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ATTORNEY FOR APPELLANT:

THOMAS W. VANES
Office of Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CLAUDE R. FISHER,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 45A03-1010-CR-530
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0908-FA-32

July 5. 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Claude R. Fisher ("Fisher") pleaded guilty to Class C felony battery in Lake Superior Court. Fisher was ordered to serve a maximum eight-year sentence in the Department of Correction. Fisher appeals and argues that his eight-year sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On August 8, 2009, Fisher entered Bobby Jordan's home while armed with a shovel and hit Jordan more than once on his head and arm. As a result of the unprovoked attack, Jordan received a cut on his arm requiring stitches.

Shortly thereafter, the State charged Fisher with attempted murder, Class C felony battery, and Class D felony residential entry. The State later filed an amended charging information alleging that Fisher was an habitual offender.

On June 1, 2010, Fisher pleaded guilty to Class C felony battery. In exchange for Fisher's guilty plea, the State agreed to dismiss the remaining charges, including the habitual offender allegation. Under the plea agreement, sentencing was left to the discretion of the trial court.

On September 16, 2010, the trial court ordered Fisher to serve an eight-year sentence in the Department of Correction. In imposing the maximum eight-year sentence, the trial court considered as an aggravating circumstance Fisher's "horrendous" prior criminal history, which includes seven prior felony convictions. Tr. pp. 34-35. Fisher now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Fisher argues that his eight-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. Alvies v. State, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007)). This appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that a court "may revise 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." Anglemyer, 868 N.E.2d at 491. However, "we must and should exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007).

Fisher was ordered to serve eight years in the Department of Correction, which is the maximum sentence for a Class C felony. See Ind. Code § 35-50-2-6 (2004 & Supp. 2011). Fisher argues that his sentence is inappropriate because although he "might be characterized as a 'worst offender,' his crime here does not deserve the 'worst offense' label." Appellant's Br. at 5.

Although the maximum sentence is generally reserved for the worst offenders and offenses, this oft-cited principle is "not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario." Harris v. State, 897 N.E.2d 927, 929-30 (Ind. 2008). Therefore, we will not engage in the useless exercise of imagining a more contemptible set of circumstances, and instead focus our review on what the record reveals about the nature of Fisher's offenses and his character.

Concerning the nature of Fisher's offense, the record establishes that Fisher entered Jordan's home while armed with a shovel. He then struck Jordan more than once on the head and arm. As a result of the unprovoked attack, Jordan suffered a cut on his arm requiring stitches. Although we acknowledge Fisher's argument that his offense "falls far short of the worst kind of armed battery," see Appellant's Br. at 5, Fisher is also fortunate that his attack on Jordan did not result in more serious injury.

Furthermore, Fisher's deplorable character more than supports the imposition of the maximum eight-year sentence. Fisher has six juvenile adjudications, for committing the offenses of battery, robbery, trespass, and burglary, and one adult misdemeanor conviction for operating a vehicle having never received a license.

The trial court's characterization of Fisher's adult criminal history as "horrendous" is not without support in the record. Fisher's felony criminal history spans nearly thirty years. See Tr. p. 35. Specifically, Fisher was convicted of Class D felony theft in 1979, and ordered to serve a three year sentence. Shortly thereafter, he was convicted of Class

A felony kidnapping and Class B felony robbery. Fisher was ordered to serve an aggregate thirty-five year sentence and he was discharged from parole in 2002. Approximately one year later, Fisher was charged with Class D felony auto theft and Class C felony robbery and ordered to serve an aggregate five and one-half year sentence. In 2007, Fisher pleaded guilty to two counts of Class C felony robbery and received an aggregate sentence of four years. On December 19, 2008, the trial court granted Fisher's request to modify his sentence to time served. Despite the trial court's leniency, approximately eight months later, Fisher committed the offense at issue in this appeal. Even Fisher admits that his prior criminal history "might" justify the label "worst offender." Appellant's Br. at 5.

For all of these reasons, we conclude that Fisher's maximum eight-year sentence is appropriate in light of the nature of the offense and the character of the offender.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.