



## STATEMENT OF THE CASE

Appellant-Defendant, Jonathan Perkins (Perkins), appeals his sentence after pleading guilty to robbery, a Class B felony, Ind. Code § 35-42-5-1; aiding in a theft, a Class D felony, I.C. §§ 35-41-2-4, 35-43-4-2; and visiting a common nuisance, a Class B misdemeanor, I.C. § 35-48-3-13.

We affirm.

## ISSUE

Perkins raises one issue, which we restate as: Whether his sentence is inappropriate when the nature of his offense and character are considered.

## FACTS AND PROCEDURAL HISTORY

On November 21, 2008, Perkins and three other men went to Jeffery Brockhaus' (Brockhaus) house ostensibly to purchase morphine from him. Their real intent was to steal drugs from him. When Brockhaus opened his door for the men, they took him to the ground and beat him. When Brockhaus attempted to fight back by kicking, one of the men sliced his leg with a knife. The men took some pills and a phone from Brockhaus' home. As a result of the attack, Brockhaus suffered a front skull fracture with possible bleeding on the brain and severed and separated ligaments on his leg.

On November 26, 2008, the State filed an Information charging Perkins with burglary, as a Class A felony, I.C. § 35-43-2-1(2)(B); robbery, as a Class A felony, I.C. § 35-42-5-1; and maintaining a common nuisance, a Class D felony, I.C. § 35-48-4-13. On October 19, 2009, Perkins signed an agreement to plead guilty to robbery, as a Class B felony, I.C. § 35-

42-5-1; aiding in theft, a Class D felony, I.C. §§ 35-41-2-4, 35-43-4-2; and visiting a common nuisance, a Class B misdemeanor, I.C. § 35-48-3-13. In exchange, the State recommended that Perkins be sentenced to a concurrent term of imprisonment of twenty years, with a cap of executed time at fifteen years, the remaining five years to be served on probation. That same day, the trial court heard Perkins' plea of guilty. Perkins protested that he did not personally have a knife during the attack on Brockhaus, but admitted that his cohorts were armed, he knew that they were, and that he knowingly assisted them in the attack and taking of property. He also admitted to visiting a common nuisance, that being his own apartment, where controlled substances were located.

On November 23, 2009, the trial court conducted a sentencing hearing. The trial court noted the violent nature of Perkins' crime and found Perkins criminal history, which included a "serious battery" as a juvenile to be an aggravating factor. (Transcript p. 13). In addition, the trial court found the fact that Perkins had pled guilty to be a mitigating factor. Upon weighing the aggravating and mitigating factors, the trial court sentenced Perkins to fifteen years executed in the Indiana Department of Correction, followed by five years of probation for robbery, one and one-half years for aiding theft, and ninety days for visiting a nuisance, all to be served concurrently.

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

### DISCUSSION AND DECISION

Perkins contends that his fifteen-year executed sentence, with an additional five years of probation, for robbery is inappropriate when the nature of his offense and character are

considered. Specifically, Perkins argues that his sentence is inappropriate because he was not the person who stabbed the victim and by pleading guilty he saved the county money and prevented the victim from having to testify.

Regardless of whether the trial court has sentenced the defendant within its discretion, we have the authority to independently review the appropriateness of a sentence authorized by statute through Appellate Rule 7(B). *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). That rule permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). "Ultimately the length of the aggregate sentence and how it is to be served are the issues that matter." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). "The principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Id.* at 1225. The defendant carries the burden to persuade us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

We first note that Perkins explicitly appeals only his sentence for robbery. Since Perkins pled guilty to robbery as a Class B felony, the trial court had discretion to sentence him to a term of years between six and twenty years, with the advisory sentence being ten years. I.C. § 35-50-2-5. However, the trial court accepted Perkins' guilty plea pursuant to a plea agreement, and therefore, was bound by the terms of that agreement which restricted the

executed portion of his sentence to fifteen years. *See Blakemore v. State*, 925 N.E.2d 759, 762 (Ind. Ct. App. 2010) (“A plea agreement is contractual in nature, binding the defendant, the state, and the trial court”). In accord with the agreement, the trial court sentenced Perkins to fifteen years executed, and five years of probation, which falls within the discretionary boundaries of a sentence for a Class B felony.

The State compares the nature of Perkins’ offense and character to that discussed in *Reyes v. State*, 848 N.E.2d 1081 (Ind. 2006). In *Reyes*, our supreme court considered Reyes’ appeal of his sentence after his plea of guilty to voluntary manslaughter as a Class B felony. *Id.* at 1082. The trial court sentenced him to the maximum term for a Class B felony, twenty years. *Id.* Reyes was a medical doctor with no criminal history, but had “led a clandestine life that among other things included extensive use of illegal drugs.” *Id.* at 1083. Reyes’ crime was “particularly brutal;” he bludgeoned, strangled, and poisoned his victim. *Id.* Considering the nature of Reyes’ offense and character, our supreme court concluded that Reyes had not persuaded them that his sentence was inappropriate. *Id.* at 1083.

As for the nature of Perkins’ offense, the trial court noted that it was “one of the more violent acts the county has seen.” (Tr. p. 11). While Perkins’ victim may not have died as a result of the attack, as Reyes’ victim did, the facts here are still heinous. The victim was a terminally ill man who was chosen as a victim apparently because of his access to prescription pain medication. Perkins admitted that he held down the victim while two other men attacked him in his home. The victim suffered a fractured skull and severed ligaments

as a result of the attack. When the men left, they took the victim's phone so he could not call for help.

As for Perkins' character, the trial court noted that he has previously committed a "serious battery." (Tr. p. 13). The Pre-Sentence Investigation Report explains that Perkins beat an unarmed juvenile with a baseball bat, causing injuries that required the victim to be flown to a hospital. At the time of the attack on Brockhaus, Perkins was twenty years old. Therefore, Perkins has committed two extraordinarily violent crimes prior to reaching his twenty-first birthday, which demonstrates his violent propensity. Furthermore, the impetus for his current crime was a desire to steal drugs and Perkins is an admitted drug abuser. In sum, Perkins has failed to persuade us that his sentence is inappropriate when the nature of his offense and character are considered.

#### CONCLUSION

Based on the foregoing, we conclude that Perkins' sentence is not inappropriate when the nature of his offense and character are considered.

Affirmed.

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