



Appellant/Defendant Christopher Rudolph appeals the twenty-five-year sentence imposed following his convictions of aggravated battery,<sup>1</sup> unlawful possession of a firearm by a serious violent felon,<sup>2</sup> and carrying a handgun without a license<sup>3</sup> under cause number 49G01-0905-FB-49065, (cause number 9065), and unlawful possession of a firearm by a serious violent felon,<sup>4</sup> dealing in marijuana,<sup>5</sup> and resisting law enforcement<sup>6</sup> in cause number 49G01-0905-FB-048341 (cause number 8341). Concluding that consecutive sentences did not constitute an impermissible double enhancement and that the sentence was not inappropriate, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On May 19, 2009, the State charged twenty-four-year-old Rudolph with aggravated battery as a class B felony; unlawful possession of a firearm by a serious violent felon as a class B felony; and carrying a handgun without a license as a class C felony under cause number 9065 after he shot Eric Moore three times. The charging information alleged Rudolph was a serious violent felon because he possessed a firearm when he had a prior conviction of dealing cocaine in June 2006.

At some point before trial on these charges, Rudolph told Moore's girlfriend, who was also Rudolph's sister, "not [to] go against the grain or [she would] pay." Tr. p. 154. The trial began in December 2009. The testimony revealed that in May 2009, Eric Moore argued for

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<sup>1</sup> Ind. Code Section 35-42-2-1.5 (2008).

<sup>2</sup> Ind. Code Section 35-47-4-5 (2008).

<sup>3</sup> Ind. Code Section 35-47-2-1 (2008).

<sup>4</sup> Ind. Code Section 35-47-4-5 (2008).

<sup>5</sup> Ind. Code Section 35-48-4-10 (2008).

<sup>6</sup> Ind. Code Section 35-44-3-3 (2008).

three to four minutes with Rudolph's girlfriend about an SUV he had sold to Rudolph's brother. Later that day, Rudolph telephoned Moore several times and chastised him for arguing with his girlfriend. That same night, Rudolph drove to the house Moore shared with his mother and six-year-old daughter on East 49<sup>th</sup> Street and yelled for Moore to come outside. As Moore exited his home and walked towards Rudolph's SUV, Moore's niece Jacqueline and Moore's girlfriend Constance grabbed Moore's arms to hold him back. At that moment, Rudolph began shooting at Moore, who was standing only two to three feet from Rudolph's SUV. Rudolph shot Moore three times, once in the abdomen and twice in his buttocks. Rudolph drove away from the scene while Moore was rushed to the hospital. The jury convicted Rudolph as charged.

On January 5, 2010, following his convictions for these offenses, but before sentencing, Rudolph pled guilty to unlawful possession of a firearm by a serious violent felon as a class B felony; dealing marijuana as a class D felony; and resisting law enforcement as a class D felony in cause number 8341. He pled guilty to being a serious violent felon because he possessed a firearm with a prior conviction of dealing in cocaine in June 2006.

Three days later, the trial court in cause number 9065 held a sentencing hearing for Rudolph's convictions in cause numbers 9065 and 8341. Following the hearing, the trial court found the following aggravating factors: 1) Rudolph's extensive prior criminal history, including thirteen arrests, four felony convictions, and three probation violations; 2) Rudolph's threatening phone call to Moore's girlfriend, which could have served as the basis for an independent charge and which showed an unwillingness to follow court orders because

there was a no-contact order in place; 3) Rudolph's multiple conduct violations while he was at the Marion County Jail awaiting trial; and 4) the nature and circumstances of the offenses in cause number 9065, including the "sheer mindlessness of his actions [as well as] his complete and utter disregard for the safety of others." Tr. p. 321. The trial court also found the following mitigating circumstances: 1) Rudolph pleaded guilty in cause number 8341; 2) Rudolph waived a jury trial as to the serious violent offender charge in cause number 9065; 3) slight mitigating weight to his history of substance abuse; and 4) slight mitigating weight to the hardship visited upon his dependent children.

As to cause number 9065, the court found the aggravating factors outweighed the mitigating factors and sentenced Rudolph to fifteen years of incarceration for aggravated battery, ten years for unlawful possession of a firearm by a serious violent felon; and one year for carrying a handgun without a license, sentences to run concurrently to each other. As to cause number 8341, the court sentenced Rudolph to ten years of incarceration for unlawful possession of a firearm by a serious violent felon, seven years executed and three years suspended, five hundred and forty-five days for dealing marijuana, and five hundred and forty-five days for resisting law enforcement, sentences to run concurrently. The court further ordered that the concurrent sentences in cause number 9065 run consecutively to the concurrent sentences in cause number 8341, for a total sentence of twenty-five years with three years suspended. Rudolph appeals this sentence.

## **DISCUSSION AND DECISION**

### **I. Whether the Trial Court Erred in Imposing Consecutive Sentences**

Rudolph first argues that the trial court erred in imposing consecutive sentences in cause numbers 9065 and 8341 because the unlawful possession of a firearm by a serious violent offender convictions in both cause numbers were predicated on the same 2006 dealing in cocaine conviction. In support of his argument, Rudolph directs us to *Sweatt v. State*, 887 N.E.2d 81 (Ind. 2008), where Sweatt was convicted of burglary and unlawful possession of a handgun by a serious violent felon as class B felonies and of being an habitual offender. The unlawful possession count and the habitual offender charge were both based on the same 1994 conviction. The trial court sentenced Sweatt to twenty years for each count and enhanced the burglary count by thirty years for the habitual offender finding. The court ordered the sentences to run consecutively for a total sentence of seventy years. This court affirmed the conviction. *See Sweatt v. State*, No. 49A02-0604-CR-303, slip op., 868 N.E.2d 921 (Ind. Ct. App. June 15, 2007). The Indiana Supreme Court granted transfer and concluded that Sweatt's conviction for unlawful possession of a firearm by a serious violent felon, based on a 1994 conviction, and his status as an habitual offender, based on the same 1994 conviction was not a double enhancement. *Sweatt*, 887 N.E.2d at 84. However, under these circumstances, consecutive sentences did constitute a double enhancement. *Id.*

Rudolph's reliance on *Sweatt* is misplaced. *Sweatt* applies where there is a conviction for unlawful possession of a firearm by a serious violent felon and an habitual offender adjudication with a sentence enhancement that occur in the same trial. Here, however, Rudolph was convicted of two counts of unlawful possession of a firearm by a serious violent offender in two separate cause numbers and two separate trials, and the two sentences

were ordered to run consecutively. Express statutory authority for consecutive sentences is found at Indiana Code section 35-50-1-2 (2008), which permits the imposition of consecutive sentences for separate convictions where appropriate. We find nothing in that provision that places multiple unlawful possession of a firearm by a serious violent felon convictions outside its ambit. The trial court did not err in ordering the sentence in cause number 9065 to run consecutively to the sentence in cause number 8341.

## **II. Whether Rudolph's Sentence is Inappropriate**

Rudolph also argues that his sentence is inappropriate. Indiana Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

With respect to the character of the offender, twenty-four-year-old Rudolph has a prior criminal history that includes thirteen arrests; four convictions for dealing cocaine, possession of cocaine, possession of marijuana, and battery; and three probation violations. In addition, Rudolph threatened a witness in this case and had multiple conduct violations while he was at the Marion County Jail awaiting trial. His prior contacts with the law have not caused him to reform himself.

With respect to the nature of Rudolph’s offense, our review reveals that Rudolph fired multiple shots at Moore while Moore was standing in the front yard of his mother’s house on

49<sup>th</sup> Street. Moore's girlfriend and cousin were standing on either side of him. Moore's girlfriend was Rudolph's sister. Rudolph shot Moore because Moore had argued with Rudolph's girlfriend for three to four minutes earlier that day. We also note that Rudolph's prior convictions and probation violations show a disregard for the law as well as an escalation in the threat of violence to others. *See Ruiz v. State*, 818 N.E.2d 927, 929 (Ind. 2004) (holding that the significance of prior criminal history varies based on the gravity, nature, and number of prior offenses as they relate to the current offense).

Based upon our review of the evidence, we see nothing in the character of this offender or in the nature of this offense that would suggest that Rudolph's sentence is inappropriate.

The judgment of the trial court is affirmed.

DARDEN, J., and BROWN, J., concur.