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.

FILED
Aug 31 2011, 9:23 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

KRISTIN A. MULHOLLAND
Office of the Public Defender, Appellate Div.
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

CYNTHIA L. PLOUGHE
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

REO JON'TA THOMPSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1012-CR-635
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0910-MR-11

August 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Reo Thompson appeals his sentence for two counts of murder in the perpetration of a robbery.[1] Thompson asserts the trial court abused its discretion when it denied his request for a continuance during the sentencing hearing and his sentence is inappropriate based on his character and the nature of the crime. We affirm.

FACTS AND PROCEDURAL HISTORY

On October 18, 2009, Thompson and Gregory Brooks attempted to gain entry to the home of Milton and Ruby McClendon by claiming they had car trouble. Milton denied them entry, and Thompson and Brooks forced their way into the house. Once inside, Thompson and Brooks held the McClendons, who were both in their seventies, at gunpoint and ordered them to surrender all their valuables and money. Ruby gave Thompson fifty dollars and the keys to the couple's vehicle. Thompson and Brooks barricaded Ruby inside a hallway closet and forced Milton to crawl at gunpoint into his bedroom. At some point, Thompson picked up a vase and struck Milton in the head, making him dizzy. Thompson and Brooks searched the house for money and valuables; they took some gold jewelry and a handgun. Before they left they barricaded Milton in the basement of the home by propping a ladder against the door.

Thompson and Brooks drove away, but decided to return to the house to "finish them," (App. at 98), because the McClendons had seen their faces. On their return to the McClendons' home, Thompson and Brooks forced Milton and Ruby to crawl into the trunk of the McClendons' vehicle. Thompson and Brooks then drove around, making a few stops,

[1] Ind. Code § 35-42-1-1.

including a gas station and an abandoned garage near Thompson's house. At the garage, Thompson and Brooks exited the car for an extended period of time, leaving Milton and Ruby locked in the trunk.

Sometime later, Thompson and Brooks returned to the vehicle, and drove to a wooded forest preserve in Calumet City, Illinois. They forced the McClendons out of the trunk, made them walk a few feet into a tall grassy area, executed them, and left them there. Ruby was shot in the head, and Milton was shot in the arm, shoulder, upper back, and head. The bodies of Milton and Ruby were discovered the next day. The Cook County Medical Examiner's Office was able to identify the bodies by the serial number on Milton's pacemaker.

Thompson was ultimately charged with fifteen felony counts and on October 19, 2010, he agreed to plead guilty to two counts of Murder in the perpetration of a robbery. On November 29, after a hearing, the trial court sentenced Thompson to sixty years for each count of Murder, to be served consecutively.

DISCUSSION AND DECISION

1. Discovery Violation

The trial court has broad discretion in dealing with discovery violations and may be reversed only for an abuse of that discretion involving clear error and resulting prejudice. *Berry v. State*, 715 N.E.2d 864, 866 (Ind. 1999). The doctrine of "clear error" requires us to assess whether "there is any way the trial court could have reached its decision." *State v. Moore*, 678 N.E.2d 1258, 1261 (Ind. 1997), *reh'g denied* (quoting *Spranger v. State*, 650 N.E.2d 1117, 1120 (Ind. 1995)). Thompson claims the trial court abused its discretion when

it admitted reports of his misconduct in jail and denied his request for a continuance. We disagree.

At Thompson's sentencing hearing, the State asked the court to admit, as a supplement to his Pre-Sentencing Report, a report of all of Thompson's incidents of misconduct while in jail. Defense counsel objected, stating she had not been able to properly inspect and authenticate the reports because the State did not tell her it had the reports until 2:00 p.m. the previous day, and she did not receive the reports until the morning of the sentencing hearing. Defense counsel requested a continuance.

The trial court denied the continuance and stated, "Discovery is a two way street, counsel. You are telling me you could not have obtained these documents yourself, due diligence. He's your client. He's the one getting into trouble." (Tr. at 24-25.) Nevertheless, the trial court indicated it would not consider the jail misconduct records when it determined Thompson's sentence. As the jail misconduct records were not considered by the trial court during sentencing, Thompson cannot show he was prejudiced by the ruling.

2. Appropriateness of Sentence

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. *Williams v. State*, 891 N.E. 2d 621, 633 (Ind. Ct. App. 2008) (citing Ind. Appellate Rule 7(B)). We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied.* The appellant bears the burden of demonstrating his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind.

2006).

When considering the nature of the offense, the advisory sentence is the starting point to determine the appropriateness of a sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 878 N.E.2d 218 (Ind. 2007). The advisory sentence for murder is fifty-five years, with a range from forty-five to sixty-five years. Ind. Code § 35-50-2-3. One factor we consider when determining the appropriateness of a deviation from the advisory sentence is whether there is anything more or less egregious about the offense committed by the defendant that makes it different from the "typical" offense accounted for by the legislature when it set the advisory sentence. *Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008), *trans. denied*.

Thompson characterizes the details of his crime as "troublesome." (Br. of Appellant at 9.) The trial court's characterizations – "vicious, cold-blooded, and heinous," (App. at 110) – seem more appropriate. Thompson and Brooks forced their way into the home of a couple in their seventies, and while pilfering small amounts of money and jewelry, battered and confined their elderly victims. The two left in the McClendons' vehicle, then returned to "finish them." (*Id*. at 98.) Thompson and Brooks forced the McClendons into the trunk of the stolen vehicle, drove them to a remote location, led the McClendons into the woods, and shot Milton four times and Ruby once. The details of the crime are particularly disturbing, and we cannot say Thompson's sentence is inappropriate based on the nature of his offense.

When considering the character of the offender, one relevant fact is the defendant's criminal history. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The

significance of a criminal history in assessing a defendant's character varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id*. Thompson had one juvenile adjudication for criminal mischief prior to this incident. However, while incarcerated, he committed several rule violations including possession of unauthorized medication, destroying or defacing jail property, flooding an area of the jail, refusing to wear his jail wristband, fighting, and failing to obey the directions of jail personnel on multiple occasions.[2]

Thompson argues the fact he pled guilty should reflect favorably on his character because he saved the trial court the cost of a trial, he kept the victims' family from hearing testimony regarding the crimes, and he was remorseful. A guilty plea does benefit the criminal justice system and the family of the victim. *Francis v. State*, 817 N.E.2d 235, 237-38 (Ind. 2004). But it does not necessarily reflect positively on a defendant's character if he received a significant benefit from the plea. *Fields v. State*, 852 N.E.2d 1030, 1034 (Ind. Ct. App. 2006), *trans. denied*. Thompson was charged with fifteen felonies including murder, criminal confinement, and auto theft. Thus, he received a significant benefit when the State dismissed most of the charges against him. The trial court noted "the evidence in this case was most persuasive and strongly favored a conviction had the case gone to trial." (App. at 110.) Based on these factors, we cannot say Thompson sentence was inappropriate based on his character.

[2] We note that while the trial court did not consider the reports of jail misconduct, we are permitted to do so on review. *See Roney*, 872 N.E.2d at 206. (we consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record).

CONCLUSION

The trial court did not err when it admitted records of Thompson's pre-trial jail misconduct because the trial court did not consider the misconduct reports when making its sentencing decision. We also hold Thompson's sentence is appropriate based on the nature of the offense and his character. Accordingly, we affirm.

Affirmed.

BAKER, J., and BRADFORD, J., concur.