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IN THE
COURT OF APPEALS OF INDIANA

GLENN EDMOND,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0902-CR-99
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas J. Stefaniak, Jr., Judge
Cause No. 45G04-0808-MR-5

September 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Glenn Edmond[1] appeals the sentence imposed following his conviction for Voluntary Manslaughter, as a Class A felony, pursuant to a plea agreement. Edmond raises a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

In August 2008, Edmond was living with his parents, Willie and Georgeann Edmond, in Gary. On August 11, Edmond, while intoxicated, argued with his father and stabbed him multiple times. Lieutenant Jeff Trevino of the Gary Police Department responded to a call regarding a possible stabbing. Upon arriving at the Edmond home, he found Willie Edmond with stab wounds to his head, neck, and chest. Paramedics found no signs of life, and the coroner's officer pronounced Willie Edmond dead at the scene.

On August 13, the State charged Edmond with murder for the stabbing death of his father. On October 28, the parties filed a Stipulated Plea and Agreement with an attached Stipulated Factual Basis. The Stipulated Factual Basis provides that Edmond lived with his parents, that the officer called to the scene heard Edmond admit to "hurting his father[,]" and that Edmond "admitted to arguing with [the] victim and during this argument [Edmond] grabbed a knife and stabbed the victim multiple times." Appellant's App. at 22. Under the plea agreement, the State agreed to amend the information to

[1] The parties spell the appellant's last name as "Edmund," but the trial court documents, including the Pre-Sentence Investigation and the appellant's signature on Stipulated Factual Basis, use the spelling "Edmond."

charge Edmond with voluntary manslaughter, as a Class A felony, and to dismiss the murder charge, and Edmond agreed to plead guilty to voluntary manslaughter. The parties reserved the right to fully argue their respective positions regarding sentencing. On the same date, the State also filed the amended information, charging Edmond with voluntary manslaughter, and a motion to dismiss the murder charge.

At the sentencing hearing on January 13, the trial court accepted the plea agreement and entered judgment of conviction for voluntary manslaughter, as a Class A felony. The court made the following statement before sentencing Edmond:

> Court: The Court finds in mitigation that the defendant pled guilty and accepted responsibility to Voluntary Manslaughter, a class A felony, in Count II, with Murder in Count I being dismissed as a result.
>
> It is important for this Court to note, because it was argued by counsel, that the Court is expressly rejecting the implication that the defendant has some mental disease or defect. The Court finds that there is no credible evidence before this Court that the defendant has any mental disease or defect or mental illness. And there is no evidence before the Court so the Court is expressly rejecting that mitigator.
>
> The Court is expressly rejecting the mitigator of the defendant's having a drug addiction. Because, number one, the defendant did not indicate that in the presentence report, at least not to crack cocaine. And today, he just told me he was only under the influence of alcohol and he did not ingest any drugs on the night in question, August 11, 2008. So the Court specifically finds that this crime was not committed as a result of being high on drugs, but the defendant was under the influence of alcohol.
>
> [Defense counsel]: Your Honor, may I interrupt you, please? My comments about the drug use and rehabilitation at Edgewater were not a mitigator in the sense that he was under the influence of drugs when he did it, but it was a comment on his character. That his character was good enough to recognize the problem and try to treatment [sic] the addiction.
> Court: That wasn't a shot at you. That was me making a record in case a higher court reviews this to make sure that I thought through the possibility that there were drugs and/or alcohol involved.

[Defense counsel]: Will you consider my argument for the character issue?

Court: Yes.

[Defense Counsel]: I hope you haven't rejected that.

Court: I have not.

* * *

Court: In aggravation, the Court finds that the defendant has a criminal record as follows: In 1997, the defendant was arrested for three counts of Battery as misdemeanors. And as the facts of that case got flushed [sic] out today, that involved a knife. The defendant got or was involved in a family dispute at that time. Involving that knife [sic], members of the family were injured. And he was ordered, as a result of being found guilty, to complete a domestic violence program. And in 1998 [he] was discharged satisfactorily.

In the year 2000, the defendant was arrested for Disorderly Conduct and Resisting Law Enforcement. [He w]as convicted and got six months in the County jail, suspended six months of probation, and got ordered to go to counseling.

Later that year, the defendant was arrested for two counts of Battery, as misdemeanors, got convicted, and was sentenced to 365 days in the Lake County jail.

In 2002, the defendant was arrested for Battery and received a deferred prosecution. This offense occurred thereafter.

In further aggravation, the Court finds that prior leniency has not deterred the defendant's criminal behavior, in that the defendant has been given ample opportunity from the court system at a break and given the chance to go to counseling on two occasions. And, in fact, the defendant was in an alcohol and drug program at the time this offense was committed.

The probation that the defendant was given for the three prior Batteries involving a knife of [sic] other family members[] was not enough of a deterrent for the defendant to not have committed this crime that he stands convicted of now.

In further aggravation, the Court finds that the victim in this case was 78 years of age. In further aggravation, the Court finds that Willie

> Edmond was not under the influence of alcohol, per State's Exhibit 5. And if he did, in fact, consume any alcohol at all that night, it would have been on a social basis like one of the family members testified was his habit to drink socially. And that if there was any alcohol in his system, it dissipated and did not cause his or [a]ffect his behavior and/or ability to function at the time of the crime.
>
> After considering the aggravating factors and the mitigating factors, the aggravating factors outweigh the mitigating factors. And, Mr. Edmond, I sentence you, sir, to thirty-five (35) years in the Indiana Department of Correction.

Appellant's App. at 110-15. Edmond now appeals.

DISCUSSION AND DECISION

Edmond contends that his sentence is inappropriate in light of the nature of the offense and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met

th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration original).

Indiana Code Section 35-42-1-3(a) defines voluntary manslaughter in relevant part as follows: "A person who knowingly or intentionally . . . kills another human being . . . while acting under sudden heat commits voluntary manslaughter, a Class B felony. However, the offense is a Class A felony if it is committed by means of a deadly weapon." The sentence for a Class A felony is a fixed term between twenty and fifty years, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4.

Here, the court sentenced Edmond to thirty-five years for the offense. Edmond asserts that his sentence is inappropriate in light of the nature of the offense. In support, he argues that he "was drunk, got into an argument with his father, grabbed a knife and stabbed him five times, killing Willie Edmond. This was an impulsive act for which [Edmond] had no explanation and little recollection of the details immediately before the offense." Appellant's Brief at 6-7.

Edmond cites Duncan v. State, 857 N.E.2d 955 (Ind. 2006), in support of his contention that his sentence should be revised under Appellate Rule 7(B). There, the Indiana Supreme Court held that a sixty-five year sentence for felony murder, arising from methadone poisoning of a two-year-old child, was inappropriate. The poisoning occurred after Duncan gave one-quarter of a pill from her prescription methadone to her grandchild. A jury found Duncan guilty of felony murder, reckless homicide, dealing in a Schedule II controlled substance, and neglect of a dependent. The trial court sentenced her under the former presumptive sentencing scheme and enhanced the sentence in part

using aggravators that violated Blakely v. Washington, 542 U.S. 296 (2004), and in light of a "relatively minor criminal history." Duncan, 957 N.E.2d at 960. On appeal, our supreme court found that "it was only through a series of stretches that [Duncan's] conduct [fell] under the felony murder statute." Id. The court also found that Duncan's offense was no "more serious than the average murder" and, therefore, revised her sentence to the minimum for murder, forty-five years. Id. at 960-61.

Relying on Duncan, Edmond argues that his offense, stabbing his elderly father in a drunken rage, is similarly "not more serious than the typical voluntary manslaughter." Appellant's Brief at 7. But Duncan involved a finding of guilty on multiple charges, which resulted in a conviction and sentence for the greater offense of felony murder. Here, through the plea agreement, Edmond negotiated the dismissal of the murder charge and pleaded guilty to the lesser offense of voluntary manslaughter. Duncan is inapposite. Moreover, Edmond does not explain what the "typical" voluntary manslaughter would look like. Thus, Edmond has not shown that his sentence is inappropriate on that basis.

Regarding the nature of the offense, an intoxicated Edmond and his father argued at a family gathering. As a result of the argument, Edmond attacked his seventy-eight-year-old father, who had no alcohol in his system at the time, stabbing the victim five times. Edmond's father was dead by the time paramedics arrived. There is no evidence in the record that Edmond's father was the aggressor or that Edmond was acting in self-defense. And Edmond could not remember the reason for the argument immediately following the incident or at sentencing. Edmond's sentence, well under the maximum for a Class A felony, is not inappropriate in light of the nature of the offense.

Edmond's character also does not support his contention that his sentence is inappropriate. As noted by the trial court, Edmond had a 1997 misdemeanor conviction for alcohol-related knife attacks on family members, a 2000 misdemeanor conviction for battery, and a 2002 arrest for battery with deferred prosecution. In those cases, he had been sentenced to domestic violence counseling, which he had completed; a sentence suspended to probation with counseling; and 365 days in the Lake County jail. He was also granted a deferred prosecution in the 2002 battery case. And at the time of the instant offense, Edmond was in alcohol and drug treatment. As the trial court noted at sentencing, Edmond "was given ample opportunity from the court system at a break [sic] and given the chance to go to counseling on two occasions. And, in fact, [he] was in an alcohol and drug program at the time this offense was committed." Appellant's App. at 113-14.

There is also evidence in the record to show that Edmond's history of violence while drinking is not limited to his criminal history. Edmond's sister testified that "[w]hen [he] would drink excessively, his anger would get out of control. And at times [she] would find out that he was hitting [his] mother and father." Id. at 48. Edmond's victim, his father, was one person who had always supported Edmond and "stood by him even when nobody else stood by him." Id. at 51. Edmond failed to take advantage of the opportunities to correct his behavior, and his victim was his elderly father, one of the few people who had supported him unconditionally. We cannot say that Edmond's sentence is inappropriate in light of his character.

Affirmed.

KIRSCH, J., and BARNES, J., concur.