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IN THE
COURT OF APPEALS OF INDIANA

MATTHEW HUTCHINSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 11A01-0902-CR-53
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLAY CIRCUIT COURT
The Honorable Ernest E. Yelton, Judge
Cause No. 11C01-9806-CF-043

July 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Matthew Hutchinson appeals his sentence for murder.[1] Hutchinson raises one issue, which we revise and restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

In June 1998, Hutchinson and a friend drove to Matt Selsam's house to obtain methamphetamine, but Selsam did not have any. Selsam asked Hutchinson and his friend "if [they] wanted to go for a ride. He wanted to show [them] something." Transcript at 16. Selsam drove Hutchinson and his friend by the house of Dan Miller. Selsam previously rented from Miller. Selsam told Hutchinson that there were drugs and money in Miller's house and that Selsam "was trying to find somebody to help him rob it because he needed the money." Id. at 17.

Approximately three or four days later, James Barrett asked Hutchinson if he knew where he could get or make some money. Hutchinson told Barrett he would put him in touch with somebody, and Hutchinson drove Barrett and Norman Johnson, Barrett's cousin, to meet Selsam. Hutchinson, Barrett, and Johnson met with Selsam and one of Selsam's friends, Jerry West. Selsam discussed the idea of robbing Miller's house with Barrett and Johnson while Hutchinson was present. Selsam said that he "wanted the pot and the money and the motorcycle," and "told 'em where the stuff was supposed to be and . . . said there wasn't no dogs, told us the guy didn't have no guns or nothin', that there wouldn't be no problem, just go in and more or less tie him up and take—take what

[1] Ind. Code § 35-42-1-1(1) (Supp. 1997) (subsequently amended by Pub. L. No. 17-2001, § 15 (eff. July 1, 2001), Pub. L. No. 151-2006, § 16 (eff. July 1, 2006), Pub. L. No. 173-2006, § 51 (eff. July 1, 2006), Pub. L. No. 1-2007, § 230 (eff. Mar. 30, 2007)).

they wanted to take." Id. at 24. Hutchinson agreed to drive Barrett and Johnson to Miller's house. Selsam gave a gun to Barrett.

At approximately 4:00 a.m., Hutchinson drove Barrett and Johnson to Miller's house and pulled his truck into Miller's driveway. Barrett and Johnson entered Miller's house. After waiting for about one minute, Hutchinson turned his truck around. Hutchinson then got out of his truck and stood by the exterior garage door outside of Miller's house and waited for Barrett and Johnson to return.

A short time later, Hutchinson heard two gunshots and saw Johnson running out of Miller's house with the gun in his hand. The three men fled the scene and later met with Selsam and West. Barrett said: "I can't believe I shot the guy." Id. at 33. At Barrett's direction, Hutchinson, Johnson, and Barrett disposed of the gun and a pillowcase containing some clothes and some small items in a creek. Hutchinson went with Johnson to Chicago, Illinois for one and a half or two days, and then Hutchinson went to Ohio. Hutchinson later learned that Miller had died. After learning there was a warrant for his arrest, Hutchinson contacted his cousin and made arrangements to turn himself in to law enforcement. Following his arrest, Hutchinson initially lied to the police by telling them that there were actually four conspirators present at the scene of the crime because he was angry that Selsam had not been charged.

The State initially charged Hutchinson with: Count I, murder; Count II, felony murder; Count III, burglary resulting in serious bodily injury as a class A felony; Count IV, conspiracy to commit burglary resulting in serious bodily injury as a class A felony;

Count V, auto theft as a class D felony; and Count VI, theft as a class D felony. The State subsequently amended its charging information and charged Hutchinson with: Count I, murder; Count II, felony murder; Count III, robbery as a class A felony; Count IV, conspiracy to commit robbery as a class A felony; Count V, burglary as a class A felony; Count VI, conspiracy to commit burglary as a class A felony; Count VII, auto theft as a class D felony; and Count VIII, theft as a class D felony.

Sometime after Johnson was sentenced to 176 years for his role in the offense, Hutchinson and the State entered into a plea agreement in which Hutchinson agreed to plead guilty to Count I, murder, and Count VI, conspiracy to commit burglary as a class A felony. The trial court sentenced Hutchinson to fifty-five years for murder and thirty years for conspiracy to commit burglary, and the court ordered the sentences to run concurrently.[2]

The issue is whether Hutchinson's sentence for murder is inappropriate in light of the nature of the offense and the character of the offender.[3] Indiana Appellate Rule 7(B) provides that this court "may revise a sentence authorized by statute 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." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

[2] Hutchinson was granted permission to file a belated notice of appeal because he was never advised of his rights to appeal by the trial court or by his trial counsel.

[3] Hutchinson appeals only his sentence for murder.

Our review of the nature of the offense reveals that Hutchinson was present when Selsam, Barrett, and Johnson discussed robbing Miller's house. Hutchinson also knew that Selsam handed Barrett a gun before going to Miller's house. Hutchinson drove Barrett and Johnson to Miller's house and waited for them. After the crime, Hutchinson helped to dispose of the murder weapon and other evidence and fled to Chicago and Ohio.

Our review of the character of the offender reveals that Hutchinson turned himself in to police after fleeing to Ohio when he learned that there was a warrant for his arrest. Following his arrest, Hutchinson initially lied to the police by telling them that there were actually four conspirators present at the scene of the crime. Hutchinson pled guilty to murder and conspiracy to commit burglary, and in exchange the State's other six charges were dismissed. Hutchinson did not plead guilty or provide a factual basis for his guilty plea until after Johnson was sentenced to 176 years for his role in the offense.

The Presentence Investigation Report reveals that Hutchinson used methamphetamine often. The Presentence Investigation Report also reveals that Hutchinson had no arrests or convictions as an adult prior to this offense. Hutchinson has a juvenile adjudication for truancy. As a juvenile, Hutchinson was charged with criminal recklessness as a class D felony if committed by an adult for discharging a "20-gauge shotgun" inside city limits. Appellant's Appendix at 163. Hutchinson pled guilty to an amended charge of disorderly conduct as a class B misdemeanor if committed by an adult. Also as a juvenile, Hutchinson was charged with aiding, inducing, or causing

burglary as a class C felony if committed by an adult. Hutchinson pled guilty to the amended charge of aiding, inducing or causing an attempted theft as a class D felony if committed by an adult.

After due consideration, we cannot say that the presumptive sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., McKinney v. State, 873 N.E.2d 630, 647 (Ind. Ct. App. 2007) (holding that the defendant's fifty-five year sentence for murder was not inappropriate), trans. denied; Fuller v. State, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006) (same), trans. denied.

For the foregoing reasons, we affirm Hutchinson's sentence for murder.

Affirmed.

CRONE, J., and BRADFORD, J., concur.