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ATTORNEY FOR APPELLANT:

**MARK SMALL**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**GARY R. ROM**  
Deputy Attorney General  
Indianapolis, Indiana



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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHAD BYRD,

Appellant- Defendant,

vs.

STATE OF INDIANA,

Appellee- Plaintiff,

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No. 54A01-1101-CR-4

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APPEAL FROM THE MONTGOMERY CIRCUIT COURT  
The Honorable Thomas K. Milligan, Judge  
Cause No. 54C01-0911-MR-134

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**June 8, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Chief Judge**

## Case Summary and Issues

Chad Byrd pleaded guilty but mentally ill to murder, and the trial court sentenced him to fifty-five years executed and five years suspended to probation. He raises one issue, which we restate as two: whether the trial court abused its discretion in sentencing, and whether his sentence is inappropriate. Concluding the trial court did not abuse its discretion in sentencing him and that his sentence is not inappropriate, we affirm.

## Facts and Procedural History

In November 2009, Byrd, who was then twenty-four years old, joined his parents and older brother for a barbeque at the parents' home. While the four were talking, laughing, eating, and watching television, Byrd picked up a twenty-gauge shotgun and shot his brother in the head from less than ten feet away, killing him. Byrd later testified that he did so because his brother molested him at least ten years earlier.

The State charged Byrd with murder, a felony, and voluntary manslaughter as a Class A felony. Because Byrd's mental condition was a crucial issue during his prosecution, he was independently examined by three medical professionals. Dr. George Parker, M.D., examined Byrd and reported that at the time of the offense Byrd suffered from a mental disease or defect and did not appreciate the wrongfulness of his conduct. Dr. Stephanie Callaway, Ph.D., examined Byrd and reported that at the time of the offense Byrd suffered from a mental disease or defect, but did appreciate the wrongfulness of his conduct. Dr. David Crane, M.D., examined Byrd and reported similar to Dr. Callaway that at the time of the offense Byrd suffered from a mental disease or defect, but did, in fact, appreciate the wrongfulness of his conduct.

Byrd pleaded guilty pursuant to a plea agreement, which provided that he plead guilty but mentally ill to murder, that his sentence include a maximum of fifty-five years of executed time in prison, and that the State would not seek an additional five-year enhancement that was available for Byrd's use of a firearm in committing the offense. See Ind. Code § 35-50-2-11. The trial court accepted Byrd's guilty plea and, following a sentencing hearing, sentenced Byrd to sixty years total, fifty-five years of which was to be executed and five years suspended to probation. Byrd now appeals his sentence. Additional facts will be supplied as appropriate.

### Discussion and Decision

#### I. Abuse of Discretion in Sentencing

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), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” Id. (quotations and citation omitted). A trial court may abuse its discretion by failing to enter a sentencing statement, entering findings of aggravating and mitigating factors unsupported by the record, omitting factors clearly supported by the record and advanced for consideration, or giving reasons that are improper as a matter of law. Id. at 490-91. “Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491.

Byrd argues that the trial court abused its discretion in failing to assign sufficient mitigating weight to Byrd's mental illness. Trial courts are obligated to "carefully consider on the record what mitigating weight, if any, to allocate to any evidence of mental illness, even though the court is not obligated to give the evidence the same weight as does the defendant." Prowell v. State, 787 N.E.2d 997, 1002 (Ind. Ct. App. 2003), trans. denied. Our supreme court has "emphasized that a [guilty but mentally ill] defendant is not automatically entitled to any particular credit or deduction from his otherwise aggravated sentence simply by virtue of being mentally ill." Weeks v. State, 697 N.E.2d 28, 30 (Ind. 1998) (quotation and citation omitted). In other words, even aside from our reluctance to attribute greater (or lesser) mitigating weight to mental illness than the trial court does, the trial court is not required to attribute a particular amount of mitigating weight to mental illness either, and certainly not the same weight that the defendant does.

At the outset, we are not persuaded by Byrd's use of one of the three doctors' opinions, Dr. Parker's, to support his argument that his mental illness should be given substantial mitigating weight when the other two doctors' opinions lead to a contrary conclusion and the trial court apparently agreed with those two. Nor do we attempt to re-determine the relative weight of the professionals' opinions or reevaluate factual findings made by the trial court.

Byrd refers us to the portion of Weeks in which our supreme court enumerated “several considerations that bear on the weight, if any, that should be given to mental illness in sentencing.”<sup>1</sup> Id. at 30.

These factors include: (1) the extent of the defendant’s inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime.

Id.

At Byrd’s sentencing hearing the trial court addressed these considerations in explaining its decision.

The court in treating Mr. Byrd as a juvenile tried various things to address the issues or problems he had concerning school and drugs. Nothing that we could do here in the community seemed to make any difference so we made the effort to and did place him out of state . . . and he was there for fifteen months, came back and continued to have problems . . . . He has a significant history of drug and alcohol abuse, substance abuse, . . . and over the years . . . his use of different illegal drugs has continued and escalated in terms of the seriousness of the drugs and the frequency with which he used them and from the evidence just before this incident happened that brings us to court today he was trying to wean himself off of Lortab and other painkillers. There is a history of behavior which would probably be categorized as mental illness. Whenever a person has a mental illness and uses drugs it’s the court’s belief that the drug use really screws up the ability to diagnose appropriately what the mental illness is and I think that’s reflected in the various reports that have been submitted. We’ve got psychosis not otherwise specified which is a general label. We’ve got personality disorder, anti-social personality disorder. We’ve got schizophrenia. And all of those conditions or mental illnesses are exacerbated or modified by the use of alcohol and illegal drugs. One thing is clear that when Mr. Byrd was in the Department of Corrections [sic] the first time he seemed to respond well to the medication that was given to him at that time. Since his break down in jail this second time he seems to have responded well to the medications that he was placed on when he was at Logansport State Hospital. This court is not smart enough or well

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<sup>1</sup> Byrd discusses and applies these considerations in the section of his brief arguing that his sentence is inappropriate in light of his character, but we address them as both potentially revealing an abuse of discretion and relating to the appropriateness of his sentence.

enough educated to tease out from all these [sic] information what the appropriate diagnosis for Mr. Byrd is. It's clear that he does suffer from mental illness. It's clear that the mental illness can be addressed by medication and it would appear that a contributing factor to this incident that happened was the fact that the family was not able to continue him on his medication when he came back from the Department of Corrections [sic] and therefore his mental illness probably contributed to the incident which happened. The court also believes that the fact that Mr. Byrd has a significant history of drug abuse and other juvenile criminal history that the drug abuse contributed and that perhaps there is a [sic] underlying anti-social personality disorder that contributed as well. . . . [I]t's fairly clear that there was some premeditation . . . . It's not like this was a spontaneous or something that happened just on the spur of the moment, but it would appear that it's something that had been planned to a certain extent. . . . The court finds that the only mitigating circumstances the court can find are the mental illness that he suffers from and the fact that he has cooperated with his attorney and with the court. . . . The aggravating circumstances have to be the previous juvenile delinquency history, the adult criminal offense history, the long standing involvement with drugs and to whatever extent this may have been premeditated the court believes that that's aggravating [sic] circumstance as well. The court finds that the aggravating circumstances outweigh the mitigating circumstances. . . .

Transcript at 102-04 (emphases added).

From this statement we gather that the trial court found Byrd's mental illness to be largely controllable through use of medications which Byrd was prescribed. The trial court stated it is "clear" that Byrd "respond[ed] well" to medication while in prison, and the same while he was in Logansport State Hospital. *Id.* at 103. The trial court further found Byrd's failure to take his medications to be a contributing factor to the murder, which implies that by taking his medications Byrd could have controlled his mental illness. The mitigating effect of Byrd's mental illness is appropriately substantially lessened when he could have controlled his mental illness.

The extent to which Byrd's mental illness limited his overall functioning does not indicate the trial court abused its discretion either. While Byrd points out that his mental

illness affected his education and job training, these are only partial truths because the trial court also found that his education and job training suffered from his extensive and consistent substance abuse. Further, and of greater importance, Byrd committed this offense while he was lounging with family at his parents' home – not at a job site or even in a public area where one's socialization or other form of education or training might be relevant.

The trial court acknowledged that Byrd has suffered from his mental illness for an extended period of time, but also recognized that during that time professionals discovered he could minimize negative effects by avoiding illegal drugs and alcohol and taking his prescribed medication. In that sense, the trial court appears to have concluded that although the length of Byrd's mental illness could have been a mitigating factor, any mitigating effect is lessened because with greater experience with his condition Byrd learned how to avoid manifestations of his illness, and yet failed to do so.

The trial court's assessment and discussion of the nexus between Byrd's mental illness and commission of this offense also supports its sentencing decision. Although the trial court noted that Byrd's mental illness "probably contributed" to Byrd murdering his brother, the trial court deemed this to be of limited mitigating weight in light of other contributing factors – his abuse of alcohol and illegal drugs and failure to take his prescription medication that had a history of minimizing negative effects of his illness.

In sum, the record reflects that the trial court reviewed the reports from the three physicians who evaluated Byrd's mental condition, reviewed Byrd's history of mental illness and drug use, and ultimately considered his mental illness to be a mitigating factor but of limited weight because his abuse of alcohol and drugs and failure to consistently

take his medications enabled his mental illness to overwhelm him, which led to his offense. The trial court considered what mitigating weight, if any, his mental illness warrants, and we do not deem its conclusion to be an abuse of discretion.

## II. Inappropriateness of Sentence

This court has authority to revise a sentence “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.” Ind. Appellate Rule 7(B). In making this determination, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. Nevertheless, the defendant bears the burden to persuade this court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). “[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008).

Indiana Code section 35-50-2-3 provides the sentencing range for a fixed term of imprisonment for murder as between forty-five and sixty-five years, and the advisory sentence is fifty-five years. Byrd received a sixty-year sentence, fifty-five of which was to be executed and five years suspended to probation.<sup>2</sup> In reviewing the appropriateness of a sentence, we may consider the “totality of the penal consequences,” which includes as relevant here the amount of time to be executed in prison and any portion suspended to

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<sup>2</sup> We note that although Byrd’s fifty-five years executed sentence is consistent with his plea agreement, he has not waived his inappropriateness argument by entering the agreement. Appellate courts exercise their constitutional authority in determining whether a sentence is inappropriate. See Childress, 848 N.E.2d at 1078-80 & n.2.

probation. Davidson v. State, 926 N.E.2d 1023, 1024 (Ind. 2010). Therefore we note that Byrd's sentence is slightly longer than the statutory advisory sentence.

As to the nature of the offense, our court has previously held that “[e]ven where there is a strong indication” that an offense is linked to a defendant's mental illness, the mitigating weight of such illness generally does not favor imposition of a reduced sentence, but rather the advisory sentence. Wright v. State, 916 N.E.2d 269, 279 (Ind. Ct. App. 2009), trans. denied. Here, the trial court concluded that Byrd's mental illness “probably contributed” to the murder, along with his extensive drug abuse. Tr. at 103.

But even if we were to equate the trial court's “probably contributed” language with the “strong indication” referred to in Wright, and even if we ignored what the trial court seemed to focus on as the primary cause of Byrd's deranged actions – his extensive and serious abuse of drugs and alcohol – the trial court's finding of at least some premeditation justifies a sentence slightly longer than the advisory sentence, which is exactly what Byrd received.

As to Byrd's character, again he raises the sole issue of his mental illness. Recapping the four common general considerations in challenging a sentence based on mental illness that we discussed above, we largely agree with the trial court's reasoning and decision. Because the trial court found that Byrd's mental illness was controllable through avoiding alcohol and illegal substances and by taking his prescribed medication, we do not deem his slightly enhanced sentence for conduct resulting from a failure to control his mental illness inappropriate. The extent to which Byrd's functioning was limited is irrelevant because of the particular facts of this case. The long time period of Byrd's illness is distressing, but is in large part explained by his repeated regression into

abusing alcohol and illegal substances, and for that reason we do not deem the long period of his illness to warrant a lesser sentence. And although Byrd's illness could be linked to this dreadful act, his extensive substance abuse is just as likely a major factor, and therefore his slightly enhanced sentence is not inappropriate.

What limited mitigating weight we might attribute to Byrd's mental illness is more than offset by the seriousness and extent of Byrd's history of drug and other criminal activity. Beginning as a juvenile, he was placed on probation for truancy and violated it multiple times through various arrests. He was charged with possession of marijuana, resisting law enforcement, multiple counts of possession of paraphernalia, and multiple counts of battery. As a juvenile he received the benefit of "probation and parole supervision, residential treatment, hospital stays, house arrest placements, secure detention, and . . . placement in the Indiana Department of Correction (IDOC) Boys School." Appellant's Appendix at 66.

As an adult, in 2004, Byrd was convicted of battery resulting in serious bodily injury as a Class A misdemeanor, the same as a Class D felony, resisting law enforcement as a Class A misdemeanor, and the same as a Class D felony. In 2005, Byrd was convicted of illegal consumption of alcohol as a Class C misdemeanor, and in 2006, of resisting law enforcement as a Class A misdemeanor and of operating while intoxicated as a Class A misdemeanor. While incarcerated Byrd has resisted jail staff, threatened inmates and jail staff, destroyed property, bit jail staff on two occasions, thrown feces and urinated under his prison cell door, and has attempted escape.

As to his substance abuse, Byrd began drinking alcohol at eleven years old and increased the frequency of his use as he aged. He began smoking marijuana at eleven

years old and by sixteen was smoking marijuana daily. He began smoking methamphetamine at thirteen, and at sixteen began orally ingesting opiates. He also experimented with lysergic acid diethylamide when he was sixteen. He abused Xanax and Klonopin, has snorted cocaine regularly and has also smoked crack cocaine. He has snorted and injected heroin into his body, and has experimented with inhalants multiple times. Finally, Byrd admits to having ingested Lortab prior to murdering his brother, and blood tests following his arrest confirmed marijuana in his system as well. Byrd has failed to cooperate with or complete multiple drug treatment programs, and his lengthy history of alcohol and drug abuse has become more serious over the years. This history and the reasonably probable link to Byrd ultimately murdering his brother justifies Byrd's sixty-year sentence for murder, a modest enhancement from the advisory sentence.

#### Conclusion

The trial court did not abuse its discretion in identifying or weighing the aggravating and mitigating circumstances in sentencing Byrd, and the sentence is not inappropriate in light of the nature of Byrd's offense and his character.

Affirmed.

NAJAM, J., and CRONE, J., concur.