Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

CHARLES W. LAHEY
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

FILED
Jul 20 2009, 10:19 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

GREGORY T. HILL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0904-CR-171
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-0307-FA-44

July 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Gregory T. Hill pleaded guilty to two counts of attempted murder,[1] each as a Class A felony and was sentenced to twenty years for each count with the sentences to run consecutively for a total executed sentence of forty years. He appeals, raising the following restated issue: whether the trial court abused its discretion when it ordered his sentences to run consecutively.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 30, 2003, Hill was at the home of his grandmother, which was located on Allen Street in South Bend, Indiana. A brawl broke out between members of Hill's family and members of the families who lived across the street from his grandmother. Two of the people from across the street involved in the fight were Damesha Hicks and her boyfriend, David Thompson. During this fight, Thompson assaulted Hill's brother, Corey. When Hill witnessed the assault on his brother, he came outside with a handgun and shot Thompson and Hicks several times, hitting Thompson three times and Hicks once. Hill was aware that, by shooting Thompson and Hicks, there was a high probability that he would kill them. *Tr*. at 17-18. Hill did not believe that he was acting in self-defense or in the legal defense of another when he shot Thompson and Hicks. *Id*. at 18. At the time this crime occurred, Hill was on probation for another felony.

On March 22, 2004, Hill pleaded guilty to two counts of attempted murder, each as a Class A felony, pursuant to a written plea agreement. Under the terms of the plea agreement, the executed portion of Hill's sentence for both counts would not exceed forty

[1] *See* Ind. Code §§ 35-42-1-1, 35-41-5-1.

years. On June 18, 2004, the trial court accepted Hill's guilty plea, and a sentencing hearing was held. As mitigating factors, the trial court found that Hill had a troubled childhood, had lost his mother at an early age, had been trying to help his two younger brothers at the time this crime occurred, and had children of his own for whom he was trying to provide. *Id*. at 49-50. As aggravating factors, the trial court noted that Hill had a gun at the time of the crime despite the fact that he was on probation, that he had shot Thompson three times, seriously injuring him, and then shot Hicks as she was going to assist Thompson, and that Hill had a criminal record, which included a conviction for Class B felony aggravated battery, for which he was on probation at the time of the present crime. *Id*. at 50-51. The trial court sentenced Hill to serve twenty years for each count with the sentences to run consecutively for a total of forty years executed. When the trial court ordered the sentences to run consecutively, it specifically stated that it was doing so based upon the circumstances of each crime, which it found to be particularly aggravating, and because Hill was on probation for another violent crime at the time that he committed the instant offenses. Hill now appeals.

DISCUSSION AND DECISION

Hill argues that the trial court abused its discretion when it ordered his sentences to run consecutively. Sentencing decisions are generally within the discretion of the trial court and will only be reversed upon a showing of an abuse of discretion. *Garland v. State*, 855 N.E.2d 703, 706 (Ind. Ct. App. 2006), *trans. denied* (2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or if the trial court has misinterpreted the law. *Id*. The

court may increase a sentence or impose consecutive sentences if the court finds aggravating factors. *Id*.

Initially, we note that to the extent that Hill argues that his consecutive sentences violated the Sixth Amendment of the United States Constitution and *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), we disagree. First, "[t]here is no constitutional problem with consecutive sentencing so long as the trial court does not exceed the combined statutory maximums." *Smylie v. State*, 823 N.E.2d 679, 686 (Ind. 2005), *cert. denied*, 546 U.S. 976 (2005). Second, Hill committed his crime on June 30, 2003, which was before the legislature amended Indiana's sentencing statutes to provide for "advisory sentences" in response to our Supreme Court's decision in *Smylie*. Therefore, the prior "presumptive" sentencing scheme applies to his case. *Monroe v. State*, 886 N.E.2d 578, 579 (Ind. 2008) (citing *Gutermuth v. State*, 868 N.E.2d 427, 431 n.4 (Ind. 2007) (stating that "the sentencing statute in effect at the time a crime is committed governs the sentence for that crime")).

Indiana law requires that the trial court take the following steps during sentencing: (1) identify all significant mitigating and aggravating circumstances; (2) specify facts and reasons which lead the court to find the existence of each such circumstance; and (3) demonstrate that the mitigating and aggravating circumstances have been evaluated and balanced in determination of the sentence. *Garland*, 855 N.E.2d at 707. A single aggravating circumstance is enough to justify an enhancement or the imposition of consecutive sentences. *Id*. Further, when a defendant commits the same offense against multiple victims, "enhanced 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).

Here, at Hill's sentencing hearing, the trial court listed the aggravating and mitigating circumstances that it had found and explained why it found each to be either aggravating or mitigating. It then imposed a twenty-year sentence on each count and ordered them to be served consecutively. The trial court explained that it was making the sentences consecutive because it found the circumstances of the crime to be particularly aggravating and that Hill was on probation for another violent crime, aggravated battery as a Class B felony, at the time that he committed the instant offenses. *Tr*. at 52. "[B]efore a trial court can impose a consecutive sentence, it must articulate, explain, and evaluate the aggravating circumstances that support that sentence." *Monroe*, 886 N.E.2d at 580.

We conclude that, here, the trial court did articulate, explain, and evaluate the aggravating circumstances before imposing consecutive sentences. Additionally, the fact that the trial court only imposed the minimum sentences was presumably due to the forty-year cap imposed by the plea agreement since the circumstances surrounding the multiple victims was used to impose the consecutive sentences. The trial court did not abuse its discretion in sentencing Hill.

Affirmed.

RILEY, J., and MATHIAS, J., concur.