from Smith's head, and Lockett and Yates left. As a result of jumping out the window, Taylor suffered a red eye and sore sides.

The incident was not immediately reported to the Kokomo police because Taylor had drugs in his possession, and Dunn was afraid she would be evicted from her apartment in Gateway Gardens. However, Dunn eventually cooperated with Kokomo police and identified Yates as the intruder. Dunn indicated that she recognized Yates's eyes and his pigtailed or braids. In addition, Lockett also eventually cooperated with Kokomo police and set forth his and Yates's actions in connection with the April 4, 2008 incident.

On June 18, 2009, the State charged Yates with Class B felony attempted armed robbery. Yates's trial counsel filed an appearance on October 8, 2009.<sup>3</sup> Yates filed a motion requesting a speedy trial on October 23, 2009. The trial court scheduled Yates's jury trial to begin on October 30, 2009.

The morning of trial, Yates requested a continuance. In making this request, Yates alleged that his trial counsel was not adequately prepared for trial. Upon being questioned by the trial court, Yates's trial counsel indicated that he was prepared to proceed to trial. The trial court denied Yates's request for a continuance, and the parties proceeded to trial. During trial, it came to the trial court's attention that Yates had asked an associate to contact

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<sup>3</sup> The record reveals that two different attorneys filed an appearance on Yates's behalf before his trial counsel filed his appearance on October 8, 2009. The record does not reflect why either of these attorneys withdrew from Yates's case prior to trial.

the son of one of the jury members, to ask the son to convince his father to find in Yates's favor, and to threaten injury to the juror's family if the juror did not find in Yates's favor. The trial court excused the juror, and the parties proceeded with the trial. At the conclusion of trial on November 3, 2009, the jury found Yates guilty of attempted armed robbery. On December 2, 2009, the trial court conducted a sentencing hearing, at the conclusion of which it imposed a twenty-year sentence. Yates requested and was granted permission to file a belated notice of appeal on October 1, 2010. This belated appeal follows.

## **DISCUSSION AND DECISION**

### **I. Denial of Motion for Continuance**

Yates contends that the trial court abused its discretion by denying his motion for a continuance. Indiana Trial Rule 53.5 provides in part that a "trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence." When, as here, a motion for a continuance is based on non-statutory grounds or the motion fails to meet the statutory criteria,<sup>4</sup> the decision to grant or deny the motion is within the discretion of the trial court. *Hamilton v. State*, 864 N.E.2d 1104, 1108-09 (Ind. Ct. App. 2007); *Macklin v. State*, 701 N.E.2d 1247, 1250 (Ind. Ct. App. 1998); *Rhinehardt v. State*, 477 N.E.2d 89, 92 (Ind. 1985); *Carter v. State*, 451 N.E.2d 639, 642 (Ind. 1983). We will not disturb the trial court's decision absent a clear demonstration that the trial court abused that discretion. *Hamilton*, 864 N.E.2d at 1109;

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<sup>4</sup> The statutory criteria referred to above are set forth in Indiana Code Section 35-36-7-1 (2007) and relate to continuances based upon the absence of evidence or witnesses, which is not at issue here.

*Macklin*, 701 N.E.2d at 1250. An abuse of discretion occurs when the ruling is against the logic and effect of the facts and circumstances before the trial court or when the record demonstrates prejudice resulting from the denial. *Hamilton*, 864 N.E.2d at 1109. Additionally, for a denial of a continuance to constitute reversible error, the defendant must demonstrate that he was prejudiced by the denial. *Id.*; *Macklin*, 701 N.E.2d at 1250.

Yates claims that the trial court abused its discretion in denying his motion for a continuance because he did not believe that he and his counsel were working harmoniously in his best interests. Yates filed the motion for a continuance on Friday, October 30, 2009, the first day of trial, which consisted entirely of *voir dire* and other preliminary matters. In requesting a continuance, Yates claimed that he had never received the full statement given by one of the State's witnesses prior to trial. In response, the State provided Yates with a copy of the requested statement. Yates also told the trial court that he did not believe that his trial counsel had had adequate time to prepare for trial. Yates's counsel, however, indicated that he was adequately prepared for trial.

Upon review of the record, we conclude that Yates has failed to show that the witness statement in question contained any information that was not previously available to him or that his counsel was not adequately prepared for trial. Yates does not allege that his counsel failed to investigate any information relating to the case or pursue any available defense. Moreover, the record demonstrates that Yates's counsel had a working knowledge of the facts and evidence at issue, objected to certain statements and exhibits offered by the State, conducted thorough cross-examination of the State's witnesses, and presented evidence in

Yates's favor, including an alibi defense. Accordingly, we conclude that Yates has failed to show that he was prejudiced by the denial of his request for a continuance. The trial court did not abuse its discretion in denying Yates's request for a continuance.

## **II. Appropriateness of Sentence**

Yates also contends that his twenty-year sentence is inappropriate in light of the nature of his offense and his character. Indiana Appellate Rule 7(B) provides that we "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." The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

With respect to the nature of Yates's offense, the record indicates that Yates entered an apartment in a public housing complex while armed with a handgun with the intent to rob an individual whom he knew to be inside. Yates believed that the intended victim was wearing valuable jewelry and carrying a substantial amount of money. Yates also knew that the intended victim was a drug dealer who was not likely to report the incident to the police. As a result of Yates's actions, the intended victim suffered bodily injury and was placed in fear for his safety. In addition, two other occupants of the apartment were placed in fear for their safety, with Smith having a gun held to her head. Furthermore, Yates entered the public housing complex while armed without regard for the complex's other inhabitants, including the elderly and children.

With respect to Yates's character, the record indicates that Yates did not have regard

for the laws of the State of Indiana, and was willing to use intimidation to negatively influence the integrity of the judicial proceedings. Upon recognizing one of the jurors chosen to hear the instant matter, Yates instructed an associate to contact the juror's son and threaten the juror's family if the juror did not find in his favor. The record further indicates that Yates had a criminal history that included, at least in part, prior convictions for Class B felony robbery, Class C felony battery, Class D felony possession of cocaine, and Class A misdemeanor possession of marijuana.<sup>5</sup> In addition, the State brings to our attention that in the time between sentencing and the instant appeal, Yates has been convicted of one count of murder and two counts of attempted murder.<sup>6</sup> *See* Indiana Department of Correction Offender Database [www.in.gov/apps/indcorrection/ofs/ofs](http://www.in.gov/apps/indcorrection/ofs/ofs) (last visited March 23, 2011). In light of the nature of Yates's offense and his undeniably poor character, we cannot say that his twenty-year sentence is inappropriate.

Having concluded that the trial court did not abuse its discretion in denying Yates's request for a continuance and that Yates's twenty-year sentence is appropriate, we need not consider the State's cross-appeal argument that the trial court erroneously granted Yates permission to file a belated direct appeal.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.

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<sup>5</sup> We observe that the pre-sentence investigation report that Yates included in his appendix on appeal appears to be incomplete as it does not list the prior Class B felony or Class C felony battery convictions. However, the parties discussed these convictions at sentencing and Yates does not contest the validity of these convictions on appeal.

<sup>6</sup> These convictions are currently on appeal.