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IN THE
COURT OF APPEALS OF INDIANA

EARL E. LUCAS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0811-CR-536
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Judge
Cause No. 45G04-0712-FB-107

July 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Earl E. Lucas appeals his sentence for seven counts of Class B felony robbery and one count of Class D felony theft. We affirm.

FACTS AND PROCEDURAL HISTORY

On July 29, 2008, Lucas pled guilty to seven counts of Class B felony robbery[1] and one count of Class D felony theft.[2] In exchange, the State agreed to dismiss an habitual offender charge. Sentencing was left to the discretion of the trial court.

The parties stipulated to the following factual basis. On November 21, 2007, Lucas and his son, Bryan[3] Lucas, went to a GNC store in Schererville. Bryan robbed the store while armed with a knife. Lucas waited outside in the car, ready to drive them away when Bryan finished the robbery. They then committed a string of similar robberies: the GNC store in Munster on November 27, the GNC store in Hobart on November 28, the Vitamin Shoppe in Hobart on November 29, the Game Stop in Munster on December 3, a Thornton's gas station[4] and the Smoke Shop in Hobart on December 7, and Moksha Tobacco in Hammond on December 10.

The probable cause affidavit was not part of the factual basis; however, the parties referred to facts from the affidavit at the sentencing hearing. Ryan Cogdill, the manager of the Game Stop, told police

> a man [Lucas] approximately fifty years old entered the business and was talking on a cell phone. He [Cogdill] further stated that he asked the man if

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[1] Ind. Code § 35-42-5-1.
[2] Ind. Code § 35-43-4-2.
[3] This name is spelled "Brian" in the transcript; other documents in the record spell the name "Bryan." We will use the spelling used by Lucas.
[4] This offense was charged as Class D felony theft, and the information does not allege that a knife was used. However, the "Stipulated Factual Basis" attached to the plea agreement states that Bryan was armed with a knife.

> he needed help and the man shrugged him off. He further stated that a second man who was in his twenties [Bryan] entered the store with a turtleneck sweater over his face and walked up to the cash register and demanded money. Cogdill said that the younger man told the older man to get off the phone and placed the knife to the other man's chest while store employees took money from the register and placed it into the bag. He further stated that the two men left the store together. The younger man took the money. He further stated that he now believes that the two were working together.

(Appellant's App. at 11.)

The probable cause affidavit also contained statements Bryan had made to the police. Bryan told them he robbed the GNC stores because he had worked there and he knew there was a policy not to resist. Bryan said Lucas often went inside the store first to see if there were any customers inside.

A sentencing hearing was held on October 3, 2008. Megan Goss, who works for one of the GNC stores that was robbed, was the only victim present to testify. She described the effect the robbery had on her:

> We are all females that work there, we are by ourselves, after this robbery was committed we were able to for a short period of time, have double coverage and that hurt my wages, so of course my store lost money, in addition to whatever they took. For me personally, if – if a male comes into my store and just walks around, like I was scoped out before, the other guy came in with a knife, you know, I get nervous and it is very intimidating. . . . I've had numerous panic attacks at work where I've had to close the door and take a deep breath and you know, I mean, after somebody just walks around and if anybody gets close, it just makes me nervous.

(Tr. at 18-19.)

Lucas' brother, Ronnie Lucas, and his wife, Alba Lucas, testified in his support. They testified that Lucas lost his job in 2002. Bryan began using drugs "and then it

rolled all over into the family." (*Id*. at 34.) Ronnie testified that Lucas was intimidated by Bryan, and he had seen Bryan beat up Lucas. Ronnie and Alba felt the robberies were motivated by Lucas' drug habit and fear of Bryan. In addition, Lucas was struggling with the illness and death of his father. Alba had previously urged Lucas to go to counseling for his drug problem, but he refused. Since being out on bond, Lucas had been working, staying off drugs, participating in counseling, and providing for the family.

Lucas apologized for his actions. He stated he began using heroin in 2001. Bryan introduced him to drugs when he was unable to get pain medication for a back injury. Lucas stated he was "really afraid" of Bryan, and Bryan had broken his ribs and nose. (*Id*. at 54.)

The trial court questioned Lucas about the extent of his involvement in the robberies:

> Q. Well you were the get-away driver for most of these, you walked into a number of these and kind of created the diversion. He used you as a hostage in one of these, did he not?
> A. Yes, and I was not aware that he was going to do that either, Your Honor.
> Q. Well, you went into the place to stake out the place, didn't you, on a number of these?
> A. Yes, sir.
> Q. You pulled the car behind so that after he robbed the place, he could get in the car, out the back door and you guys could get away. What do you mean you were not an active participant?
> A. I was active, I admit that, sir.

(*Id*. at 58.)

Defense counsel characterized Bryan as a "body builder" who is "on steroids and he's somewhat maniacal." (*Id*. at 46-47.) The trial court acknowledged, "the Court has

had an opportunity to see [Bryan, who] is a very scar[y] looking individual, with tattoos, as I recall, on his neck, possibly his face and is very intimidating." (*Id*. at 65-66.)

As mitigators, the trial court found Lucas pled guilty and accepted responsibility, his imprisonment would result in significant hardship to his family, the offenses "were likely precipitated by a heroin addiction," and he led a "productive life" prior to his addiction and again after being released on bond in this case. (*Id*. at 63.)

The trial court found Lucas' criminal history to be an aggravator.[5] Lucas has a 1965 juvenile adjudication of auto theft, which the court gave minimal weight. Lucas also has convictions of Class D felony theft in 2001 and 2006. He has admitted to probation violations on two occasions. As additional aggravators, the trial court found "prior leniency has not deterred the defendant's criminal behavior," Lucas was an active participant in the offenses, and the impact on the victims. (*Id*. at 65.)

The trial court found "the mitigating factors outweigh the aggravating factors, namely because, for the most part other than minor petty crimes, you have [led] a substantially law abiding life for a substantial period in your life." (*Id*. at 66.) The trial court imposed the minimum sentence for each count – six years for the Class B felonies and six months for the Class D felony. *See* Ind. Code §§ 35-50-2-5 and -7. However, the court found "each of these aggravating factors . . . taken individually, is enough . . . to order these sentences served consecutively. To do otherwise and to sentence these crimes concurrently, would be allowing you . . . to be able to commit multiple crimes without

[5] The pre-sentence investigation report states that Lucas has a 1970 conviction of second degree burglary. Lucas disputed that entry, and the trial court agreed that it "may be an error and I'll not consider it." (Tr. at 50.)

multiple punishment." (Tr. at 67-68.) The court ordered the sentences for the Class B felonies to be served consecutively to each other, with the Class D felony running concurrent. Therefore, Lucas' aggregate sentence is forty-two years.

DISCUSSION AND DECISION

Lucas argues his sentence is inappropriate. We may revise a sentence if it is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We give deference to the trial court's decision, recognizing its special expertise in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied* 878 N.E.2d 208 (Ind. 2007). "The principal role of appellate review should be to attempt to leaven the outliers, . . . but not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Lucas and his son committed seven robberies and one theft in the course of seventeen days. They targeted several GNC stores because Bryan knew that employees were instructed to not resist. Lucas downplays his role, noting that he usually acted as the driver, but he admitted to the trial court that he played an active role in several of the robberies by scoping out the store in advance. He pretended to be a hostage during one of the robberies. Although none of the victims was physically harmed, one of them still has panic attacks.

There was evidence Lucas was intimidated by Bryan; however, Lucas' own addiction was also a motivating factor for his participation in the robberies. Lucas failed

to obtain treatment despite being urged to do so by family members. Lucas has two prior convictions of theft during the time he was using heroin. He was allowed to serve one of his sentences on probation, but he violated the terms of his probation twice.

While there are some facts that reflect favorably on Lucas' character, such as the improvements he made after being released on bond, we believe the trial court adequately responded to those circumstances by imposing the minimum sentence on each count. As noted by the trial court, consecutive sentences are appropriate where there are multiple crimes against multiple victims. *See Cardwell*, 895 N.E.2d at 1225. We cannot say Lucas' sentence is inappropriate in light of his character and the nature of his offenses.

Affirmed.

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