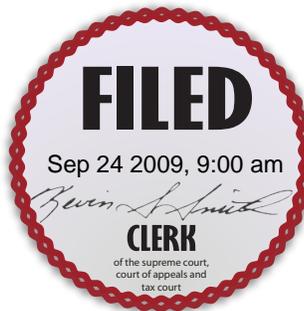


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KEITH ORMAN HAWKINS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 45A05-0904-CR-214

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0809-FD-32

September 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Keith Hawkins pled guilty without a plea agreement to robbery as a Class A felony, two counts of aggravated battery as a Class B felony, and one count of battery as a Class C felony for his part in the robbery of a pizza delivery person. The trial court accepted the plea and sentenced Hawkins to thirty-two years in the Department of Correction. Hawkins contends that his sentence is inappropriate in light of the nature of the offense and his character. Concluding that his slightly aggravated sentence is not inappropriate in light of the serious injuries sustained by the victim and his juvenile record, we affirm.

Facts and Procedural History

On February 4, 2009, Hawkins pled guilty without the benefit of a plea agreement to robbery as a Class A felony,¹ two counts of aggravated battery as a Class B felony,² and one count of battery as a Class C felony.³ At the guilty plea hearing, the State laid a factual basis, establishing that on August 30, 2008, Hawkins, his mother, Tamatha Hawkins, and his mother's boyfriend, Joseph Zeld, planned to order pizzas to an abandoned house in Lake County so that they could steal the pizzas from the pizza delivery person. Tamatha gave Hawkins and Zeld a "Club" steering wheel lock device. When the young woman delivering the pizzas, Samantha Sayre, arrived at the house, Hawkins met Sayre on the street and directed her to the back of the house, where Zeld was waiting. The men then struck Sayre with the Club twice, first on the head and then

¹ Ind. Code § 35-42-5-1.

² Ind. Code § 35-42-2-1.5(1), (2).

³ Ind. Code § 35-42-2-1(a)(3).

again at the same spot, striking the hand that Sayre had raised to her head to protect herself. The blows fractured Sayre's skull and shattered the bones in her hand. The men then took the pizza and fled. Hawkins later ate some of the pizza. Tr. p. 19.

The trial court accepted the guilty plea. At the sentencing hearing, Sayre and Sayre's father testified. Sayre, twenty-one at the time of the attack, testified about the extent of her injuries. The blow to her head required physicians to install a permanent metal plate and screws to her skull and left her scarred across her forehead, absent-minded, and suffering from frequent headaches. The blow to her hand required physicians to insert pins, which were later removed, but her hand did not heal normally and is now deformed. The court then questioned Sayre about the attack. Sayre testified that she was delivering three party-size pizzas to the home at about 10:00 that Saturday night. When she arrived, Hawkins helped her take the pizzas out of the van and directed her to carry the pizzas to the back of the house. Hawkins and Zeld, who was waiting in the back, then told her to put the pizzas down next to a tree while he retrieved the money to pay from inside the home. Sayre had put the pizzas down and was walking back toward the house when she was struck. Sayre believed that it was Hawkins who struck her because he was standing to her right and she was struck on the right. Sayre's father testified that before the attack, Sayre was at the top of her class and "the sharpest tool in the shed." *Id.* at 40. Now, Sayre cannot maintain her concentration and easily gets confused.

Before pronouncing sentence, the trial court gave Hawkins an opportunity to speak. Hawkins denied that he was the person who struck Sayre but admitted that he had

been smoking crack right before the robbery. Hawkins explained that Zeld had the Club so that they could “protect” themselves rather than “harm the victim.” *Id.* at 51.

The trial court merged the two aggravated battery counts and the battery count into the robbery count. The trial court identified several mitigating and aggravating factors and concluded that the aggravators outweighed the mitigators. The trial court then sentenced Hawkins to thirty-two years in the Department of Correction.⁴ Hawkins now appeals.

Discussion and Decision

On appeal, Hawkins argues that his slightly aggravated sentence is inappropriate in light of the nature of the offense and his character. In reviewing the imposition of a trial court’s decision, 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 v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007)). 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)).

Regarding the nature of the offense, Hawkins, high on crack, conspired with his mother and her boyfriend to lure a pizza delivery person to an unoccupied location so that

⁴ The advisory sentence for a Class A felony is thirty years, with a minimum of twenty years and a maximum of fifty years. Ind. Code § 35-50-2-4.

they could rob the person of three pizzas. Hawkins and Zeld accepted a Club from Tamatha to use during the robbery. The victim testified that she believed that Hawkins hit her the second time because she was hit from the right and he was standing on her right. And Sayre suffered serious injury as a result of the attack. The blow to her head fractured her skull, which required doctors to install a permanent metal plate in her head. Sayre now suffers from headaches and a loss of concentration. The blow to her hand resulted in surgery and permanent deformity. Hawkins tries to minimize his role in these events. But we cannot say that his sentence is inappropriate in light of the serious nature of the crime Hawkins, Tamatha, and Zeld committed to obtain three pizzas. *See Eversole v. State*, 873 N.E.2d 1111, 1114 (Ind. Ct. App. 2007) (examining nature of the offense and concluding that the crime was extreme under the circumstances), *trans. denied*.

Regarding the character of the offender, Hawkins was only eighteen years old at the time of sentencing but has a juvenile record. In October 2006, he pled guilty to criminal trespass. In March 2007, he pled guilty to possession of alcohol by a minor. In April 2007, he pled guilty to fleeing law enforcement. He was on probation for the 2007 offenses when he committed this robbery. These contacts with the juvenile justice system provided him with opportunities to modify his behavior, but apparently they did not succeed. *See Pitts v. State*, 904 N.E.2d 313, 323 (Ind. Ct. App. 2009), *trans. denied*. To Hawkins' credit, he did plead guilty to the instant crimes. He also suffers from mental illness. But, on balance, we conclude that his slightly aggravated sentence is not inappropriate in light of the nature of the offense and his character.

Affirmed.

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