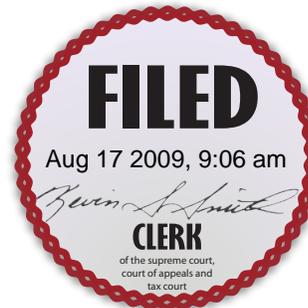


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MILO WALKER, JR.,)
)
Appellant-Defendant,)
)
vs.) No. 45A04-0901-CR-48
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Judge
Cause Nos. 45G04-0803-FA-10, 45G04-0803-FA-11,
45G04-0803-FB-23 & 45G04-0803-FB-28

August 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Milo Walker, Jr. challenges the trial court's imposition of a forty-year sentence after he pled guilty to two counts of Class A felony robbery and two counts of Class B felony robbery. Specifically, Walker contends that his sentence is inappropriate in light of his character and the nature of his offenses. Concluding that Walker has failed to persuade us that his sentence is inappropriate, we affirm.

Facts and Procedural History

On September 25, 2007, in Lake County, Indiana, Walker and another man approached Robert Williams, who was washing his car at a carwash. The two men robbed Williams using a handgun and stole his "keys, navigation system, and money." Appellant's App. p. 27. Williams was fifty-two at the time of the robbery.

On October 28, 2007, in Lake County, Indiana, Walker, Brandon Green, and Landon Shaw robbed Floyd and Rose Deen. During the robbery, Floyd was struck in the head, and some of his teeth were knocked out. Floyd was knocked unconscious by the blow. Rose was pushed into a lawnmower as she struggled to maintain control of her purse and had to undergo physical therapy for six months after the attack. Walker, along with Green and Shaw, took "money, credit cards, and identification from the Deens." *Id.* At the time of the robbery, Rose was seventy-seven and Floyd was seventy-three.

On November 14, 2007, in Lake County, Indiana, Walker approached Pauline Kovich, put a gun to her head, and demanded her purse. He stole Kovich's purse, "which contained money and credit cards." *Id.* at 26. Kovich later identified Walker through a photo line-up. Kovich was seventy-five at the time of the robbery.

On February 27, 2008, in Lake County, Indiana, Walker and Green approached Rosalinda Ortega in her backyard. Ortega was struck in the head and lost consciousness. As a result of the incident, “Ortega suffered severe swelling to the left side of her face and a cut lip.” *Id.* Walker and Green “took the keys to her house, work, and garage.” *Id.* Ortega was fifty-six at the time of the robbery.

On March 18, 2008, Walker was charged with Class A felony robbery under cause number 45G04-0803-FA-00010 (“FA-10”). He was also charged with Class A felony robbery, Class B felony robbery, and Class C felony battery under cause number 45G04-0803-FA-00011 (“FA-11”). On March 20, 2008, Walker was charged with Class B felony carjacking and Class B felony robbery under cause number 45G04-0803-FB-00023 (“FA-23”). On March 27, 2008, he was charged with Class B felony robbery under cause number 45G04-0803-FB-00028 (“FA-28”).

At the guilty plea hearing, in a stipulated plea agreement, Walker pled guilty to the following: (1) Class A felony robbery¹ under cause number FA-10, (2) Class B felony robbery² under cause number FA-28, (3) Class A felony robbery³ under cause number FA-11, and (4) Class B felony robbery⁴ under cause number FA-23. The parties agreed that Walker would serve his sentence at the Indiana Department of Correction and that he would be sentenced to twenty years on cause number FA-10, six years on cause number FA-28, twenty years on cause number FA-11, and six years on cause number FA-23. The

¹ Ind. Code § 35-42-5-1.

² *Id.*

³ *Id.*

⁴ *Id.*

plea agreement left to the trial court's discretion whether to order concurrent or consecutive sentences. In exchange, the State agreed to dismiss the remaining charges.

At the sentencing hearing, the trial court heard testimony from Walker, Walker's mother, and some of his victims. The trial court then considered "aggravators and mitigators as it relates to concurrent versus consecutive sentencing." Sent. Tr. p. 83. The trial court identified the following aggravating circumstances: (1) Walker's conditional discharge for a prior misdemeanor,⁵ (2) the ages of the complaining witnesses at sentencing,⁶ and (3) the facts that the victims were less capable of defending themselves than Walker, violence and weapons were used in the commission of the crimes, and the victims were injured. In addition, the trial court identified the following mitigating circumstances: (1) Walker's guilty plea and acceptance of responsibility, (2) Walker was twenty-five at the time of sentencing, (3) Walker's family support, (4) Walker's lack of significant criminal history, and (5) Walker's use of alcohol and drugs at the time of the offenses. After finding that the aggravating factors outweighed the mitigating factors, the trial court, pursuant to the provisions of the plea agreement, imposed a forty-year sentence.⁷ Walker now appeals.

⁵ Walker has a prior misdemeanor conviction for disorderly conduct, for which he received a one-year conditional discharge and twenty hours of community service. PSI p. 4.

⁶ At the sentencing hearing, Ortega, Rose, Floyd, and Kovich testified.

⁷ Specifically, the trial court ordered Walker to serve consecutive twenty-year sentences for cause number FA-10 and cause number FA-11. The trial court ordered the two six-year sentences for Class B felony robbery (FB-23 and FB-28) to run concurrent to FA-10. On January 7, 2009, Walker filed a "Motion to Consolidate Appeals." Appellant's App. p. 31-32. The motion was granted by the trial court, and the appeals were consolidated under cause number FA-10. *Id.* at 34.

Discussion and Decision

Walker contends that his forty-year sentence is inappropriate based on the nature of his offenses and his character. Further, Walker invites us to “reweigh” the mitigating factors in light of his character.⁸ Appellant’s Br. p. 7. Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The burden is on the defendant to persuade us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offenses, Walker admits that his conduct was serious. However, this categorization of his crimes is an understatement. The trial court was disturbed by the fact that Walker committed four robberies in six months and chose victims based on their age. His actions are particularly egregious in light of the fact that violence and weapons were used and that several of his victims suffered serious injuries.

As for Walker’s character, we acknowledge, as did the trial court, that his criminal history is minimal. Walker contends that his character “warranted the imposition of fully concurrent, rather than partially consecutive, sentences.” Appellant’s Br. p. 8. Walker’s

⁸ Walker asks us to reweigh the aggravating and mitigating factors, which we may not do pursuant to *Anglemyer v. State*. 868 N.E.2d 482, 491 (Ind. 2007) (“Because the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.”), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007).

argument that the trial court should have imposed concurrent sentences is based on his contention that he expressed remorse at sentencing. At sentencing, although Walker apologized to the court and the victims of his crimes, he merely admitted to participating in the crimes and blamed his conduct on his situation and the people around him. Sent. Tr. p. 76-77. As such, the trial court noted, “[N]obody wants to admit they are the ones that hit these individuals. Everybody is blaming everybody else.” *Id.* at 73. Further, the trial court asked Walker why he continued to participate in the robberies if he knew what he was doing was wrong and that people were getting hurt. Again, he responded by blaming his actions on the influences around him. The trial court did not consider Walker’s expression of remorse to be mitigating. *See Ricci v. State*, 894 N.E.2d 1089, 1095 (Ind. Ct. App. 2008) (stating that a defendant’s actions may reflect unfavorably on his capacity for remorse and show diminished acceptance of responsibility), *trans. denied.*

Walker pled guilty to committing four robberies in a span of six months. In each instance the victims were chosen because of their age, and violence was used to commit the offenses. While we acknowledge Walker’s minimal criminal history before his string of criminal activity, the frequency and severity of his recent actions reflect a disregard for the law and the lives of others. In conclusion, Walker has failed to persuade us that his forty-year sentence is inappropriate in light of his character and the nature of his offenses.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.