

Brandon Lee was convicted of felony murder¹ after a bench trial and sentenced to sixty years in the Department of Correction. He pled guilty to another count of murder stemming from a separate incident and agreed to a fixed term of forty-five years. The sentencing court ordered the sentences served consecutively. Lee raises the following issues on appeal:

1. Whether the sentence of sixty years was inappropriate in light of his character and the nature of the offense.
2. Whether the sentencing court abused its discretion in ordering the sentences served consecutively.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 19, 2006, Devron Sales, Charles Miller, Octavius Clay, and Lee were riding in a stolen pickup truck driven by Derick Scruggs on the south side of Indianapolis. Scruggs suggested they steal a car, and no one objected.

The five men pulled into the Berkley Commons Apartments and spotted a Mercedes Benz belonging to William Harris. Scruggs indicated they should steal that car. The men noticed the door to Harris' apartment was ajar. Miller and Lee entered the apartment to get the keys to the Mercedes. Scruggs and Clay stood outside poised to enter, and Sales acted as a lookout. Several of the men, including Lee, were carrying guns.

¹ Ind. Code § 35-42-1-1.

Sales heard Harris express disbelief he was getting robbed. Harris apparently tried to wrestle the shotgun from Miller and Lee fired several shots at Harris. All of the men got back into the pickup truck and quickly drove away. Harris later died from the gunshot wounds.

The State charged Lee with felony murder. He was found guilty after a bench trial and sentenced to sixty years to be served consecutive to a forty-five-year sentence resulting from his plea of guilty to a murder he committed December 18, 2006. The sentencing court found as aggravating the two deaths in two days and Lee's criminal history. It found as mitigating circumstances Lee's age and his acceptance of responsibility for the first murder by pleading guilty. The court found the aggravating circumstances outweighed the mitigating circumstances.

DISCUSSION AND DECISION

1. Appropriateness of Sentence

Lee argues a sixty-year sentence for felony murder is inappropriate in light of his character and the nature of the offense. It is not.

Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences. *Major v. State*, 873 N.E.2d 1120, 1130 (Ind. Ct. App. 2007). Our authority is implemented through Indiana Appellate Rule 7(B), which provides we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence inappropriate in light of the nature of the offense and the character of the offender. *Id.* We give deference to a sentencing decision, both because Rule 7(B) requires we give "due consideration" to

that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Id.* The defendant has the burden to demonstrate his sentence is inappropriate. *Id.*

Lee's sentence is five years above the advisory sentence for felony murder. *See* Ind. Code § 35-50-2-3(a) ("A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years").

A. Nature of the Offense

Lee argues the "particularized circumstances of this crime were not more egregious than contemplated by the material elements of the offense." (Appellant's Br. at 12.) A trial court may appropriately consider the particularized circumstances of a criminal act as an aggravating factor, *Smith v. State*, 780 N.E.2d 1214, 1219 (Ind. Ct. App. 2003), *trans. denied* 792 N.E.2d 41 (Ind. 2003), and the circumstances surrounding this crime were more egregious than contemplated by the material elements of the offense. Lee killed an innocent man in his home while attempting to steal a Mercedes Benz, and he had killed someone else the day before. We agree with the trial court's characterization of the crime as "horrible" and "unconscionable," (Tr. at 297), and find the nature of the offense warrants the enhanced sentence.

B. Character of the Offender

Lee was only twenty years old when he was convicted, but already had an extensive criminal record. Lee's juvenile history included criminal trespass on two occasions, resisting law enforcement, battery, and residential entry. Juvenile

adjudications may be used to enhance a sentence. *Haas v. State*, 849 N.E.2d 550, 555 (Ind. 2006). Lee’s adult criminal history included charges of criminal mischief and battery that were pending when he killed Harris, and a murder to which he pled guilty. That criminal history reflects negatively on Lee’s character. *See, e.g., Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008) (criminal history “comments negatively” on defendant’s character).

The nature of the offense and character of the offender warrant the sixty-year enhanced sentence imposed by the trial court.

C. Consecutive Sentences

Lee argues the trial court should have ordered the sentences to run concurrently in light of the nature of the offense and the character of the offender. We disagree.

Appellate review of sentences “should focus on the forest--the aggregate sentence--rather than the trees--consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Cardwell v. State*, 895 N.E.2d 1219, 1226 (Ind. 2008). Whether the counts involve one or multiple victims is highly relevant to the decision to impose consecutive sentences, as is the nature of the crime. *Id.* “These circumstances must be balanced in view of the fact that the legislature has already built into its sentencing range the consequences to victims, moral revulsion, and other factors inherent in the crime.” *Id.*

A consecutive sentence must be supported by at least one aggravating circumstance.” *Quiroz v. State*, 885 N.E.2d 740, 741 (Ind. Ct. App. 2008), *trans. denied* 898 N.E.2d 1216 (Ind. 2008). The trial court explicitly found two: Lee had committed

two separate murders on two consecutive days and had a criminal history. A consecutive sentence may be proper based on “multiple separate and distinct criminal acts.” *Sanquenetti v. State*, 727 N.E.2d 437, 443 (Ind. 2000), and in cases involving multiple killings, the imposition of consecutive sentences is appropriate. *Scruggs v. State*, 737 N.E.2d 385, 387 (Ind. 2000). “[E]nhanced and consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person.” *Serino v. State*, 798 N.E.2d 852, 857 (Ind. 2003).

Lee killed one individual on December 18 and was convicted of felony murder for killing Harris the next day. These multiple, separate, and distinct criminal acts justify consecutive sentences. We accordingly affirm the sentencing court.

Affirmed.

BAKER, C.J., and BARNES, J., concur.