



## STATEMENT OF THE CASE

Appellant-Defendant, Edward L. Underhill (Underhill), appeals his seventy-year sentence following his conviction for burglary, a Class A felony, Ind. Code § 35-43-2-1 and his adjudication as an habitual offender, I.C. § 35-50-2-8.

We affirm.

## ISSUE

Underhill raises one issue on appeal, which we restate as: Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

## FACTS AND PROCEDURAL HISTORY

On September 25, 2008, eighty-four-year-old Carlton Beever (Beever) was asleep at his residence, located in Marion County, Indiana. The doors were locked and the windows closed. At some point that night, Underhill and an accomplice broke into Beever's home and continuously beat Beever in the face while he slept. Beever woke up but then lost consciousness. The two men fled from the house before Beever could identify them. When Beever regained consciousness, he walked to a neighbor's house where he called the police.

Officer Ted Brink of the Indianapolis Metropolitan Police Department (Officer Brink) responded to the call. When the Officer arrived at the scene, he noticed that Beever's right eye "was really protruding a lot from his face." (Transcript p. 29). Beever was taken to the hospital where he was diagnosed with a fractured eye socket as a result of the attack.

Detective Cameron Brosseau of the Indianapolis Metropolitan Police Department (Detective Brosseau) was assigned to the case. Together with Officer Brink, he entered

Beever's residence. They noticed that a plastic cover of a bedroom window had been broken loose. The Officers also observed several dressers, an armoire and a desk that had open drawers, and open kitchen cabinet doors. A crime lab technician took photographs of the scene and found a latent fingerprint on a doorknob in the den area of the house. An analysis of the fingerprint resulted in a match with Underhill's fingerprints.

On or about October 14, 2008, Underhill was arrested and taken to the police station. At the police station, Underhill agreed to be interviewed by Detective Brosseau. In his statement, Underhill admitted that he and a named accomplice had committed the burglary. Although he admitted his involvement in the burglary of Beever's home, Underhill told the Detective that he did not take part in Beever's beating; rather, Underhill claimed that he tried to unsuccessfully stop his accomplice from beating Beever.

On October 16, 2008, the State filed an Information charging Underhill with Count I, burglary, a Class A felony, I.C. § 35-43-2-1, which was subsequently amended on November 20, 2008. Four days later, on November 24, 2008, the State filed an habitual offender enhancement, I.C. § 35-50-2-8. On July 22, 2009, a bifurcated bench trial was conducted. During phase one of the bifurcated trial, the trial court found Underhill guilty of burglary. During the subsequent phase two, the trial court adjudicated Underhill to be an habitual offender. On August 28, 2009, a sentencing hearing was conducted. The trial court found Underhill's criminal history and the age of the victim as aggravating factors and found Underhill's cooperation with the police department as a mitigating circumstance. Based on

these factors, the trial court sentenced Underhill to forty years on the burglary charge, enhanced by thirty years on the habitual offender adjudication.

Underhill now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Underhill contends that his seventy-year sentence is inappropriate in light of the nature of the offense and his character. A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty years. I.C. § 35-50-2-4. Furthermore, a person who is found to be an habitual offender shall be sentenced to an additional fixed term that is not less than the advisory sentence of the underlying offense nor more than three times the advisory sentence of the underlying offense; however, the additional sentence may not exceed thirty years. I.C. § 35-50-2-8(h). Accordingly, Underhill was given an enhanced term for the Class A felony, increased with the maximum sentence on the habitual offender adjudication.

Although a trial court may have acted within its lawful discretion in determining a sentence, Indiana Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

With regard to the nature of the crime, Underhill and his accomplice burglarized the residence of an elderly man while he slept. During the burglary, Beever was severely beaten,

lost consciousness, and sustained a fractured eye socket. Even though Underhill now claims that he did not participate in the personal attack on Beever, “[t]he individual who aids another person in committing a crime is as guilty as the actual perpetrator.” *Vandivier v. State*, 822 N.E.2d 1047, 1054 (Ind. Ct. App. 2005), *trans. denied*. In other words, a defendant may be convicted as a principal upon evidence that he aided or abetted in the perpetration of the charged crime. *Id.* The accomplice need not participate in each and every element of the crime in order to be convicted of it. *Id.*

Turning to Underhill’s character, we first note that as a juvenile, Underhill has two true findings for criminal mischief, which would be Class A misdemeanors if committed by an adult. Underhill’s adult criminal history consists of six felony convictions which include burglaries in 1986, 1990, 1992 and 1999, receiving stolen property in 1991, and auto theft in 1999. Underhill was placed on probation on two prior occasions, which resulted in one revocation. Furthermore, while incarcerated for his convictions, Underhill received sixteen reprimands.

Based on the evidence before us, we find that Underhill’s seventy-year sentence is not inappropriate in light of his character and nature of the offense. It is clear that the crime was brutal and unnecessarily violent, resulting in extreme physical pain for the eighty-four-year-old victim. Underhill’s numerous convictions and reprimands indicate that he is a consistent customer of the criminal justice system and reflect a profound disregard for the law and

unwillingness to reform his character. As a result, we affirm the trial court's imposition of an enhanced sentence.

CONCLUSION

Based on the foregoing, we conclude that Underhill's sentence is not inappropriate in light of his character and nature of the offense.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.