



## Case Summary and Issue

Tyrone Goodman pled guilty to robbery as a Class A felony, robbery as a Class B felony, and robbery and forgery as Class C felonies. The trial court sentenced Goodman to an aggregate sentence of seventy-eight years. Goodman now appeals, raising the sole issue of whether the trial court properly sentenced him. We affirm.

## Facts and Procedural History

On March 2, 2005, Goodman and an accomplice parked outside the home of eighty-three year old Mary Dreiser in Hobart, Indiana. When Dreiser returned home, Goodman's accomplice approached her and asked for directions. As Dreiser began to respond, Goodman's accomplice grabbed her purse and knocked her to the ground. Dreiser sustained a hip injury from the fall and had to have hip replacement surgery.

On March 5, 2005, Goodman went to Merrillville, Indiana, where he encountered Bonnie Armstrong. Goodman approached Armstrong and took her purse. In doing so, Goodman pushed Armstrong against a rail, causing bruising and soreness to her arm.

Later that same day, Goodman went to a Linens N' Things store in Highland, Indiana. Carmen Milojkovitch was inside the store returning an item she had purchased. Milojkovitch's eleven-year old daughter remained outside in the car with Milojkovitch's purse. When Milojkovitch exited the store, she saw Goodman reach inside her car and take her purse. Milojkovitch ran up to Goodman and grabbed the strap of her purse. The two struggled for a few moments until the purse strap broke. Milojkovitch fell to the ground, and Goodman fled with the purse. Inside Milojkovitch's purse was her checkbook. On March 9,

2005, Goodman forged Milojkovitch's signature on one of the checks and made the check payable to himself in the amount of \$361.32. Goodman then went to a Bank of Calumet branch and unsuccessfully attempted to cash the check.

Goodman was ultimately arrested. The State charged him with a number of offenses under four different cause numbers. For the events involving Dreiser, Goodman was charged with robbery as a Class A felony, and aggravated battery as a Class B felony under cause number 45G01-0503-FA-00010 ("FA-10"). Goodman was charged under cause number 45G01-0503-FB-00022 ("FB-22") with robbery as a Class B felony for the robbery of Armstrong and robbery as a Class C felony for the events involving Milojkovitch. Goodman was charged with robbery resulting in serious bodily injury as a Class B felony under cause number 45G01-0503-FB-00023 ("FB-23").<sup>1</sup> Goodman was also charged with forgery as a Class C felony and fraud on a financial institution as a Class C felony under cause number 45G01-0503-FC-00041 ("FC-41") for his attempt to forge Milojkovitch's name and cash one of her checks. Additionally, the State filed an habitual offender charge under each of the four cause numbers.

On August 30, 2005, Goodman entered into a plea agreement with the State. Under the agreement, Goodman agreed to plead guilty to robbery as a Class A felony under FA-10, robbery as a Class B felony and robbery as a Class C felony under FB-22, and forgery as a Class C felony under FC-41. In exchange, the State dismissed the aggravated battery as a Class B felony charge under FA-10, all of the charges under FB-23, the fraud on a financial

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<sup>1</sup> It is not clear from the record to what event this charge relates.

institution as a Class C felony charge under FC-41, and all four of the habitual offender charges.

The trial court held a sentencing hearing on September 27, 2005, where it accepted Goodman's guilty plea. At the hearing, Goodman apologized to his victims and stated that he was under the influence of drugs at the time he committed each of the acts to which he pled guilty. The trial court found two aggravating circumstances. First was Goodman's criminal history, which includes four juvenile adjudications, nine adult felony convictions, and one misdemeanor conviction. The second aggravating circumstance was that one of Goodman's victims was an eighty-three year old woman who suffered a fractured hip. The only mitigating factor found by the trial court was Goodman's guilty plea, but the court did not give this factor significant weight because of Goodman's criminal history. The trial court specifically refused to find that Goodman's addiction to drugs was a mitigating circumstance. The court sentenced Goodman to forty-eight years for his Class A felony robbery conviction, seventeen years for his Class B felony robbery conviction, seven years for his Class C felony robbery conviction, and six years for his Class C felony forgery conviction. These sentences were to be served consecutively for an aggregate sentence of seventy-eight years.<sup>2</sup> The trial court stated that it did not give Goodman the maximum sentence for any of his convictions because he pled guilty. This appeal ensued.

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<sup>2</sup> Although Goodman objects to the sentence the trial court imposed on each individual count, he has not raised an objection to the trial court's imposition of consecutive sentences.

## Discussion and Decision

Goodman argues that the trial court abused its discretion in sentencing him because it failed to consider his addiction to drugs and his remorse as mitigating circumstances. We disagree.

### I. Standard of Review

“Sentencing decisions are within the trial court’s discretion and will be reversed only for an abuse of discretion.” Williams v. State, 840 N.E.2d 433, 436 (Ind. Ct. App. 2006). When deciding whether to increase or reduce a defendant’s sentence, the trial court has the discretion to determine which aggravating and mitigating circumstances it will consider and what weight it will give to those circumstances. Id.

### II. Sentencing Scheme

In sentencing Goodman, the trial court found one mitigating circumstance, which was Goodman’s guilty plea. The trial court gave this mitigating circumstance little weight because of Goodman’s criminal history. Goodman argues that the trial court abused its discretion by not finding that his addiction to drugs and his remorse were mitigating circumstances. He also argues that the trial court did not give sufficient mitigating weight to his guilty plea. Based on this, Goodman concludes that his sentence should be reduced.

Goodman’s arguments raise several questions that concern our legislature’s adoption of the current advisory sentencing scheme and whether that sentencing scheme should apply in this case. On April 25, 2005, our legislature responded to Blakely v. Washington, 542 U.S. 296 (2004), by amending our sentencing statutes to replace “presumptive” sentences

with “advisory” sentences. Weaver v. State, 845 N.E.2d 1066, 1070 (Ind. Ct. App. 2006), trans. denied. Under the new advisory sentencing scheme, “a court may impose any sentence that is authorized by statute and permissible under the Indiana Constitution ‘regardless of the presence or absence of aggravating circumstances or mitigating circumstances.’” Id. (quoting Ind. Code § 35-38-1-7.1(d)). Thus, while under the previous presumptive sentencing scheme, a sentence had to be supported by Blakely-appropriate aggravators and mitigators, under the new advisory sentencing scheme, a trial court may impose any sentence within the proper statutory range regardless of the presence or absence of aggravators or mitigators.

There is a split on this court as to whether the advisory sentencing scheme should be applied retroactively. Compare Settle v. State, 709 N.E.2d 34, 35 (Ind. Ct. App. 1999) (sentencing statute in effect at the time of the offense, rather than at the time of conviction or sentencing, controls) with Samaniego-Hernandez v. State, 839 N.E.2d 798, 805 (Ind. Ct. App. 2005) (concluding that change from presumptive sentences to advisory sentences is procedural rather than substantive and therefore application of advisory sentencing scheme is proper when defendant is sentenced after effective date of amendment even though offense was committed before) and Weaver, 845 N.E.2d at 1070 (concluding that application of advisory sentencing statute violates the prohibition against *ex post facto* laws if defendant was convicted before effective date of the advisory sentencing statutes but was sentenced after). Our supreme court has not yet had the opportunity to resolve this issue.

In this case, the outcome is the same regardless of which sentencing scheme is

applied, and therefore we need not decide the issue of retroactivity herein. We will proceed to consider the trial court's actions under both the advisory and presumptive sentencing schemes.

#### A. Advisory Sentencing Scheme

Goodman entered a plea agreement with the State on August 30, 2005. The trial court accepted Goodman's guilty plea and sentenced him to seventy-eight years on September 27, 2005. Because Goodman was convicted and sentenced after April 25, 2005, pursuant to Weaver, he would be subject to the advisory sentencing statutes. Under our advisory sentencing scheme, the trial court could impose any sentence within the statutory range regardless of the presence or absence of any aggravating or mitigating circumstances. Indiana Code section 35-50-2-4 provides that a person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years with the advisory sentence being thirty years. The trial court sentenced Goodman to forty-eight years for his Class A felony robbery conviction. Indiana Code section 35-50-2-5 states that a person who commits a Class B felony shall be imprisoned for a fixed term of between six and twenty years with the advisory sentence being ten years. Goodman was sentenced to seventeen years for his Class B felony robbery conviction. A person who commits a Class C felony shall be imprisoned for a fixed term of between two and eight years with the advisory sentence being four years. Indiana Code section 35-50-2-6(a). The trial court sentenced Goodman to seven years for his Class C felony robbery conviction and six years for his Class C felony forgery conviction. Because each of the sentences imposed by the trial court was within the statutory

range for that particular offense, Goodman cannot successfully challenge his sentence as an abuse of the trial court's discretion. Therefore, the trial court properly sentenced Goodman under the advisory sentencing scheme.

### B. Presumptive Sentencing Scheme

Under the presumptive sentencing scheme, the finding of mitigating factors is within the discretion of the trial court. Wilkie v. State, 813 N.E.2d 794, 799 (Ind. Ct. App. 2004), trans. denied. A trial court is not required to give the same weight or credit to mitigating evidence as the defendant would. Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005).

Goodman first argues that the trial court should have found his remorse to be a mitigating circumstance. At the sentencing hearing, Goodman stated:

First of all, I understand, you know, the victims got hurt and all that. I apologize to the Court as well as the victims. At the time, I was under the influence of drugs. I feel like any person who never experienced what drugs really do to you would never know the effect it would have on you or what it would cause you to do. Being if I'd have been in my right state of mind, I knew [sic] I wouldn't have did [sic] what I did.

Transcript of Sentencing Hearing at 61. With regard to his robbery of Milojkovitch, Goodman said:

And as far as the other victim, as far as her purse being taken out of the van, it was just a spur-of-the-moment thing. I was under the influence of drugs. . . . I just happened to see the purse sitting there. Didn't know her daughter was inside of the van, and I felt like just snatching real quick [sic] and get out and go get some drugs or something. That was all on me. So basically, I just want to apologize for that and what it may have put her daughter through.

Id. at 62. Goodman contends that through these statements he expressed his remorse.

Although Goodman apologized to the victims, he never took responsibility for his actions. Goodman indicated that he committed the multiple crimes at issue here because he was under the influence of drugs. In Stout v. State, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005), trans. denied, we held that the trial court did not err in refusing to find Stout's alleged remorse to be a mitigating factor where Stout blamed his conduct in part on a prescription drug problem. Considering that Goodman blamed his conduct on his being under the influence of drugs, we cannot say that the trial court erred in refusing to find Goodman's expression of remorse to be a mitigating factor.

Goodman next asserts that the trial court should have found his addiction to drugs to be a mitigating circumstance. Goodman takes issue with the following statement made by the trial court judge at the sentencing hearing:

[T]here comes a point in our laws, in our society where we believe—and it doesn't happen very often. It hasn't happened very often with me. But there does come a point where people should just be taken out of society. And I agree with that statement generally speaking. We don't reach that point very often because I try to find something good in people. I try to find something that's proper, something that perhaps I can hang my own hat and say well, maybe there is something about you that—or maybe we should give you a break. Sometimes that falls in the realm of well, you are so addicted to drugs that if you go through some drug programs, maybe, you know, you are salvageable. Maybe you can do well. But as [the defense attorney] knows because she's heard me say it before and [the prosecutor] as well, anyone who practices in this courtroom, I have said before, you can never—I would never allow anyone to use the drug addiction as a mitigating factor. It would be absolutely improper for us as a society to allow a defendant to come in here and say I committed these crimes because I was addicted to drugs; and therefore, Judge, give me a break. And sometimes we will work with someone. We will go through drug programs. We will go through long-term probation. But when that drug program gets to the level of being a menace to our society, when that drug problem gets to the point of you begin to hurt people, harm people, and you do it often enough, then that drug problem is a

wash. And I think that we have reached that level with you, Mr. Goodman. I think to the extent that [the prosecutor] cites that you are a menace to that, that you should be taken out of society. It is unfortunate, but I agree. I absolutely agree. I think that you have lost your privilege to be a walking member of our society.

Tr. of Sentencing Hearing at 66-68 (emphasis added). Goodman specifically focuses on the highlighted language. He contends that the trial court's "predisposition to not consider Goodman's addiction . . . removes the sentencing from an individualized focus and balancing of all the mitigating and aggravating factors, and instead reflects a personal philosophical or political message." Brief of Appellant at 4 (emphasis in original).

Goodman principally relies on Beno v. State, 581 N.E.2d 922 (Ind. 1991), to support his position. In that case, the trial court judge noted during sentencing that part of his motivation for making the sentences consecutive was to make an example of Beno to other drug dealers. Our supreme court stated, "We do not believe, however, that a trial judge should be allowed to use the sentencing process as a method of sending a personal philosophical message. A trial judge's desire to send a message is not a proper reason to aggravate a sentence." Id. at 924.

Here, had the trial court judge simply stated that he would never consider a defendant's drug addiction a mitigating circumstance, this would have been improper. However, that is not what the trial court judge did. The trial court judge conducted a more individualized analysis. He stated that Goodman's problems with drug addiction had caused him to harm other people and become a menace to society. The trial court judge believed that Goodman's issues with drug addiction were to such an extent that he needed to be

removed from society. For these reasons, the trial court judge determined that Goodman's drug addiction was not a mitigating circumstance.

We agree with this conclusion. Goodman was aware of his drug problem and never sought treatment for his addiction. In Bryant v. State, 802 N.E.2d 486 (Ind. Ct. App. 2004), trans. denied, Bryant argued that the trial court should have considered his history of drug abuse a mitigating circumstance rather than an aggravating factor. We noted that Bryant was aware of his drug problem, and yet, "had not taken any positive steps to treat his addiction." Id. at 501. Based on this, we held that the trial court did not err in concluding that Bryant's substance abuse was an aggravating factor. Because the trial court here could have, under Bryant, properly considered Goodman's drug addiction an aggravating factor, we see no reason why it should have found this fact to be a mitigating circumstance. Therefore, the trial court properly refused to find Goodman's drug addiction to be a mitigating circumstance.

Goodman also argues that the trial court did not give sufficient weight to his guilty plea. He asserts that his expression of remorse and acknowledgment of his drug addiction should bolster the weight of his guilty plea. We have held that a defendant's expression of remorse and acknowledgment of his drug addiction bolsters the mitigating weight of his guilty plea. See Hope v. State, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). We, though, have already determined that the trial court properly refused to find Goodman's drug addiction and his expression of remorse to be mitigating circumstances. Therefore, these facts did not bolster the mitigating weight of his guilty plea.

The trial court properly concluded that Goodman's guilty plea was not entitled to significant mitigating weight. We have previously stated that "a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one." Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied. Here, in exchange for Goodman's guilty plea, the State agreed to dismiss the aggravated battery as a Class B felony charge under FA-10, all of the charges under FB-23, the fraud on a financial institution as a Class C felony charge under FC-41, and all four of the habitual offender charges. The dismissal of these charges was a substantial benefit to Goodman, and thus, Goodman's guilty plea was not entitled to significant mitigating weight.

Ultimately, we conclude that the trial court properly determined that the aggravating factors outweighed the mitigating circumstance. Goodman's criminal history is extensive and includes four juvenile adjudications, nine adult felony convictions, and one misdemeanor conviction. The weight of this aggravating circumstance alone justified the trial court's enhancement of Goodman's sentences. Therefore, the trial court properly sentenced Goodman under the presumptive sentencing scheme.

### III. Inappropriate Sentence

Although Goodman does not specifically raise this argument, because he contends that his sentence was improper, we will consider whether his sentence was inappropriate. Under Article VII, Section 6 of the Indiana Constitution, we have the constitutional authority to review and revise sentences. Bennett v. State, 787 N.E.2d 938, 949 (Ind. Ct. App. 2003),

trans. denied. However, we exercise with great restraint our responsibility to review and revise sentences, recognizing the special expertise of the trial bench in making sentencing decisions. Id. A sentence authorized by statute will not be revised unless it is inappropriate in light of the nature of the offense and the character of the offender. Id. (citing Ind. Appellate Rule 7(B)).

We begin by considering the nature of Goodman's offenses. Between March 2 and March 9, 2005, Goodman engaged in something of a crime spree. On March 2, 2005, he and an accomplice robbed Dreiser, an eighty-three-year old woman who broke her hip during the course of the robbery. On March 5, 2005, Goodman robbed Armstrong by taking her purse. During the course of the robbery, Armstrong was injured when Goodman pushed her into a rail. Later that day, Goodman robbed Milojkovitch of her purse in front of Milojkovitch's eleven-year old daughter. On March 9, 2005, Goodman forged one of Milojkovitch's checks and tried to cash it. Goodman stated that during each of these events he was under the influence of drugs and intended to use the money he stole to purchase more drugs. The nature of Goodman's offenses was serious.

As to Goodman's character, he did apologize to the victims and he appears to be addicted to drugs. Nevertheless, Goodman's criminal history is extensive and reflects negatively on his character. Goodman has four juvenile adjudications, nine adult felony convictions, and one misdemeanor conviction. Five of his felony convictions are for theft or auto theft, and two of his convictions are for robbery. These convictions are substantially similar to the crimes at issue here.

Considering Goodman's extensive criminal history and the nature of his offenses, we cannot say that his sentence was inappropriate.

Conclusion

The trial court properly refused to find that Goodman's remorse and his addiction to drugs were mitigating circumstances. Goodman's sentence was not inappropriate in light of his character and the nature of his offenses. Goodman's sentence is therefore affirmed.

Affirmed.

SHARPNACK, J., and NAJAM, J., concur.