



Jonathan Owens<sup>1</sup> was convicted of Possession of a Firearm by a Serious Violent Felon,<sup>2</sup> a class B felony, and subsequently sentenced to twelve years. On appeal, Owens argues that his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

On February 9, 2008, Owens went to visit his cousin, Marlon Allan, at his cousin's house in Indianapolis. Because Owens was being disrespectful to Allen, Allen asked Owens to leave. Owens reacted by going to his car, a black, four-door Mercury Sable, and retrieving a revolver. Owens told Allan that he would shoot him. Owens then got in his car and drove away. Allen went back into his house, and not believing that his cousin was serious, did not call the police.

The following day, February 10, Allan was awakened by his girlfriend, Shalonda Parrish, at 12:00 p.m. Parrish told Allan that Owens was in the front room and that he was "cussin" and being "loud". *Transcript* at 16, 24. Allan got up, got dressed, and went into front room. Owens, however, had stepped outside and was in the side yard. Allan went outside and confronted Owens by punching him in the mouth with his fist. Allan then slipped and fell. As Allan got up, Owens shot him in the leg.<sup>3</sup> Owens was about five feet away when he fired the shot. Owens then ran to his black Mercury Sable and directed his girlfriend, who was driving, to leave.

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<sup>1</sup> In the record, Owens's first name is spelled three different ways: "Jonathan", "Johnathon", and "Johnathan". We have used the spelling of defendant's name, i.e., "Jonathan", that is used in court documents, including the charging information and the chronological case summary.

<sup>2</sup> Ind. Code Ann. § 35-47-4-5 (West, Premise through 2008 2nd Regular Sess.).

<sup>3</sup> Specifically, Allan was shot in the femur.

Upon hearing the gunshot, Parrish called 911. Allan was taken to a hospital by ambulance where it was determined that he had a broken femur from the gunshot wound. Allan reported to police that the gun he saw in Owens's possession on February 10 was a black .38 with a brown handle and that it looked like the gun he had seen Owens in possession on the night before.

Owens was arrested and charged with Count I, aggravated battery as a class B felony, Count II, possession of a firearm by a serious violent felon as a Class B felony, Count III, carrying a handgun without a license as a class A misdemeanor, and Part II of Count III, an enhancement of Count III for being a person convicted of a felony within the past fifteen years, a class C felony. The case was bifurcated and proceeded to a jury trial on Count I and Part I of Count III on August 4, 2008. The jury returned verdicts, acquitting Owens of Count I but finding him guilty of carrying a handgun without a license. Owens waived his right to a jury trial on the remaining charges, and a bench trial was held on August 5, 2008. The trial court found Owens guilty of possession of a firearm by a serious violent felon and the enhanced charge of carrying a handgun without a license as a class C felony.

The trial court held a sentencing hearing on August 13, 2008. The court entered a judgment of conviction only on Count II, the serious violent felon offense, citing double jeopardy concerns. The trial court then sentenced Owens to twelve years on his conviction for class B felony possession of a firearm by a serious violent felon. Owens now appeals, challenging the sentence as inappropriate.

We have the constitutional authority to revise a sentence if, after consideration of the

trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that Owens bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

With regard to the nature of the offense, Owens emphasizes that the jury acquitted him of aggravated battery using the same firearm that supported his conviction for possession of a firearm by a serious violent felon. Owens further asserts the jury's acquittal indicates that the jury believed his claim of self-defense. Owens therefore argues that given the nature of the offense, he is deserving of a sentence less than the advisory sentence of ten years.<sup>4</sup>

We first observe that the jury's acquittal on the charge of aggravated battery was not necessarily based on a finding that Owens acted in self-defense. In addition to his self-defense claim, Owens also argued to the jury that the State failed to prove that Allan suffered a protracted loss or impairment of the function of a bodily member or organ, an essential element to the charge of class B felony aggravated battery. In any event, even if the jury found Owens shot Allan in self-defense, he did not possess a handgun, the conduct at issue

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<sup>4</sup> Ind. Code Ann. § 35-50-2-5 (West, Premise through 2008 2nd Regular Sess.) ("[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years").

here, in self-defense. As a serious violent felon, Owens was not privileged to carry a gun on his person or in his car even for the purpose of defending himself. Moreover, we note that after a confrontation the day before the shooting, Owens pulled out a gun and threatened to shoot Allan. The following day, Owens was in possession of a handgun when he came to confront Allan at Allan's home. The nature of this offense is not as blameless as Owens claims.

With regard to his character, Owens argues that he was only twenty-two years old at the time of his conviction and that his criminal history consists of one prior felony conviction, which served to establish his status as a serious violent felon. Owens asserts that every defendant who is convicted of possession of a handgun by a serious violent felon will have a criminal history that is violent in nature. Thus, he contends that the fact that he has only one-prior felony conviction (a conviction for attempted carjacking as a class B felony) represents the base-line for his current offense. Indeed, Owens's prior felony conviction was relied upon by the State to prosecute Owens as a serious violent felon. Being an essential element of the crime for which he was convicted, such conviction cannot be considered in aggravation of his sentence. Owens therefore argues that given his age and the fact that he has only one prior felony conviction, he is quintessentially an average serious violent felon for whom an advisory sentence, or less, is appropriate.

Though Owens was twenty-two years old at the time of the current offense, his conduct has demonstrated his propensity for violence. As a juvenile, Owens had one negative contact with the juvenile justice system for criminal trespass, a class A misdemeanor

if committed by an adult. No action was taken on this allegation, however. As has been noted, Owens has one prior conviction as an adult for attempted carjacking as a class B felony. Owens pleaded guilty to that offense and was sentenced to ten years, with four years suspended to probation. Owens was released to probation on November 9, 2007. Just three months later, and while he was still on probation, Owens committed the current offense. The record further reveals that just one month after committing the current offense, Owens committed the offense of resisting law enforcement.<sup>5</sup> Owens has also accumulated thirteen allegations of probation violations in the three short months since his release from incarceration. Owens admitted to the trial court that he is not a “perfect probationer”. *Transcript* at 102. In his pre-sentence investigation report, Owens admitted to years of weekly marijuana and cocaine use. Owens has had two positive drug tests while on probation and has never sought treatment for his drug use even though required to do so as a condition of probation. We further note that following his conviction, Owens failed to accept responsibility for his actions, telling the trial court at sentencing that he did not commit the crime and repeatedly denying that he shot his cousin. Owens asserted no other circumstances in mitigation of his sentence.

Having reviewed the record, we conclude that Owens’s twelve-year sentence for class B felony possession of a firearm by a serious violent felon is appropriate in light of both the nature of the offense and the character of the offender.

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<sup>5</sup> Following pronouncement of his sentence in the instant case, Owens pleaded guilty to the resisting law enforcement charge. The trial court accepted his plea and sentenced him to 180 days, to be served concurrently with the sentence imposed in this case.

We affirm.

NAJAM, J., and VAIDIK, J., concur.