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IN THE
COURT OF APPEALS OF INDIANA

BRUCE A. WHITE, JR.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 20A03-1101-CR-28
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-1003-MR-1

October, 13, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Bruce A. White, Jr. ("White") was convicted of murder in the Elkhart Circuit Court and sentenced to an executed term of sixty-five years in the Department of Correction. White appeals and raises two issues, which we restate as:

> I. Whether the State presented sufficient evidence to rebut White's self-defense claim; and
>
> II. Whether White's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On the evening of July 25, 2009, White, Charles Farrell ("Farrell"), and an unidentified third man drove to Elkhart to purchase two kilos of cocaine from Alphonso James ("James") for a price of $64,000. The men met Daron Tuggle ("Tuggle") at a convenience store, and then followed Tuggle's vehicle to the Old Farm Apartments. Upon their arrival at the apartment complex, the group found James and Noble Dennie ("Dennie") waiting for them. Tuggle, White, and Farrell got out of their vehicles and joined James and Dennie, and all five men entered an apartment.

Once inside the apartment, James grabbed two packages of cocaine from a table. Farrell asked to look inside the packages, and Tuggle turned toward the kitchen to retrieve something to use to open them. At that time, Tuggle heard White tell James "give it up, Cuz." Tr. p. 331. Tuggle turned back around and saw that White was holding a gun to James's head. Tuggle took a step forward, and Farrell pulled out a gun and pointed it at Tuggle, telling him not to move. James struggled with White,

unsuccessfully attempting to disarm him. James then backed away as White continued to point the gun at him. Tuggle then heard a gunshot and James fell to the ground.

Multiple other shots were fired, and Dennie knocked Tuggle to the ground. When the gunfire stopped, Tuggle looked up and saw that only he and James remained in the apartment. Tuggle then got up and went over to check on James, who had been shot in the abdomen, but was still breathing. Tuggle called an ambulance, but James later died from the gunshot wound. A single .45 caliber bullet was recovered during James's autopsy. The police recovered seven .45 caliber shell casings, all of which were fired from one weapon, as well as six 9 mm shell casings, all of which were fired from one additional weapon. No gun was seen or found on or near James.

White suffered three gunshot wounds during the shooting, and he later sought treatment at a hospital in South Bend. White told the treating nurse that he was walking near a local restaurant and "minding his own business" when "these guys just came up and shot him." Tr. p. 585. The next morning, after reading about James's death in the newspaper, White fled to Indianapolis, where he stayed at a friend's house. A few months later, White returned to South Bend after he contacted an attorney and learned that no warrant had been issued for his arrest. Some time after returning to South Bend, White learned that a warrant had been issued for his arrest, and he fled to Atlanta, Georgia. While in Atlanta, White was pulled over for a traffic infraction, and he gave the officer false identifying information. White was arrested, and before being fingerprinted, he admitted to the Atlanta police that he had shot someone and there was a warrant for

his arrest in Indiana. Thereafter, White was extradited to Indiana and brought to the Elkhart County Jail.

On March 1, 2010, the State charged White with murder and felony murder. A three-day jury trial commenced on December 13, 2010, at which Tuggle testified for the State. At the conclusion of the evidence, White was found guilty of murder. The trial court held a sentencing hearing on January 6, 2011, and White was sentenced to an executed term of sixty-five years in the Department of Correction. White now appeals.

I. Self-Defense Claim

White first argues that the State presented insufficient evidence to rebut his self-defense claim. The standard for reviewing a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same standard used for any claim of insufficient evidence. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). We neither reweigh the evidence nor judge the credibility of witnesses. Id. If there is sufficient evidence of probative value to support the jury's conclusion, then the verdict will not be disturbed. Id.

"A valid claim of self-defense is legal justification for an otherwise criminal act." Id. To prevail on a self-defense claim, White must show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. See Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002); see also Ind. Code. § 35-41-3-2 (2004). When a

self-defense claim is raised and finds support in the evidence, the State need only negate one of the necessary elements. Wilson, 770 N.E.2d at 800.

In support of his claim that the State failed to rebut his self-defense claim, White alleges that Tuggle's eyewitness testimony was not credible and points to conflicting testimony concerning who instigated the violence. Specifically, White directs our attention to his own trial testimony that as he began laying out the money to pay for the drugs, James approached him and pressed a gun into his side. White testified that he pushed James away, and then he was shot by someone firing from the kitchen area of the apartment. According to White, he was shot again during the ensuing flurry of gunfire, and when he turned toward James, James was pointing a gun at him. White claims that he then pulled out his own gun and shot in James's direction and toward the kitchen before fleeing from the apartment.

White's argument in this regard is simply an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. Tuggle was an eyewitness to the shooting, and he testified that White pulled a gun on James during a robbery attempt. A struggle ensued, and White shot James as James attempted to back away. Tuggle's testimony was more than sufficient to establish that White instigated the violence and that he did not have a reasonable fear of death or great bodily harm. Therefore, the State presented sufficient evidence to rebut White's self-defense claim.

II. Sentencing

White also argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. Alvies v. State, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007)). This appellate authority is implemented 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." Anglemyer, 868 N.E.2d at 491. However, "we must and should exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007).

White committed murder, for which the sentence range is forty-five to sixty-five years, with an advisory sentence of fifty years. See Ind. Code § 35-50-2-3 (2004). The trial court sentenced White to the maximum sentence of sixty-five years. Generally, the maximum possible sentence is most appropriate for the worst offenders. Buchanan v.

State, 767 N.E.2d 967, 973 (Ind. 2002). This acknowledgement is not, however, an invitation to determine whether a worse offender could be imagined. Wells v. State, 904 N.E.2d 265, 274 (Ind. Ct. App. 2009), trans. denied. In stating that maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment, but this encompasses a considerable variety of offenses and offenders. Id. Thus, in our Appellate Rule 7(B) analysis, "[w]e concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." Id.

With regard to the nature of the offense, White argues that "[t]here is nothing about this offense that is particularly outrageous regarding the conduct of White that was above and beyond what is generally necessary to establish murder." Appellant's Br. at 20. We strongly disagree. White committed murder in a manner that endangered many innocent people, including young children. White repeatedly fired a gun inside an apartment complex, and bullets entered three other apartments, including one that was occupied. Moreover, White murdered James with a handgun he was carrying illegally and while attempting to rob James of large amount of cocaine. Thus, White engaged in multiple levels of criminality that ultimately resulted in the murder before us.

Considering the character of the offender, we note White's lengthy criminal history. As an adult, White has been convicted of Class C felony carrying a handgun

without a license and Class D felony possession of cocaine. White also has misdemeanor convictions for operating a vehicle while intoxicated and resisting arrest, and he has violated probation on three separate occasions. Additionally, as a juvenile, White was twice adjudicated delinquent, once for possession of cocaine and once for theft. And although White had been unemployed for over a year and was in arrears on his child support obligations at the time of the instant offense, by his own admission, he had $28,000 in his possession for the cocaine purchase, at least until he decided to rob James of the drug. White's actions after the murder also reflect poorly on his character. In an attempt to avoid facing the consequences of his crime, he fled from the scene of the crime, then from his city of residence, then from the state.

Accordingly, under the facts and circumstances before us, and giving proper deference to the trial court's sentencing discretion, we cannot conclude that the maximum sentence was inappropriate in this case. In light of the nature of White's offense and his character, White's executed sixty-five-year sentence for murder is not inappropriate.

Affirmed.

BAILEY, J., and CRONE, J., concur.