

STATEMENT OF THE CASE

Steven McIntyre appeals his sentence following his conviction for Robbery, as a Class B felony, pursuant to a plea agreement. McIntyre raises a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On the evening of September 9, 2008, McIntyre was drinking whiskey and taking Xanax with friends when one of the friends, Paul Page, suggested that McIntyre rob a bank. At 12:30 the following afternoon, after borrowing a loaded .22-caliber rifle, McIntyre entered the MainSource Bank in Linton. He pointed the gun at teller Megan McKisson and demanded money. McKisson put \$2714 in small bills, including “bait money[,]” in a Hannah Montana backpack provided by McIntyre. Appellant’s App. at 79. McIntyre left the bank and fled the scene in a small black car. McIntyre then began spending some of the money.

An investigation of the robbery led officers to bring McIntyre to the police station for questioning on the day of the robbery. McIntyre initially attempted to “mislead the investigation” and “lied multiple times.” Transcript at 111. But some of the money with him during questioning matched the “bait money” provided by the teller to the robber, and he confessed to the robbery that same evening.¹ Appellant’s App. at 79. A few days

¹ Officers never recovered \$1929 of the stolen money.

later, McIntyre again attempted to mislead the investigation.² In a jailhouse interview, he told law enforcement officers that he had been threatened with a firearm and forced to drive the getaway car but had not entered the bank. However, following additional questioning, McIntyre confessed a second time to the robbery.

On September 12, the State charged McIntyre with robbery with a deadly weapon, as a Class B felony; theft, as a Class D felony; intimidation, as a Class C felony; and pointing a firearm, as a Class D felony. The trial court set the case for trial on February 3, 2009. On October 22, 2008, after some discovery had been conducted, the State and McIntyre filed a negotiated plea agreement. Under that agreement, McIntyre agreed to plead guilty to robbery with a deadly weapon, as a Class B felony; the State agreed to dismiss the remaining counts; and sentencing was left to the discretion of the court. At a hearing on December 23, the trial court accepted the plea agreement and entered a judgment of conviction accordingly.³ The court then sentenced McIntyre as follows:

The Court finds the following aggravating factors:

1. Defendant's act of pointing a loaded firearm while under the influence of drugs and alcohol created a substantial potential for severe injury or death.
2. The Defendant's actions had a severe and on-going emotional impact upon the victim, who is an employee of the bank and at whom the loaded firearm was pointed.

² The record does not indicate when McIntyre recanted relative to his first confession or to the date charges were filed.

³ The judgment of conviction references the offense of robbery with a deadly weapon as both a Class B felony and as a Class D felony. The reference to a Class D felony is in error because the information charged McIntyre with the Class B felony, he agreed to plead guilty to the Class B felony, and the court sentenced him for a Class B felony.

3. During the investigation of the crime the Defendant implicated others when he knew they were not involved in the crime, which is indicative of the Defendant's poor character.

4. The Defendant agreed to commit this crime of violence at the suggestion of an acquaintance without any apparent hesitation or moral conflict, which is indicative of the Defendant's poor character. This further causes the Court to believe that it is likely the Defendant will re-offend.

The Court finds the following mitigating factors:

1. Defendant has no prior criminal convictions.
2. Defendant has accepted responsibility for his actions by pleading guilty to this offense.

The Court considers the balance between aggravating and mitigating factors to be:

Aggravating outweighs mitigating factors.

The Court now sentences the Defendant as follows:

The Defendant shall be imprisoned for a term of twelve (12) years, with two (2) years suspended. The Defendant shall be on supervised probation for a period of two (2) years subject to the terms and conditions as specified in this order and the Order of Probation, which supervised period of probation shall begin upon the Defendant's completion of the executed portion of this sentence. The Defendant shall receive credit for 105 actual days served prior to the sentencing. The term of imprisonment shall be served in the Indiana Department of Correction[[]].

Appellant's App. at 7-8. McIntyre now appeals.

DISCUSSION AND DECISION

McIntyre contends that his sentence is inappropriate in light of the nature of the offense and his character. Indiana Appellate Rule 7(B) provides that this court "may review 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.” Although Rule 7(B) does not require us to be “very deferential” to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). 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.

McIntyre contends that his sentence is inappropriate in light of the nature of the offense. Specifically, he asserts that the “nature of the offense is not aggravated beyond the elements inherent in a bank robbery.” Appellant’s Brief at 6. More particularly, he notes that he did not threaten to kill the teller, fire shots inside or outside the bank, or confine victims to effectuate the robbery. He also argues that the “emotional impact on the teller was not greater than that inherent in the crime or beyond that which led the legislature to make the offense a Class B felony.” Id.

The trial court could have sentenced McIntyre to a fixed term between six and twenty years, with the advisory sentence being ten years. See Ind. Code § 35-5-2-5. The court sentenced him to twelve years, with two years suspended to probation. Although the facts in this case are not the most egregious possible, neither is the sentence imposed greatly enhanced over the advisory ten-year sentence. Moreover, the teller testified at the sentencing hearing that she “had never been so scared in [her] life.” Transcript at 16. On these facts, we cannot say that McIntyre’s sentence is inappropriate in light of the nature of the offense.

McIntyre also contends that his sentence is inappropriate in light of his character. In support, he observes that he pleaded guilty forty days before the case was set to go to trial and that he had no prior convictions. But the trial court acknowledged McIntyre's lack of prior convictions and his guilty plea, finding both to be mitigating circumstances. Although McIntyre has no prior convictions, he admitted to regular criminal conduct when he stated that he smoked marijuana daily and sold about twenty pounds of marijuana a week.

Additionally, McIntyre committed the robbery after a friend "gave [him] an idea" while they were "drinking" and "partying." Transcript at 21. Thus, without "any apparent hesitation or moral conflict[.]" he decided to rob the bank at gunpoint and then did so while under the influence of alcohol and a controlled substance. Appellant's App. at 7. Also, as the State observes, McIntyre's guilty plea was a pragmatic decision, because he benefitted substantially by the dismissal of three other counts against him.

McIntyre also contends that his sentence is inappropriate because he suffered serious burn injuries as a child, continues to suffer related health problems, and those problems "will sooner or later cause problems during the period of his imprisonment." Appellant's Brief at 7. McIntyre is correct that the trial court did not make mention of his ongoing health issues. But McIntyre does not argue that his condition creates a greater hardship than a person without his health problems, nor does he contend that he will be denied medical treatment as a result of his incarceration. Indeed, as the State points out, Greene County Jail personnel were in communication with McIntyre's plastic surgeon.

On the facts presented, we cannot say that McIntyre's sentence is inappropriate in light of his character.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.