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**IN THE
COURT OF APPEALS OF INDIANA**

DAMONE WARD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 79A02-0705-CR-402

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0509-FA-37

October 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Damone Ward pled guilty to robbery resulting in serious bodily injury,¹ a Class A felony. He was sentenced to twenty-five years with twenty years executed and five years to be served under supervised probation. Ward raises the following restated issue on appeal: Whether the sentence is inappropriate based on the nature of the offense and Ward's character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 15, 2005, sixteen-year-old Ward joined with others to lure Mark Wolfe, a known drug dealer, into their neighborhood with the intent to rob him. During the robbery, Ward and his accomplices beat Wolfe, resulting in a lacerated liver, a lumbar vertebrae fracture, and cuts that required stitches. Ward then stole marijuana and \$20 from Wolfe's pocket.

On September 21, 2005, the State filed a five-count information charging Ward with robbery resulting in serious bodily injury as a Class A felony, aggravated battery as a Class B felony, battery resulting in serious bodily injury as a Class C felony, theft as a Class D felony, and conspiracy to commit robbery resulting in serious bodily injury as a Class A felony. Ward pled guilty to Class A felony robbery resulting in serious bodily injury, and in exchange, the State dropped the other four charges. Pursuant to the plea agreement, the executed portion of Ward's sentence was capped at twenty years.

During the sentencing hearing, the trial court found Ward's youthful age and his mental illness to be mitigating factors. Additionally, the trial court found as an aggravating

¹ See IC 35-42-5-1.

factor Ward's criminal history, which included adjudications as a delinquent child for theft and assisting a criminal. Each offense would have been a Class D felony if Ward had been an adult. Recognizing that Ward's crime carried a twenty-year non-suspendable executed sentence, the trial court sentenced him to twenty-five years, with twenty years executed and five years served under supervised probation. Ward now appeals his sentence.

DISCUSSION AND DECISION

A sentencing decision is within the sound discretion of the trial court and is reviewed on appeal only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences drawn therefrom. *Id.* We can only review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id.* at 491.

Ward challenges his sentence of twenty-five years arguing that the trial court incorrectly weighed the aggravating and mitigating circumstances and that the sentence is inappropriate considering the nature of the offense and his character. Because we no longer review the weight a trial court assigns to aggravating and mitigating circumstances, we do not address Ward's first argument and will only review his sentence for appropriateness. *Id.*

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a

constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). Ward contends that his sentence of twenty-five years was inappropriate in light of the nature of the offense and his character and that it should be revised to twenty years. We disagree.

As to the nature of the offense, Ward admitted that he participated with others in a plan to lure the victim, Wolfe, into their neighborhood in order to beat him up and rob him. The beating resulted in Wolfe sustaining significant injuries. As to Ward's character, the evidence showed that he had committed his first crime of shoplifting at the age of thirteen. During the following three years, Ward was adjudged a delinquent child for two counts of theft and one count of assisting a criminal. Thereafter, he was placed in secure detention on numerous occasions, was placed on electronic monitoring, committed battery, and was a runaway.

The offense of Class A felony robbery resulting in serious bodily injury carries a non-suspendable twenty-year executed sentence.² In light of the above evidence, we do not believe that Ward's sentence of twenty-five years for Class A felony robbery resulting in serious bodily injury, of which only twenty were ordered executed, was inappropriate.

Affirmed.

ROBB, J., and BARNES, J., concur.

² Robbery resulting in serious bodily injury is a Class A felony. See IC 35-42-5-1. "A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years." IC 35-50-2-4. Pursuant to IC 35-50-2-2(b)(4)(I), as to robbery resulting in serious bodily injury, "the court may suspend only that part of the sentence that is in excess of the minimum sentence." "[W]henver the court suspends a sentence for a felony it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire." IC 35-50-2-2(c).

