



## **Case Summary**

Trevor Hardy appeals his fifty-year sentence for Class A felony robbery and Class B felony burglary. We affirm.

### **Issue**

The sole issue before us is whether Hardy's sentence is inappropriate.

### **Facts**

In the early morning hours of July 21, 2007, sixteen-year-old Hardy and two cohorts, Ryan Shirley and Avery Carter, broke into the home of Dale Skaggs after having cased the house the night before.<sup>1</sup> Hardy and Carter went into Skaggs's bedroom where he was sleeping and began savagely beating him, while Shirley looked for a cash box in another room. Carter used a baseball bat to attack Skaggs, while Hardy used a table lamp. The beating continued for four or five minutes while Shirley looked for the cash box, which he never found. However, Hardy found and took Skaggs's wallet, which contained between \$2500 and \$2800 in checks and cash. After the robbery and burglary, Hardy and Carter disposed of their bloody clothes in a dumpster.

Skaggs's beating was so severe that one of his eyeballs was dislodged from its socket and he had flashbacks to his service in Vietnam. He had to undergo seven-and-a-half hours of surgery, and doctors considered him lucky to have survived. All of his facial bones were broken, his upper jaw was broken in three places, and his lower jaw was broken in two places. He had to have a steel plate inserted in his head. His mouth

---

<sup>1</sup> Carter is Hardy's older brother.

had to be wired shut for two months. Doctors described the irises of Skaggs's eyes as resembling "moth eaten blanket[s]." Tr. p. 112. The attack has required Skaggs to have a pacemaker, to wear hearing aids, and to wear thick glasses due to his sensitivity to light.

On August 13, 2007, the State charged Hardy as an adult with Class A felony robbery and Class A felony burglary. Both offenses were charged as A felonies because of the serious bodily injury to Skaggs. Carter and Shirley pled guilty to their participation in the burglary and robbery, and Shirley testified at Hardy's jury trial. On March 5, 2008, the jury found Hardy guilty as charged. At sentencing on April 4, 2008, the trial court entered judgments of conviction for Class A felony robbery and Class B felony burglary; it reduced the severity of the burglary charge to avoid double jeopardy concerns. It then sentenced Hardy to forty years for the robbery, ten years for the burglary, and ordered that the sentences be served consecutively for a total of fifty years. Hardy now appeals his sentence.

### **Analysis**

Hardy's sole argument is that his sentence is inappropriate. When considering whether a sentence is inappropriate under Indiana Appellate Rule 7(B) in light of the nature of the offense and the character of the offender, we need not be "extremely" deferential to a trial court's sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing

decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Hardy’s primary argument is that his youth at the time of the offenses—sixteen—warrants a reduction in his sentence. It is true that a defendant’s youth can, under certain circumstances, warrant significant mitigating weight in assessing the defendant’s character. See Brown v. State, 720 N.E.2d 1157, 1159 (Ind. 2000). However, youth is not a per se mitigating factor. Gross v. State, 769 N.E.2d 1136, 1141 n.4 (Ind. 2002). “There are both relatively old offenders who seem clueless and relatively young ones who appear hardened and purposeful.” Ellis v. State, 736 N.E.2d 731, 736 (Ind. 2000).

There are signs here that Hardy is more “hardened and purposeful” than “clueless.” The robbery of Skaggs was planned ahead of time and was not a spur-of-the-moment youthful indiscretion. Hardy also took steps to conceal his involvement in the crime afterwards. Moreover, it does not appear Hardy was unduly influenced by his cohorts, Shirley and Carter. For example, although Hardy arrived at Skaggs’s home unarmed, once there he willfully joined in the brutal beating of Skaggs by using a lamp. It was Hardy who took Skaggs’s wallet. Additionally, although Hardy’s prior criminal record is not extensive, his previous juvenile adjudications for Class A misdemeanor battery and Class D felony theft are similar in kind to the present offenses, which represent a disturbing and severe progression in Hardy’s criminal behavior. The presentence report also indicates that Hardy was a member of the Gangster Disciples from age twelve to fifteen.

As for the nature of the offenses in this case, it is extremely troubling. Hardy and his accomplices broke into a sleeping man's home in the middle of the night, after casing the residence the day before. Rather than attempting to steal Skaggs's personal belongings without waking him, Hardy, along with Carter, proceeded to beat him mercilessly. The severity of the attack caused Skaggs to think he had returned to Vietnam. The extent of the injuries Skaggs suffered, as we outlined earlier, was appalling. The photographs of the crime scene, depicting massive blood loss, plainly show that Skaggs suffered greatly. Indeed, Hardy may be fortunate that he is not facing charges for murder or felony murder, as Skaggs's doctors initially were uncertain that he would survive the attack.

The trial court, in pronouncing sentence, indicated that it was not considering Skaggs's serious bodily injury to be an aggravating circumstance, since that was an element of the Class A felony robbery. However, under the current advisory sentencing scheme, a material element of a crime may also form an aggravating circumstance to support an enhanced sentence, although perhaps not a maximum sentence. Pedraza v. State, 887 N.E.2d 77, 80 (Ind. 2008). Hardy did not receive a maximum sentence. In any event, the extent of Skaggs's injuries went well beyond the minimum necessary to establish serious bodily injury. It is never improper to consider particularly heinous facts or situations as warranting an increased sentence. See McElroy v. State, 865 N.E.2d 584, 590 (Ind. 2007).

We conclude, despite Hardy's age, that a total sentence of fifty years is not inappropriate in light of his character and the heinous nature of the offenses. We reject his contention that we ought to order a reduction in his sentence in light of Cherrone v. State, 726 N.E.2d 251 (Ind. 2000). There, our supreme court concluded that maximum, consecutive sentences totaling 115 years for murder and Class A felony attempted robbery was manifestly unreasonable, under the prior version of Appellate Rule 7(B), where the defendant was sixteen and his criminal history consisted only of minor consumption of alcohol. Cherrone, 726 N.E.2d at 256. The court modified the sentence to concurrent terms, thus totaling sixty-five years. Id. The primary difference in this case is that Hardy did not receive maximum, consecutive sentences. He received a sentence ten years above the advisory for the Class A felony robbery, and the advisory for the Class B felony burglary, running consecutively for a term fifteen years less than the defendant in Cherrone. Although Skaggs did not die, unlike the victim in Cherrone, he easily could have. Also, the offenses were premeditated by Hardy and his cohorts, while the attack in Cherrone appears to have been largely spontaneous and alcohol-fueled. Hardy's criminal history also is more substantial than the defendant in Cherrone, and he has a history of gang activity. All of these factors lead us to conclude that Hardy's sentence is not inappropriate and Cherrone does not mandate a reduction.

### **Conclusion**

Hardy's fifty-year sentence is not inappropriate in light of his character and the nature of the offenses. We affirm.

Affirmed.

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