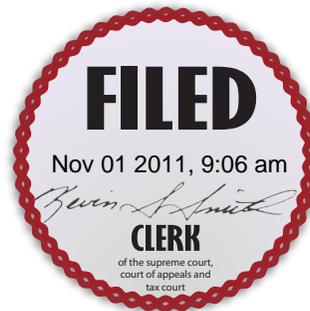


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IVERNON D. WISEMAN, JR.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-1103-CR-83

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr, Judge
Cause No. 45G04-1004-FB-29

November 1, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Ivernon D. Wiseman, Jr. appeals his sentence of sixteen years and eight months for Class C felony criminal confinement, Class D felony residential entry, and habitual offender status. He contends that his sentence is inappropriate in light of the nature of the offenses and his character. Because Wiseman has failed to persuade us that his sentence is inappropriate in light of the nature of the offenses and his character, we affirm.

Facts and Procedural History

Wiseman and LaTasha Clark have three children together, who were twelve, nine, and seven at the time of trial. In March 2010, Clark had no interest in pursuing a romantic relationship with Wiseman, but she agreed to meet him at a carwash so that he could see his daughters. Wiseman indicated his desire to work on their relationship, but Clark again expressed that she had no interest in a romantic relationship. Wiseman continued to discuss their relationship with Clark, but she continued to try to deter his advances.

On March 24, 2010, Wiseman arrived at Clark's home early in the morning to wait for the school bus with his daughters. After the three children got on the bus, Wiseman asked Clark if he could iron some clothes at her house, to which she agreed. Wiseman received a cell phone call from a female friend, at which time Clark told Wiseman to leave her home. An argument ensued and lasted for about ten minutes.

Clark took some items outside to her vehicle and returned to the house. As she attempted to walk to her vehicle a second time, Wiseman grabbed her by the hair and pulled her inside the house, where Clark's five-year-old son was at the time. A neighbor

saw Wiseman pull Clark into the house and called 911. Inside, Wiseman pushed Clark into the kitchen and hit her repeatedly with the electrical component of a crock pot. Clark lost consciousness. When she regained consciousness, she was unclothed from the waist up and was still being hit with the crock pot.

Clark's son informed her that Wiseman had taken her keys, so Clark chased after him. Wiseman returned the keys to Clark and was sitting in his vehicle when Clark told him that she was going to call the police. Wiseman exited his vehicle and ran after Clark. Wiseman forced his way into the house and pushed Clark into a table. The responding officer arrived as Wiseman forced his way into the home.

Clark sustained injuries in the attack, including a broken finger that required a cast and sling for a month, pain to her left eye and back, and flashes in her eye every two or three seconds that continue to the present day. Tr. p. 252-55.

The State charged Wiseman with two counts of Class B felony aggravated battery, Class B felony criminal confinement, Class C felony criminal confinement, two counts of Class C felony battery, two counts of Class D felony domestic battery, Class D felony strangulation, Class D felony residential entry, and habitual offender status. The trial court granted Wiseman's motion for a directed verdict on one count of Class B felony aggravated battery. At trial, Wiseman also moved to dismiss the two Class D felony domestic battery charges because they were missing an essential element, and the trial court granted the motions. *Id.* at 28, 37.

A jury trial was conducted, and Wiseman was found not guilty of Class D felony strangulation. Wiseman was found guilty as charged of Class D felony residential entry,

and guilty of lesser-included offenses of Class C felony criminal confinement, Class D felony criminal confinement, and three counts of Class A misdemeanor battery. Wiseman admitted his habitual offender status. *Id.* at 515.

The trial court did not enter judgment of conviction on Class D felony criminal confinement conviction and the three Class A misdemeanor battery convictions, thus leaving them as jury verdicts only. The court sentenced Wiseman to seven years for Class C felony criminal confinement and two years and eight months for Class D felony residential entry. The trial court then enhanced the Class D felony residential entry sentence by seven years for habitual offender status. The sentences were ordered to be served consecutively, for an executed sentence of sixteen years and eight months.

Wiseman now appeals.

Discussion and Decision

Wiseman contends that his executed sentence of 200 months is inappropriate in light of the nature of the offenses and his character and asks us to revise it to 144 months. We disagree.

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 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 defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

The principal role of Rule 7(B) review “should be to attempt to level the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We “should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Id.* Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case. *Id.* at 1224.

The sentencing range for a Class C felony is two to eight years, with four years being the advisory term. Ind. Code § 35-50-2-6. The sentencing range for a Class D felony is six months to three years, with one and one-half years being the advisory term. Ind. Code § 35-50-2-7. An habitual offender sentence is an additional fixed term not less than the advisory sentence for the underlying offense, but not more than three times that advisory sentence. Ind. Code § 35-50-2-8.5. Here, the trial court sentenced Wiseman to seven years for his Class C felony criminal confinement conviction, two years and eight months for his Class D felony residential entry conviction, and an enhancement of seven years for his admitted habitual offender status, to be served consecutively. All of the sentences were within the statutory ranges.

Regarding the nature of the offenses, there is nothing in the record that indicates that these sentences are inappropriate. Wiseman attacked Clark twice, once after an argument and once again after she claimed that she was going to call the police. Both of these attacks took place in the presence of a young child. Wiseman inflicted serious injuries on Clark, including a broken finger and an eye injury that continues to affect her to this day. Clark lost consciousness during the attack and was not clothed from the waist up when she regained consciousness. After it appeared that Wiseman was going to leave Clark's home, he forced his way back into the residence to continue the attack when Clark threatened to call the police. The nature of these offenses is serious.

Wiseman also appears to bring an additional challenge against only his Class C felony criminal confinement sentence. He argues that the bodily injury suffered by Clark already elevated the offense from a Class D felony to a Class C felony, so the trial court should not have further enhanced his sentence over the four-year advisory sentence for a Class C felony. However, Wiseman's argument fails to persuade us. The violent nature of the offense and the resulting bodily injury do not make his seven-year sentence inappropriate. Also, when we review a sentence, it is in the aggregate; we do not review the sentence given for an individual count. *See Cardwell*, 895 N.E.2d at 1224.

Regarding his character, Wiseman concedes that it is "problematic." Appellant's Br. p. 7. Wiseman has an extensive criminal history. He has eighteen prior arrests without convictions, and five felony convictions for alteration of a handgun, criminal recklessness, domestic battery, and two for illegal substances. Tr. p. 568; Appellant's App. p. 119-126. Additionally, Wiseman was on parole for a domestic battery offense

against Clark when he committed the present offenses against her. Tr. p. 567. The court did recognize that Wiseman was a good provider for his daughters, that he accepted responsibility for his status as a habitual offender, and that there was a fair likelihood that he was provoked in the attack. *Id.* at 567, 570. However, in the absence of any deterrent effect from prior leniency and the numerous domestic violence incidents, the trial court deemed the aggravating factors to substantially outweigh the mitigating factors.

After due consideration of the trial court's decision, we cannot say that Wiseman's sentence of sixteen years and eight months is inappropriate in light of the nature of the offenses and his character.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.