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**IN THE  
COURT OF APPEALS OF INDIANA**

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MICHAEL HANEY, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A04-0902-CR-90

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Mark Stoner, Judge  
Cause No. 49G06-0809-FB-221124

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**August 19, 2009**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Michael Haney (“Haney”) pleaded guilty in Marion Superior Court to Class B felony criminal confinement. Haney was sentenced to twenty years, with ten years executed and ten years suspended. He now appeals his twenty-year sentence arguing that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

### **Facts and Procedural History**

On September 24, 2008, Haney was charged with Class B felony criminal confinement, Class C felony stalking, Class D felony stalking, Class C felony battery, Class A misdemeanor battery, and two counts of Class D felony intimidation. Three months later, Haney pleaded guilty to Class B felony criminal confinement and the State agreed to dismiss the remaining counts. The only provision in the plea agreement concerning sentencing was a ten-year cap on executed time.

At the guilty plea hearing, Haney admitted that during an argument with his ex-girlfriend, Haney punched her, forced her to the ground, sat on top of her, and repeatedly “banged” her head into the concrete. As a result, the victim suffered skull fractures, a nasal fracture, a laceration on her face, and bruising on her face and arms. Tr. p. 19.

A sentencing hearing was held on December 10, 2008. The trial court considered Haney’s guilty plea and mental health issues as mitigating circumstances. The court found the following aggravating circumstances: Haney’s prior criminal history, which includes ten adult criminal convictions and four probation revocations, Haney’s statement to the probation officer during the pre-sentence investigation, and Haney’s failure to pay child support. The court concluded that the aggravating circumstances

outweighed the mitigating circumstances and ordered Haney to serve twenty years, with ten years executed and ten years suspended. Tr. pp. 48-51. Haney now appeals. Additional facts will be provided as necessary.

### **Discussion and Decision**

Haney argues that his twenty-year sentence, with ten years executed and ten years suspended, is inappropriate in light of the nature of the offense and the character of the offender. Pursuant to Indiana Appellate Rule 7(B), our 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.” The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

A Class B felony conviction subjects the offender to a sentence in the range of six to twenty years, with the advisory sentence being ten years. Ind. Code § 35-50-2-5 (2004 & Supp. 2009). Haney was sentenced to ten years executed and ten years suspended for the Class B felony criminal confinement conviction.

Haney challenges only the executed portion of his sentence and argues, “the ten-year executed sentence was not appropriate because it failed to properly address the mental health issues that are at the root of Mr. Haney’s unlawful behavior.” Appellant’s Br. at 5.

Initially, we observe that the trial court did consider Haney’s mental health issues in its sentencing determination. The court stated that it considered as a mitigating circumstance Haney’s “significant mental health issues and ... [his] need of significant

mental health treatment, as documented by the Pre-Sentence Report in terms of previous mental health instances, as well as previous suicide attempts.” Tr. p. 50. However, the court also noted that Haney has been given the opportunity to receive substance abuse and mental health treatment, and his failure to take advantage of those opportunities resulted in the revocation of his probation.

The trial court weighed Haney’s mental health issues against his extensive criminal history, which includes convictions for misdemeanor resisting law enforcement, misdemeanor theft, three misdemeanor battery convictions, three misdemeanor alcohol related offenses, misdemeanor possession of marijuana, and Class D felony criminal recklessness. As a result of these numerous offenses, Haney was placed on probation on five occasions, and his probation was revoked four times. Also, as a juvenile, Haney was adjudicated a delinquent child for committing rape.

The trial court also noted Haney’s statement to a probation officer during the pre-sentence investigation that because the victim looked like she was afraid of Haney, he became angry. Haney said, “That pissed me off. Hell, I hit her before why wouldn’t I hit her again.” He also stated multiple times, “I should have shot her” and admitted that he “shove[d] her head into the cement.” Pre-Sentence Investigation Report p. 13.

Haney has demonstrated a consistent inability to live a law-abiding life and has refused opportunities to participate in mental health treatment when offered to him. His lack of remorse for his commission of the offense to which he pleaded guilty also reflects poorly on his character. The offense was brutal and resulted in serious injury to the victim including skull fractures. Haney admits that “nothing about the offense lends

itself to lenient sentencing[.]” Br. of Appellant at 4. For all of these reasons, we conclude Haney’s twenty-year sentence, with ten years executed and ten years suspended, is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

DARDEN, J., and ROBB, J., concur.