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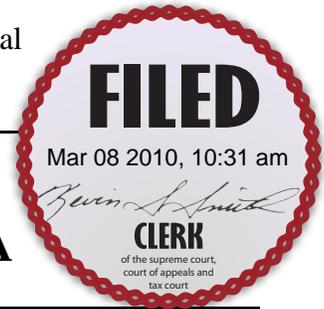
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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN W. RENDELL,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 45A03-0908-CR-375

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas Stefaniak, Judge
Cause No. 45G04-0810-FA-36

March 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a guilty plea, John Rendell was convicted of aggravated battery, a Class B felony, and sentenced to ten years imprisonment, all executed. Rendell appeals his sentence, raising the sole issue of whether his sentence is inappropriate in light of the nature of his offense and his character. Concluding the sentence is inappropriate, we revise and remand to the trial court to suspend four years of the sentence to probation.

Facts¹ and Procedural History

On September 11, 2008, Rendell entered Midwest Graphics in Gary, Indiana, and asked the store owner, Diego Gonzalez, to make him an air-brushed t-shirt. While Gonzalez was making the t-shirt, Rendell stepped behind the counter and hit Gonzalez in the back of the head with a wooden chair. Gonzalez suffered a skull fracture and a head wound that required eighteen staples to close. Gonzalez also has a serious permanent disfigurement from the assault.

As a result of this incident, Rendell was charged with robbery and attempted murder, both Class A felonies, robbery, two counts of criminal confinement, and aggravated battery, all Class B felonies, and battery, a Class C felony. Rendell and the State entered into a plea agreement pursuant to which Rendell pled guilty to aggravated battery, a Class B felony, the State dismissed the remaining charges, and Rendell's sentence was left to the discretion of the trial court. Following a sentencing hearing, the trial court accepted the plea agreement and sentenced Rendell to ten years at the Department of Correction, all executed. Rendell now appeals his sentence.

¹ The facts are drawn from the stipulated factual basis filed by the parties at the guilty plea hearing. See Appendix to Brief of Appellant at 33.

Discussion and Decision

This court has authority to revise a sentence “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.” Ind. Appellate Rule 7(B). In determining whether a sentence is inappropriate, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) (“[I]nappropriateness review should not be limited ... to a simple rundown of the aggravating and mitigating circumstances found by the trial court.”). The burden is on the defendant to demonstrate that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Because the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed,” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006), when the trial court imposes the advisory sentence, the defendant bears a “heavy burden” in persuading us the sentence is inappropriate, McKinney v. State, 873 N.E.2d 630, 647 (Ind. Ct. App. 2007), trans. denied. “[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008).

Rendell was convicted of a Class B felony. “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.” Ind. Code § 35-50-2-5. The trial court sentenced Rendell to the advisory sentence of ten years, finding as mitigating

circumstances that Rendell was seventeen as of the time of his sentencing hearing and accepted responsibility for his actions by pleading guilty, and finding as aggravating circumstances that Rendell has two juvenile adjudications for delinquent acts and was not rehabilitated by prior attempts by the juvenile system to act in his best interest. Rendell argues both the nature of his offense and his character warrant a sentence less than the advisory.

As to the nature of the offense, Rendell stated at his sentencing hearing that he had known Gonzalez for several years and they had an understanding that Gonzalez would make t-shirts for Rendell for five dollars. On September 11, 2008, however, after Gonzalez made the t-shirt and Rendell gave him a twenty dollar bill expecting fifteen dollars in change, Gonzalez gave him only five dollars back and said he had to start charging him full price. An argument ensued, culminating in Rendell hitting Gonzalez in the back of the head with a chair. The offense was spontaneous and impulsive rather than premeditated or calculated. Although the offense is serious and resulted in a significant injury to Gonzalez, aggravated battery is defined by an injury that creates a substantial risk of death, see Ind. Code § 35-42-2-1.5, and Rendell's actions did not therefore cause greater injury than required by the elements of the offense. In other words, the advisory sentence was designed for an offense of this kind.

As to the character of the offender, Rendell was sixteen years old at the time he committed the offense. A defendant's youth can be an "important fact" in reviewing the character of the offender. Brown v. State, 720 N.E.2d 1157, 1159 (Ind. 1999) (considering fact defendant was sixteen at the time of his crime in addressing whether his

sentence was manifestly unreasonable); see also Roper v. Simmons, 543 U.S. 551, 570 (2005) (noting, in determining execution of juveniles is constitutionally prohibited, “[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”). Rendell’s criminal history is not extensive, consisting of two prior juvenile adjudications, one for burglary and criminal mischief committed when he was thirteen, and one for criminal mischief committed three months later. Those offenses occurred more than two years prior to the instant offense and did not involve injury to a person. See Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999) (noting “[t]he significance of a criminal history varies based on the gravity, nature and number of prior offenses as they relate to the current offense.”). According to the pre-sentence investigation report, Rendell successfully completed the obligations of his juvenile dispositions. Rendell’s mother testified at the sentencing hearing that Rendell voluntarily began counseling for anger issues after he was released on bail for the instant offense. At the time of the offense, Rendell was attending high school, maintaining a 2.6 grade point average and participating in football, soccer, and drill team.

Although the nature of Rendell’s offense is serious, his character is such that some leniency is appropriate. Rendell pled guilty,² has a minimal criminal history, and is just

² We do note that several charges against Rendell were dismissed as a result of the plea agreement, benefitting Rendell. However, as all seven charges stemmed from a single incident against a single victim, it is unlikely Rendell could have been convicted and sentenced for all seven crimes, making the benefit not as great as might seem at first blush.

seventeen years old. He was attending school, had decent grades, and was participating in extracurricular activities. He has also demonstrated an awareness of and a willingness to address his anger issues. The pieces are in place for Rendell to become a productive and responsible adult, but a ten-year fully-executed prison sentence is likely instead to harden this still-immature young man. Thus, we find the ten-year executed sentence to be inappropriate and exercise our authority to revise Rendell's sentence pursuant to Appellate Rule 7(B). In recognition of the seriousness of Rendell's offense, the ten-year advisory sentence stands, but we remand this cause to the trial court with instructions to suspend four years of the sentence to probation.³

Conclusion

The trial court's imposition of a ten-year fully-executed sentence is inappropriate in light of the nature of Rendell's offense and his character. We therefore revise the sentence and remand for the trial court to order four years of the sentence suspended to probation.

Remanded.

BAKER, C.J., and BAILEY, J., concur.

³ All parties agreed that Rendell's sentence for aggravated battery could not be suspended beyond the minimum sentence of six years. See Ind. Code §§ 35-50-2-2, -2.1.