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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN F. GRUBER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 20A03-0709-CR-443

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20C01-0410-FC-00155

December 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

John F. Gruber (“Gruber”) appeals his three consecutive eight-year sentences for three Class C felony robbery convictions. Specifically, he argues that because the robberies constitute a single episode of criminal conduct, pursuant to Indiana Code § 35-50-1-2 we should reduce his sentence to ten years, the advisory sentence for the next higher class of felony. Because Gruber committed the three robberies at three separate banks over the course of ten days, they do not constitute a single episode of criminal conduct. We therefore affirm Gruber’s twenty-four-year sentence.

Facts and Procedural History

On September 25, 2004, Gruber entered a Key Bank branch at 3821 South Main Street in Elkhart, Indiana, and took money from the presence of bank employee Bobbi Hensley by putting Hensley in fear. Five days later, on September 30, 2004, Gruber entered a Key Bank branch at 2801 Cassopolis Street in Elkhart, Indiana, and took money from the presence of bank employee Linda La Fountain by placing La Fountain in fear. Then, on October 4, 2004, Gruber entered a Key Bank branch at 100 North Elkhart Street in Wakarusa, Indiana, and took money from the presence of bank employee Kandice Kirkwood by placing Kirkwood in fear.

On October 15, 2004, the State charged Gruber with three counts of Robbery as a Class C felony¹ and alleged that he was a habitual offender. On June 29, 2006, Gruber and the State entered into a plea agreement whereby Gruber pled guilty to the three counts of Class C felony robbery and the State agreed to dismiss the habitual offender

¹ Ind. Code § 35-42-5-1.

count. Sentencing was left to the trial court's discretion. The trial court accepted the plea agreement. Following a sentencing hearing, the trial court sentenced Gruber to eight years for each of the three robbery counts, to be served consecutively, for an aggregate term of twenty-four years. Gruber now appeals his sentence.

Discussion and Decision

Gruber contends that the trial court erred in sentencing him to consecutive terms totaling twenty-four years because the three robberies constitute a single episode of criminal conduct. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *reh'g granted on other grounds*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* In some cases, the trial court's discretion when imposing consecutive sentences is restricted by statute. Indiana Code § 35-50-1-2(c) provides, in part:

The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

Ind. Code § 35-50-1-2(c). Gruber argues that because the robberies constitute a single episode of criminal conduct, his aggregate sentence may not exceed ten years, the advisory sentence for a Class B felony. Ind. Code § 35-50-2-5.

“Episode of criminal conduct” means “offenses or a connected series of offenses that are closely related in time, place, and circumstance.” I.C. § 35-50-1-2(b). The Indiana Supreme Court recently clarified that although previous Indiana cases have articulated the test as whether “a complete account of one charge cannot be related without referring to details of the other charge,”

[T]his is a bit of an overstatement. We are of the view that although the ability to recount each charge without referring to the other can provide additional guidance on the question of whether a defendant’s conduct constitutes an episode of criminal conduct, it is not a critical ingredient in resolving the question. Rather, the statute speaks in less absolute terms: “a connected series of offenses that are closely connected in time, place, and circumstance.” I.C. § 35-50-1-2(b).

Reed v. State, 856 N.E.2d 1189, 1200 (Ind. 2006). In considering whether a series of offenses constitutes a single episode of criminal conduct, timing of the offenses is important. *Harris v. State*, 861 N.E.2d 1182, 1188 (Ind. 2007); *Smith v. State*, 770 N.E.2d 290, 294 (Ind. 2002).

Here, Gruber robbed three different branches of Key Bank, two in Elkhart and one in Wakarusa, over the course of ten days. Although this may have been a common scheme on Gruber’s part to rob banks, it involved multiple episodes that were not closely connected in time and place. This case is thus readily distinguishable from *Jennings v. State*, 687 N.E.2d 621 (Ind. Ct. App. 1997), upon which Gruber relies on appeal. In *Jennings*, the offenses were committed at the same place on the same night (before and after midnight), and on appeal we found that they constituted a single episode of criminal conduct. Here, because the three robberies were not closely connected in time and place, they do not constitute a single episode of criminal conduct. Accordingly, the trial court

did not abuse its discretion in sentencing Gruber to consecutive terms totaling twenty-four years.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.