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ATTORNEY FOR APPELLANT:

JULIE ANN SLAUGHTER
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

CYNTHIA L. PLOUGHE
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DAMON ANDERSON,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A02-0609-CR-781
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Amy Barbar, Magistrate
Cause No. 49G04-0507-MR-114635

June 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Damon Anderson appeals his conviction after a jury trial of murder and his sentence of fifty years. He raises two issues: 1) whether the evidence was sufficient to convict him of murder; and 2) whether his sentence was appropriate in light of his character and the nature of his offense.

We affirm.

DISCUSSION & DECISION

1. Sufficiency of the Evidence

Anderson and the victim, Dino Thomas, were arguing and pointing guns at each other.¹ At one point, both men put down their weapons. Then Thomas grabbed his weapon and Anderson picked his up again. Eventually, Thomas put his pellet gun in another room. Witnesses heard a number of shots and saw Thomas on the ground. Anderson told two witnesses to “be quiet,” (Tr. at 154), and ordered, “don’t move - - I’ll blow your fuckin [sic] brains out.” (*Id.* at 197.) At least three witnesses identified Anderson as the man arguing with Thomas.

Thomas died of multiple gunshot wounds. One bullet perforated his aorta, trachea and lung. Another bullet grazed his left chest. A third bullet entered his lower left chest, perforating his lung and lacerating his aorta. A fourth bullet entered his head, fracturing his skull. A fifth bullet entered his right wrist.

¹ Thomas’ weapon was a pellet gun.

On appeal, we consider only the probative evidence and reasonable inferences supporting the verdict. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). There was ample evidence to support Anderson’s conviction of murder.

2. Sentencing

We may revise a sentence if it is “inappropriate in light of the nature of the offense and the character of the offender.” Ind. App. R. 7(B).

Anderson shot Thomas five times from close range while Thomas was unarmed. At least one shot was close enough to Thomas that gunshot residue was found on his sweatshirt. Anderson was sentenced to fifty years, which was below the advisory sentence of fifty-five years. *See* Ind. Code § 35-50-2-3. We cannot say that sentence was inappropriate in light of the nature of Anderson’s offense.

Anderson’s character also must be considered. He was twenty years old at the time of the murder and already had a history of criminal and delinquent behavior, including a true finding of battery as a juvenile. He had been convicted of resisting law enforcement and was on probation for that offense when he shot Thomas. He was convicted of carrying an unlicensed firearm at the same time he was convicted of murder. While was in prison, Anderson was involved in several altercations.

After reviewing Anderson’s character and the nature of his offense, we cannot say a fifty-year sentence was inappropriate.

Affirmed.

BAILEY, J., and SHARPNACK, J., concur.