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IN THE
COURT OF APPEALS OF INDIANA

PATRICK MCGUFFIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0905-CR-482
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia J. Gifford, Senior Judge
Cause No. 49G03-0712-FB-279673
Cause No. 49G03-0712-FB-280073

December 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Patrick McGuffin was convicted of two counts of Robbery,[1] class B felonies, under Cause No. 49G03-0712-FB-279673 (Cause No. 279673), and one count of Robbery,[2] a class B felony, under Cause No. 49G03-0712-FB-280073 (Cause No. 280073). The trial court subsequently sentenced McGuffin to ten years for each conviction under Cause No. 279673 and ordered the sentences served concurrently. The trial court also sentenced McGuffin to ten years for the conviction under Cause No. 280073 and ordered this sentence served consecutive to the sentence in Cause No. 279673. On appeal, McGuffin presents two issues for our review:

1. Did the trial court err in ordering the sentence imposed under Cause No. 280073 to be served consecutive to the sentence imposed under Cause No. 279673?

2. Is McGuffin's sentence inappropriate in light of the nature of the offense and his character?

We affirm.

Christina Miller worked as an overnight cashier at the Village Pantry convenience store at the corner of Arlington Avenue and Thompson Road in Indianapolis in the fall of 2007. Around 2:00 a.m. on September 24, 2007, McGuffin entered the store and walked to the candy aisle. McGuffin then brought a candy bar to the cashier's counter and presented Christina with a $5 bill as payment. When Christina looked up to give McGuffin change, McGuffin was holding a butcher's knife and demanded that she give him all of the money in the cash register. Christina complied, and McGuffin walked out of the store.

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[1] Ind. Code Ann. § 35-42-2-2 (West, PREMISE through 2009 1st Regular Sess.).

[2] *Id*.

On November 27, 2007, Christina was again working at the Village Pantry. While changing trash bags in the waste receptacle outside, Christina saw McGuffin enter the store. Christina recognized McGuffin as the individual who had robbed the store in September and immediately went inside to alert her coworkers. After other customers finished their purchases and left the store, McGuffin approached the cash register with a candy bar. As Christina was handing him his change, McGuffin pulled a knife from his pants and demanded that she give him the money from the register. Christina complied, and McGuffin walked out of the store.

On December 20, 2007, Melissa Gordon was working the cash register on the night shift at the same Village Pantry. At approximately 4:00 a.m., McGuffin entered the store and eventually brought a cup of coffee to the register. After paying for his coffee, McGuffin pulled a knife from his shirtsleeve and ordered Melissa to give him the money in the register. Melissa handed McGuffin the money, and he left the store.

On December 31, 2007, the State charged McGuffin under Cause No. 279673 with three counts of robbery as class B felonies. On the same day, the State also charged McGuffin under Cause No. 280073 with one count of robbery as a class B felony. The causes were joined on March 14, 2008. A jury trial was conducted on February 9 and 10, 2009, at the conclusion of which the jury was unable to reach a unanimous verdict. The trial court thus declared a mistrial. On April 20, 2009, McGuffin waived his right to a jury trial. On April 21, 2009, the State moved to dismiss one of the counts under Cause No. 279673. A

bench trial was subsequently held, and the trial court found McGuffin guilty on all remaining counts.

At a sentencing hearing held on May 5, 2009, the trial court sentenced McGuffin to the advisory sentence of ten years[3] for each conviction under Cause No. 279673 and ordered the sentences served concurrently. The trial court also sentenced McGuffin to the advisory sentence of ten years for the conviction under Cause No. 280073 and ordered this sentence served consecutive to the sentence in Cause No. 279673. In explaining the sentence imposed, the trial court stated that it considered evidence that McGuffin was a good father and that he was a source of income for his family.[4] The court found as a mitigating circumstance that McGuffin's criminal history was minimal, specifically noting that McGuffin had no prior felony convictions and that a misdemeanor offense was dismissed after McGuffin completed a diversion program and another dismissed because the arresting officer failed to appear. With regard to aggravating factors, the court specifically noted that McGuffin committed three robberies at the same place within a relatively short period of time. The court further noted that McGuffin robbed the same victim twice and that this victim was pregnant at the time of the robberies. The trial court ultimately concluded that the aggravators and mitigators "may somewhat balance out". *Transcript* at 416. The court further explained that it was ordering the sentence under Cause No. 280073 to be served

[3] *See* Ind. Code Ann. § 35-50-2-5 (West, PREMISE through 2009 1st Regular Sess.) ("[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years").

[4] The trial court specifically stated that it did not find these to be mitigating factors, but that it would take them into consideration.

consecutive to the sentences under Cause No. 279673 "because of the aggravating circumstances . . . cited". *Id*. at 417.

1.

McGuffin argues that the trial court erred in ordering the sentence under Cause No. 280073 to be served consecutive to the sentence imposed under Cause No. 279673. *Transcript* at 416. It is well-settled law that sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g by* 875 N.E.2d 218. With the exception of our authority to review sentences under Indiana Appellate Rule 7(B), as long as a defendant's sentence is within the statutory range, it is reviewed only for an abuse of discretion. *Id*. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences to be drawn therefrom. *Id*. With regard to consecutive sentences, where not statutorily mandated, the imposition of consecutive sentences rests within the wide discretion of the trial court. *Creekmore v. State*, 853 N.E.2d 523 (Ind. Ct. App. 2006). The trial court must, however, find at least one aggravating circumstance to support consecutive sentences. *Marcum v. State*, 725 N.E.2d 852 (Ind. 2000).

McGuffin argues that because the trial court found that the aggravators and mitigators "may somewhat balance out", *Transcript* at 416, the trial court could not order that the sentence under Cause No. 280073 be served consecutive to the sentence under Cause No. 279673. *See Marcum v. State*, 725 N.E.2d 852 (holding that where trial court found aggravating and mitigating circumstances to be in balance, there was no basis upon which to

impose consecutive terms). Here, although the trial court gave one sentencing statement, the trial court was explaining the sentence to be imposed under two separate cause numbers. Further, the trial court discussed mitigators and aggravators and found not that they balanced, but that they "may somewhat balance out." *Transcript* at 416. In support of the imposition of consecutive sentences, the trial court referenced the aggravating factors identified, i.e., the fact that McGuffin committed three robberies at the same place within a short period of time, that he robbed the same victim twice and that this victim was pregnant at the time of the robberies. The trial court properly considered the aggravating circumstances in deciding to order the sentences under the two separate causes to be served consecutive and we conclude that those aggravating circumstances support the trial court's sentencing decision. *See Serino v. State*, 798 N.E.2d 852, 857 (Ind. 2003) (noting that "consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person").

2.

McGuffin argues that his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover,

we observe that McGuffin bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

With regard to his character, the record supports the fact that McGuffin is a good father to his three children and that he is a major source of income for his family. Further, McGuffin's criminal history is minimal, at best. Turning to the nature of the offenses, we give minimal weight to the fact that McGuffin did not explicitly threaten physical harm to either of his victims. McGuffin brandished a knife during each of the robberies and demanded the money from the cash registers. The victims complied with McGuffin's demands out of fear for their own safety. Further, as the trial court recognized, McGuffin committed the three armed robberies of the same place within a relatively short period of time. He robbed the same victim, who happened to be pregnant, twice. This victim testified that she is still affected by what McGuffin did in that she has trouble sleeping, feels nervous in public situations, and suffers from post-traumatic stress disorder. Given the character of the offender and the nature of the offense, the advisory sentence of ten years for each class B felony conviction is not inappropriate. With regard to the consecutive nature of the sentences under the two separate cause numbers, such reflects the fact that there were two separate victims. *See Serino v. State*, 798 N.E.2d 852. Having reviewed the record, we find no reason to second-guess the trial court's judgment with regard to sentencing. We therefore conclude that the sentence imposed is not inappropriate.[5]

[5] Finding the sentence imposed is not inappropriate given the nature of the offense and the character of the offener, we decline the State's request to increase the sentence by ordering all of the sentences to be served consecutive. *See McCullough v. State*, 900 N.E.2d 745 (Ind. 2009) (stating that when a defendant seeks an

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.

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appropriateness review under App. R. 7(B), the State may give its reasons why the sentence should be increased).