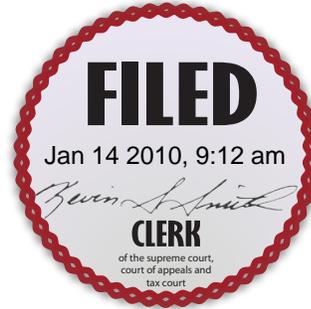


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DERRICK L. BREWER,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 02A05-0908-CR-461

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0811-FD-1009

January 14, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Derrick L. Brewer (“Brewer”) was convicted in Allen Superior Court of Class D felony battery, Class A misdemeanor battery, Class A misdemeanor interference with the reporting of a crime, and found to be a habitual offender. The trial court sentenced him to an aggregate term of seven years. Brewer appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On November 8, 2008, Brewer, who was forty-seven years old at the time, was living in an apartment with seventeen-year-old B.S., nine-year-old D.W., eight-year-old B.W., and the children’s mother. After Brewer argued with the children’s mother, she left the apartment, and Brewer went upstairs. He then returned downstairs and began questioning the three children as to the whereabouts of his money. B.S. told D.W. to go to the kitchen and call the police if anything happened.

D.W. ran to the kitchen and hid under the table with the telephone. Brewer grabbed D.W. by the leg from under the table, hit D.W. in the face with his fist, and threw him against the wall. After seeing Brewer hit D.W., B.S. hit Brewer on the head with a skillet. Brewer then attacked B.S., threw B.S. to the floor and stomped on him. B.S. got up and Brewer shoved him into the wall and scratched B.S.’s face. B.S. tried to call the police but Brewer grabbed the telephone and threw it outside. The children then managed to run to another apartment and call police. The police arrived and arrested Brewer.

On November 13, 2008, the State charged Brewer with Class D felony strangulation, Class D felony battery, Class A misdemeanor battery, and Class A misdemeanor interference with the reporting of a crime. On January 9, 2009, the State filed a habitual offender enhancement. On April 30, 2009, the State dismissed the Class D felony strangulation charge. That same day Brewer was tried by jury and found guilty of all remaining counts and found to be a habitual offender.

On May 29, 2009, the trial court sentenced Brewer to three years on the Class D felony battery with two years executed and one year suspended, one year on the Class A misdemeanor battery, and one year on the Class A misdemeanor interference with the reporting of a crime. The first two counts were to be served consecutively with the third count served concurrently with the first two. The trial court enhanced the Class A misdemeanor battery by three years because of the habitual offender finding. Brewer appeals.

Discussion and Decision

Brewer argues that his seven year sentence is inappropriate under Indiana Appellate Rule 7(B), which provides: “The 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.” In Anglemyer, our supreme court explained:

It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

868 N.E.2d at 494. “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” Id.

The natures of the crimes before us are the battery of a nine-year-old boy seeking only to call the police and the battery of a seventeen-year-old boy seeking to protect his younger brother. Brewer also tried to prevent these boys from calling the police on two occasions during the attack. The crimes are reprehensible.

The character of the offender also supports the sentence. Brewer has had ten misdemeanor convictions and two felony convictions as an adult. His criminal history began in 1993 for a conviction for Class C misdemeanor disorderly conduct and carrying a handgun without a license. He was convicted of Class C misdemeanor domestic battery in 1995. In 1996, he was convicted of Class D felony criminal recklessness. Brewer was convicted of two counts of misdemeanor invasion of privacy, one count of operating while intoxicated, and two counts of resisting law enforcement during 1997. In 1998, he was convicted of Class D felony battery. Brewer was convicted in 2002 of criminal trespass. In 2003, he was convicted of driving while intoxicated. At the time of sentencing in the present case he was awaiting trial for a different Class A misdemeanor battery.

Brewer also attempts to argue that the injuries he received after being hit in the face with a skillet should be taken into consideration as a mitigator. We find it absurd for Brewer to claim that injuries caused by a seventeen-year-old boy defending his younger brother should somehow mitigate the fact that Brewer punched the younger brother in the face as he tried to call the police because of Brewer’s violence.

The nature of the offenses committed by Brewer and Brewer's character easily support the seven-year sentence imposed by the trial court.

Affirmed.

BARNES, J., and BROWN, J., concur.