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# IN THE
# COURT OF APPEALS OF INDIANA

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| JUSTIN MORRIS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 54A04-1005-CR-325 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Thomas K. Milligan, Judge
Cause No. 54C01-0908-MR-00105

**DECEMBER 13, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Senior Judge**

## STATEMENT OF THE CASE

Defendant-Appellant Justin Morris appeals the sentence he received after pleading guilty but mentally ill to murder, Indiana Code section 35-42-1-1 (2007); and arson, a Class B felony, Indiana Code section 35-43-1-1 (2002).

## ISSUE

The only issue is whether Morris' sentence is appropriate. We determine that, given the nature of the offense and the character of the offender, the sentence is appropriate.

## FACTS AND PROCEDURAL HISTORY

At the time of this offense, twenty-five-year-old Morris was staying in a house across the street from the house in which his mother was living with her boyfriend, John Hall, the victim in this case. Apparently upset by his mother's decision to move with Hall to California, Morris murdered Hall. In the middle of the night, Morris, knowing his mother was at work, took a baseball bat and steak knife and went across the street to Hall's house. Morris went into the house, found Hall asleep in his bed and inflicted multiple fractures to his skull with the bat. Morris next used the steak knife to slash Hall's throat; he then set Hall's body and bed on fire.

As a result of these acts, Morris was charged with murder and arson, a Class A felony. Morris pleaded guilty but mentally ill to murder and a reduced charge of arson as a Class B felony in an open plea agreement. The trial court sentenced Morris to sixty

years on the murder conviction and twenty years on the arson conviction, to be served consecutively. It is from this sentence that he now appeals.

## DISCUSSION AND DECISION

Morris contends that his mental illness renders his eighty-year sentence inappropriate. We may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the appellate court that his or her sentence has met the inappropriateness standard of review. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Here, Morris was convicted of murder and arson, a Class B felony. The advisory sentence for murder is fifty-five years, with forty-five years as the minimum sentence and sixty-five years as the maximum sentence. Ind. Code § 35-50-2-3 (2007). The advisory sentence for a Class B felony is ten years, with a minimum sentence of six years and a maximum sentence of twenty years. Ind. Code § 35-50-2-5 (2005). Morris was sentenced to sixty years on his murder conviction and twenty years for his arson conviction. This murder and arson were particularly egregious. We note that in imposing the maximum sentence for Morris' arson conviction, the trial court remarked that the fire was unnecessary; Morris had killed Hall

with the baseball bat and made sure it was complete with the steak knife to Hall's throat. The trial court further stated that the fire destroyed evidence in an attempt to conceal the crime, and it endangered neighbors' lives, neighboring dwellings, and responding emergency personnel. Tr. p. 83.

With regard to Morris' character, we observe that he has a juvenile and an adult criminal history. As a juvenile, Morris came into contact with the court system both as a delinquent and as a CHINS. After becoming an adult, Morris was convicted of two misdemeanors and two felonies and had his probation revoked several times. He was released from the Department of Correction on July 13, 2009, and he committed the instant offense just over a month later on August 21, 2009.

Morris' history includes extensive substance abuse. He states that he began drinking alcohol and using marijuana at age twelve. He began taking Xanax at age fifteen and cocaine at age sixteen. His drug of choice is methamphetamine, which he began using daily at age sixteen. He experimented with several other drugs, including heroin. Morris admits to drinking a couple beers and ingesting a lot of Klonopin on the night of the instant offenses.

Nevertheless, Morris specifically points to his mental illness. There are several considerations that bear on the weight, if any, that should be given to mental illness in sentencing. These factors include: (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus

between the disorder or impairment and the commission of the crime. *Biehl v. State*, 738 N.E.2d 337, 340 (Ind. Ct. App. 2000), *trans. denied*.

Morris presented no evidence that his mental illness renders him unable to control his behavior. Rather than showing any limitations on Morris' functioning, the evidence disclosed that Morris was employed at the time of the offense. In addition, Morris denied any problems with reading or writing and asserted that he had earned his GED and had considered taking college courses. Morris also was able to develop different versions of this incident. For instance, he first told the police that he heard a commotion across the street, saw the fire, and went to help. Another time he talked to the police, he indicated that he had "snapped" after he and Hall had argued and that he had banged Hall's head against a doorframe several times and then started the fire. Tr. p. 25-26.

As to the duration of his illness, Morris indicated that he was diagnosed with ADHD in elementary school and with anxiety at age 16. As a juvenile, Morris was placed in several in-patient hospitals and residential facilities, including Koala Hospital, Hamilton Center, Community North Hospital, Pleasant Run, and ResCare Residential. For purposes of this case, the trial court ordered two psychological evaluations of Morris and took judicial notice of the doctors' reports at the sentencing hearing. On appeal, we are presented only with the summary of the reports in the pre-sentence investigation report. Dr. Callaway, a licensed clinical psychologist, diagnosed Morris with personality disorder with borderline antisocial traits, depressive disorder, attention deficit hyperactivity disorder, and polysubstance dependence in a controlled environment. Dr.

Parker, a clinical psychiatrist, diagnosed Morris with borderline personality disorder; alcohol dependence, in remission in a controlled environment; cannabis abuse; prescription medication abuse; and methamphetamine dependence, in remission. He also noted Morris' history of conduct disorder and history of attention deficit hyperactivity disorder. At the time of sentencing, Morris reported that he was taking three medications. Of those three medications, one was for his anxiety and one was for voices he was hearing. Appellant's App. p. 168.

There is no apparent connection between the instant offenses and Morris' disorders. No evidence was presented showing any link between Morris' illnesses and his commission of these offenses. Based upon these four factors, Morris' mental illness bears little weight on our analysis of his character. *See Scott v. State*, 840 N.E.2d 376, 384 (Ind. Ct. App. 2006), *trans. denied* (concluding that defendant's mental illness should have been given little weight where defendant was capable of controlling his behavior, did not have significant limitations on his functioning, and failed to identify a nexus between his mental illness and the offense).

Morris has not carried his burden of persuading this Court that his sentence has met the inappropriateness standard of review. *See Anglemyer*, 868 N.E.2d at 494. Our review of the nature of the offense and the character of the offender does not lead us to conclude that Morris' sentence is inappropriate.

Although we affirm, we remand to the trial court so that it can amend the Abstract of Judgment to reflect that Morris was found guilty but mentally ill as stated in the judgment of the trial court.

Affirmed and remanded.

KIRSCH, J., and CRONE, J., concur.