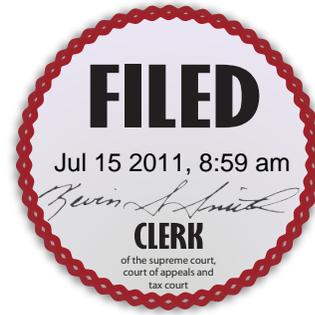


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RODNEY R. JETT,)

Appellant-Defendant,)

vs.)

No. 24A01-1012-CR-24

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
Cause No. 24C01-0809-FC-599

July 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Rodney Jett appeals his sentence of six years for Class C felony battery. We affirm.

Issue

The issue before us is whether Jett's six-year sentence is inappropriate given the nature of the offense and his character.

Facts

On July 20, 2008, eighteen-year-old Jett and Scott Wiehe went to the St. Michaels Cemetery in Brookville. Brandi Hund and Brytenie Noble, who was Jett's girlfriend and the mother of his child, had led Randy Wright to this cemetery. Jett and Wiehe jumped Wright from behind. Wearing steel-toed boots, they beat and kicked Wright for five to fifteen minutes. Following the attack, and after recuperating, Wright, who worked as a cook, could not carry heavy things without his back aching and being extremely painful.

The State charged Jett with Class C felony battery. On September 29, 2010, he pled guilty to that offense. The court sentenced Jett to a term of six years with two years suspended to probation. It also ordered Jett to pay restitution in the amount of \$2,944.77. Jett appeals his sentence.

Analysis

Jett claims his six year sentence for Class C felony battery is inappropriate given the nature of his offense and character. We engage in a four-step process when evaluating a sentence under the current "advisory" sentencing scheme. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, the trial court must issue a sentencing

statement that includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

Although Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” 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 myriad other factors that come to light in a given case. Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008). When reviewing the appropriateness of a sentence under Rule 7(B), we may consider all aspects of the penal consequences imposed by the trial court in sentencing the defendant, including whether a portion of the sentence was suspended. Davidson v. State, 926 N.E.2d 1023, 1025 (Ind. 2010).

Jett contends that his age, willingness to pay restitution, guilty plea, lack of criminal history, his unstable and troubled childhood, and the fact that he has a child who was born shortly before he was sentenced all warrant a reduced sentence. Jett asserts that

the mitigators outweigh the aggravators, and requests a sentence below the Class C felony advisory sentence of four years.

Regarding Jett's character, he has expressed a willingness to pay restitution; however, there is no evidence he has yet done so. By pleading guilty, Jett accepted responsibility for his crime and that partially confirms the mitigating evidence of his character. See Scheckel v. State, 655 N.E.2d 506, 511 (Ind. 1995). Jett's lack of criminal history also is considered a mitigating circumstance. See Rawson v. State, 865 N.E.2d 1049, 1058 (Ind. Ct. App. 2007), trans. denied. A defendant's youth, too, can sometimes, but not necessarily, be mitigating. Smith v. State, 872 N.E.2d 169, 178 (Ind. Ct. App. 2007), trans. denied.

Our supreme court, however, has held that little, if any, mitigating weight can be attributed to a difficult childhood. Ritchie v. State, 875 N.E.2d 706, 725 (Ind. 2007). Therefore, Jett's unstable childhood is of minimal importance in evaluating his sentence. As for Jett's child, hardship to a dependent is only mitigating in "special circumstances." Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999). Similar to Dowdell, there is no evidence Jett has been ordered to pay child support. Id. Jett has failed to establish that "special circumstances" exist here.

Regarding the nature of the offense, our supreme court has found that lying in wait is an aggravating circumstance that falls within the highest range of aggravation warranting an enhanced sentence. Taylor v. State, 695 N.E.2d 117, 123 (Ind. 1998). Jett chose a secluded area that is a sacred burial ground. He chose the element of surprise by lying in wait when it was dark and nearly impossible for his victim to have a chance to

prepare for what was coming. Jett's ambush was cool, calm, and calculated. He had worn steel-toed boots which caused the injuries inflicted to be more severe. Jett's random act caused Wright to have fractured vertebrae and fractured cheek bone. It caused every blood vessel in Wright's left eye to be broken. He had to miss one month of work as a result of the attack. Wright also has had to endure severe back pain since the attack. As a cook, Wright is required to physically exert himself and to carry heavy equipment. Since the attack, every time Wright has to carry something heavy, he has back pain throughout that day.

Jett's sentence is for six years with two suspended years, making his imprisonment four years, which would be the same as the advisory sentence for Class C felony battery. Keeping this in mind, Jett has not overcome his burden of persuading us that his sentence is inappropriate. Despite some valid mitigating circumstances here, such as Jett's age, guilty plea, and lack of criminal history, this egregious offense warrants a slightly enhanced sentence.

Conclusion

We cannot say that Jett's sentence is inappropriate. We affirm the judgment of the trial court.

Affirmed.

RILEY, J., and DARDEN, J., concur.