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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL ACHENBACH	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 48A02-0812-CR-1178
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0804-MR-120

August 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Michael Achenbach appeals his sixty-year sentence, following a guilty plea, for murder, a felony. For our review, Achenbach raises a single issue, whether his sentence is inappropriate in light of the nature of his offense and his character. Concluding his sentence is not inappropriate, we affirm.

Facts and Procedural History

On April 23, 2008, Cindy Achenbach dropped her two children off at the home of her estranged husband, Michael. Michael asked Cindy to come back to his bedroom to talk about their relationship. However, when Cindy saw a shotgun in Michael's room, she began to leave the house. As Cindy walked through the front door, Michael shot her in the back with the shotgun. Cindy fell down on the porch in the doorway, still alive. As Michael stood over her, Cindy said, "Mike, don't do this." Transcript at 98. Nonetheless, Michael pointed the shotgun at Cindy's head and fired two more shots, killing her.

The couple's two children, aged 7 months and 4 years old, were in the house or in the yard when the murder occurred. When questioned by police later that day, the seven-year-old stated, "My mommy's dead … My daddy shoot my mommy three times." Id. at 91. The little girl was also able to identify the murder weapon as a big, brown gun. Shortly after the murder, police arrived at the scene and eventually took Michael into custody after a stand-off. During a police interview, Michael confessed to the murder and provided explicit details to police.

Cindy's death was preceded by other acts of harassment and violence by Michael. In February of 2008, Michael went to Cindy's place of work and waited for her in the parking lot. When Cindy came out, Michael took her cell phone away, and told her to get into his car. When Cindy refused, Michael threatened her with a knife. Security guards and police responded to the scene, and Michael was arrested and charged with criminal confinement, a Class B felony, battery by means of a deadly weapon, a Class C felony, and domestic battery, a Class A misdemeanor. Michael was released on bond pending trial on March 28, 2008. The charges were still pending at the time of the murder.

Michael has a long history of mental illness beginning during his early childhood. He has been previously diagnosed with obsessive-compulsive disorder, bipolar disorder, extreme to delusional paranoia and suicidal tendencies. Michael has been prescribed several medications for his mental health problems, but does not regularly take his medication. After the murder, Michael's mental health was evaluated by a psychiatrist and a clinical psychologist. Both evaluators concluded that Michael appreciated the wrongfulness of his actions and was not acutely mentally ill at the time of the murder.

On April 28, 2008, the State charged Michael with murder, a felony. On November 17, 2008, Michael pled guilty but mentally ill to the charge without the benefit of a plea agreement. The trial court held a sentencing hearing on December 15, 2008, at which it heard extensive testimony regarding the circumstances of the crime, the relationship between Michael and Cindy, and Michael's mental health. The trial court found as aggravating circumstances that Michael was on bond for other violent crimes against Cindy when he committed the murder, Michael had terrorized Cindy prior to the

murder, and Michael committed the crime in the presence of the couple's children. The trial court found as mitigating circumstances that Michael pled guilty but mentally ill, Michael cooperated with the police investigation, and Michael's mental health history and current status, assigning minimal weight to the former two but modest weight to the latter. The trial court then determined the aggravating circumstances outweighed the mitigating circumstances and sentenced Michael to sixty years executed with the Indiana Department of Correction. Michael now appeals.

Discussion and Decision

I. Standard of Review

We engage in a multi-step process when evaluating a sentence. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (2007). First, the trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravating or mitigating circumstances, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

II. Appropriateness of Sentence[1]

Michael's sixty-year sentence is five years above the advisory sentence. See Ind.

[1] Although Michael phrases his issue as an Indiana Appellate Rule 7(B) review of the appropriateness of his sentence, he also seems to argue that the trial court did not sufficiently consider his mental illness as a mitigating factor. To the extent Michael so argues, his argument is a request that we review the weight given to a particular mitigating circumstance, which we will not do. See Anglemyer, 868 N.E.2d at 491.

Code § 35-50-2-3 (Advisory sentence is forty-five years; maximum sentence is sixty-five years). Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence if, after due consideration of the trial court's decision, we find that the sentence "is inappropriate in light of the nature of the offense and the character of the offender." Id. When making this decision, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 196 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) ("[I]nappropriateness review should not be limited … to a simple rundown of the aggravating and mitigating circumstances found by the trial court."). However, the defendant bears the burden to "persuade the appellate court that his … sentence has met this inappropriate standard of review." Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

A. Nature of the Offense

Initially, we point out the murder was the culmination of an escalating pattern of violence and harassment. In the past, Michael had stalked Cindy, handcuffed her to a toilet while threatening to make her watch him kill himself, and accosted her at knife-point. Cindy had expressed to friends and family her fear that Michael would kill her.

Michael first shot Cindy in the back as she was attempting to leave his house. This first shot left Cindy still alive and able to speak. After this first shot, Michael could have stopped the attack, called for medical assistance, and possibly saved Cindy's life. Instead, as Cindy asked him not to kill her, Michael stood over her, lowered the shotgun to within an inch of her head and fired two more shots ensuring her death. Between each of the three shots, Michael had to chamber a new round of ammunition. In addition,

Michael committed the murder in the presence of two children, one of whom at least heard and understood – and probably saw – what was happening. Such a crime evidences a level of depravity worthy of the maximum possible sentence. Thus, we cannot say that Michael's sixty-year sentence is inappropriate in light of the nature of his offense.

B. Character of the Offender

The details of the murder and the pattern of domestic violence above, taken alone, weigh very negatively toward Michael's character. However, Michael's uncontroverted mental illness, while certainly not excusing his behavior or the murder, does lessen somewhat the negative nature of his character. In addition, after an initial stand-off with police, Michael surrendered and confessed to the murder. Michael also pled guilty but mentally ill without the benefit of a plea agreement. These facts weigh in favor of his character. However, to the extent that Michael's character merits a slight reduction in his sentence, such a reduction is reflected in the fact that he received five years less than the maximum penalty despite the heinousness of the murder. Therefore, we cannot say that the sentence is inappropriate in light of Michael's character.

Conclusion

Michael bears the burden of demonstrating the inappropriateness of his sentence, and he has failed to do so. His sentence is not inappropriate in light of the nature of his offense and his character.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.