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**IN THE  
COURT OF APPEALS OF INDIANA**

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ROMAINE C. CARTER, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 45A04-0704-CR-196

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Richard W. Maroc, Judge  
Cause No. 45G01-9812-CF-239

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November 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

**KIRSCH, Judge**

Romaine C. Carter pled guilty to voluntary manslaughter,<sup>1</sup> a Class A felony, and was sentenced to thirty-two years in prison. On appeal, we restate Carter's issues as: (1) whether the trial court abused its discretion in weighing the aggravating and mitigating factors during Carter's sentencing; and (2) whether Carter's sentence is inappropriate given his character and the nature of the offense.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Carter was charged with the murder of his estranged wife. The State filed an amended information reducing the charge to voluntary manslaughter. Carter pled guilty to the reduced charge. In connection with the plea agreement, the parties filed a Stipulated Factual Basis, which provided in pertinent part as follows:

3. That on or about November 6, 1997, Romaine Carter was estranged from his wife, Regina Cox Carter and went back to [her] residence at ... Lake County, Indiana.
4. That the defendant and Regina got into an argument and a physical fight. That these words and Regina's actions excited the mind and passions of the defendant to a level of anger that gave rise to sudden heat of passion by the defendant.
5. That the defendant then stabbed Regina six times with a knife, while still angry and acting under the sudden heat of passion and Regina fell to the floor where the defendant used a lamp cord to strangle Regina.
6. That Regina died as result of asphyxiation due to strangulation of the neck and multiple stab wounds with extensive bleeding.
7. That the defendant left the house and Regina's body was found later that day by her daughter . . . .

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<sup>1</sup> See IC 35-42-1-3.

*Appellant's App.* at 43.

During the sentencing hearing, the trial court heard testimony that Carter had been on his own since age thirteen, was the child of an alcoholic father, drank a fifth of whiskey a day, and had a \$300-a-day cocaine habit. Evidence was also introduced that Carter and Regina had a history of arguments, and that on three or four occasions he had been charged with domestic violence against Regina, including two instances when he violated a protective order that Regina had obtained against him. *Sentencing Tr.* at 9. The State introduced testimony obtained from depositions of Carter's brother and a neighbor, which informed the court that: (1) Carter repeatedly said he was going to kill his wife; (2) Carter regularly carried a knife; (3) Carter's brother had seen Carter hit his wife; and (4) on one occasion, Carter's brother had to extinguish flames on Regina's face after Carter had poured lighter fluid on her and lit a match. *Id.* at 10-12.

At the end of the hearing, the trial court made the following comments:

Well, it's a very sad case. First of all, you know, they say a picture's worth a thousand words, and the photographs of the deceased that the [S]tate has admitted into evidence bear witness to a very violent killing. It's not just firing a handgun across the room, or something like that. She's been brutalized and stabbed and strangled.

*Id.* at 19. Thereafter, the trial court entered an order sentencing Carter to thirty-two years in prison.

The defendant filed a pro se motion for permission to file a belated notice of appeal, which the trial court granted. Carter now appeals his sentence.

## **DISCUSSION AND DECISION**

Upon appeal, Carter argues that the trial court improperly balanced the aggravating and mitigating circumstances and that his sentence is inappropriate given his character and the nature of the offense.

### **I. Balancing of Aggravators and Mitigators**

Sentencing decisions lie within the discretion of the trial court. *Patterson v. State*, 846 N.E.2d 723, 727 (Ind. Ct. App. 2006). A single aggravating factor is sufficient to justify an enhanced sentence. *Hildebrandt v. State*, 770 N.E.2d 355, 359 (Ind. Ct. App. 2002), *trans. denied*. At the time of Carter's crime, the presumptive sentence for a Class A felony was thirty (30) years, and the court was permitted to add up to twenty (20) years for aggravating circumstances or subtract up to ten (10) years for mitigating circumstances. IC 35-50-2-4 (1999).

At the time Carter was sentenced in 1999, modification of the presumptive thirty-year sentence based upon aggravating or mitigating circumstances required the sentencing court to: (1) identify all significant mitigating and aggravating circumstances; (2) state the specific reason why each circumstance is determined to be mitigating or aggravating; and (3) articulate its evaluation and balancing of the circumstances. *White v. State*, 847 N.E.2d 1043, 1045 (Ind. Ct. App. 2006). During the sentencing hearing, the trial court heard the parties' arguments and Carter's testimony. Thereafter, the trial court found the following mitigating factors:

- 1) The defendant acted under strong provocation. The defendant was addicted to drugs and alcohol at the time of the offense and was under the influence of those substances at the time.
- 2) The defendant has pled guilty and expressed remorse for his actions.

*Appellant's App.* at 44. The trial court also found the following aggravating factors:

[1] The defendant killed the victim, his estranged wife, by stabbing her several times with a knife and also strangling her with a cord, after several threats to do so, shortly before the offense. There were several other complaints by the victim of battery and threats against the victim by the defendant, which resulted in charges filed, but dismissed at the victim's request, while the couple lived in Chicago. 2) The State has reduced the charge from Murder to Voluntary Manslaughter as part of the plea agreement.

*Id.* at 44-45. The trial court balanced the aggravators and mitigators and sentenced Carter to two years more than the presumptive thirty-year sentence.

Carter first challenges the trial court's finding that his criminal history is an aggravating circumstance. He contends that, because the trial court failed to inquire into the correctness of his presentence investigation ("PSI") report, any factor arising from that report is not valid. We disagree. There is only one purpose for filing a PSI report; to provide information to the court for use at individualized sentencing. *Dillard v. State*, 827 N.E.2d 570, 576 (Ind. Ct. App. 2005), *trans. denied* (citing *Timberlake v. State*, 690 N.E.2d 243, 266 (Ind. 1997), *cert. denied*, 525 U.S. 1073, 119 S. Ct. 808, 142 L. Ed. 2d 668 (1999)). The sentencing court evaluates that information to determine the existence of aggravating and mitigating factors. *Id.* Thus, the information contained in the report must be accurate. *Id.* (citing *Yates v. State*, 429 N.E.2d 992, 994 (Ind. Ct. App. 1982)). To that end, we are generally concerned only with insuring that the defendant had an opportunity to examine the report and challenge any inaccuracies contained therein pursuant to IC 35-38-1-12(b).

During the sentencing hearing, the State made reference to the PSI report. *Sentencing Tr.* at 14. Carter knew that the trial court was considering the PSI report, yet failed to object. By declining to raise an objection during the sentencing hearing, Carter has waived his right

to now object to the trial court's use of that report. *See Dillard*, 827 N.E.2d at 577. More importantly, we note that Carter does not allege that there were any errors in the criminal history section of his PSI report, but only claims that the report was not properly admitted during the sentencing hearing.

Carter next contends that the State could not refer to his criminal history as aggravating since the evidence to support that conclusion came from inadmissible evidence such as hearsay statements and verbatim quotes from depositions, e.g., statements made during depositions of Carter's brother and a neighbor, when those depositions were not introduced into evidence. *Appellant's Br.* at 7. This contention is, likewise, without merit. As above, Carter did not object at sentencing, nor does he claim errors on the criminal history section of the PSI report. In addition, the rules of evidence do not apply to sentencing proceedings. Ind. Evidence Rule 101(c)(2). As such, hearsay statements made during the sentencing hearing, which would have been impermissible to introduce at trial, were permissible during the sentencing hearing. *Dumas v. State*, 803 N.E.2d 1113, 1120 (Ind. 2004). The trial court properly considered statements made by Carter's brother and a neighbor.

Finally, Carter contends that the trial court erred in finding that it was an aggravating factor for the State to reduce Carter's charge from murder to voluntary manslaughter. Specifically, Carter argues that the court's own reference to Carter acting under "strong provocation," *Appellant's App.* at 44, suggested that the evidence could not have supported a murder charge. We disagree. Here, there was evidence that Carter acted in an aggressive manner toward Regina over an extended period of time, that others heard Carter repeatedly

threaten to kill Regina, that Carter was unaccounted for at the time of the murder, and that he later returned with blood on his clothing. *Sentencing Tr.* at 12-14. The State agreed to enter into the plea agreement because it lacked an eyewitness to the crime. Sudden heat is a mitigating factor that reduces murder to voluntary manslaughter. *Jimmerson v. State*, 751 N.E.2d 719, 725 (Ind. Ct. App. 2001) (citing *Horan v. State*, 682 N.E.2d 502, 507 (Ind. 1997)). At the time of sentencing, Carter had already benefited from the mitigating factor of sudden heat by being convicted of voluntary manslaughter instead of murder. The presumptive sentence he faced thereby was immediately reduced by twenty-five years. *Compare* IC 35-50-2-3 (fifty-five year presumptive sentence for murder). Therefore, the trial court did not err in determining that the reduction of the charge was a proper aggravator.

Here, the trial court heard that Carter had repeatedly threatened to kill his wife, had brutally murdered her by stabbing her six times and then strangling her, and had left her body to be found by Regina's teenage daughter. The court further learned that there had been a history of violent behavior by Carter toward Regina, which in two instances arose after Carter violated a protective order. While recognizing that Carter had an addiction, expressed remorse, and pled guilty, on balance the trial court found his aggravators outweighed his mitigators. We do not find this to be an abuse of discretion.

## **II. Inappropriate Sentence**

Carter also claims that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. Pursuant to Indiana Appellate Rule 7(B), this court “may revise a sentence authorized by statute 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.”

As to the nature of the offense, Carter concedes that he stabbed Regina several times and then strangled her with the electrical cord of a lamp. By itself, a single deadly stab wound would have been sufficient to support the voluntary manslaughter charge. However, Carter stabbed Regina six times, and then, while she was on the floor bleeding profusely, he grabbed a lamp and strangled her with the cord. Moreover, Carter knew that Regina had a teenage daughter, and yet, he left Regina's body in the home where her daughter found her. Carter warrants no leniency in light of the nature of the offense.

As to the character of the offender, Carter had a history of physically abusing Regina. His criminal history reveals that, over a period of six years, Carter physically battered Regina and, on two separate occasions, violated the protective order she had against him. Testimony at sentencing revealed that Carter's brother had previously extinguished a fire on Regina's face after Carter had poured lighter fluid on her and lit a match. Any one of these events alone reveals Carter's character. Taken together, we certainly cannot say that his sentence was inappropriate in light of his character.

The range of sentencing for Carter's original charge of murder was forty-five to sixty-five years in prison. Carter received significant credit for pleading guilty to the lesser offense of voluntary manslaughter, which carried a range of sentencing of twenty to fifty years in prison. Under the facts of this case, we cannot say that Carter's sentence of thirty-two years was inappropriate in light of the nature of the offense and his character.

Affirmed.



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