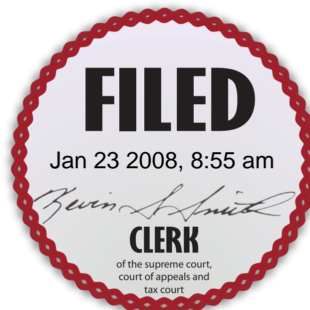
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

SUSAN D. RAYL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

DERRICK HARRINGTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0707-CR-358
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0601-FB-013225

January 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Derrick Harrington appeals the sentence he received after pleading guilty to two counts of Battery,[1] a class C felony. Specifically, Harrington argues that (1) the trial court abused its discretion by considering the multiple victims of the offenses to be an aggravating factor, and (2) his sentence is inappropriate in light of the nature of the offenses and his character. Finding no error, we affirm the judgment of the trial court.

FACTS

On January 5, 2006, Harrington and Joshua Lane drove to a residence on the southeast side of Indianapolis. Harrington, who was carrying a handgun, entered the residence and encountered Joseph Hubbard, Larry Woods, Edward Yeley, Darryl Smith, Lonnie Calvin, Karen Calvin, and Kayla Morris. Morris told Harrington that Woods and Yeley "robbed us." Tr. p. 26. After verbally assaulting Woods and Yeley, Harrington began hitting and kicking the men with his hands and feet and "hit them [both] over the head with the gun." Id. at 29. After becoming fatigued, Harrington ceased his attack and quickly left the residence, hiding his handgun under a vinyl tarp in the backyard "because [he] didn't want to carry it . . . [b]ecause [he] was walking." Id. at 33.

After leaving the residence, Harrington realized that he had accidentally taken Lane's cell phone with him. Harrington returned to the residence to give Lane his phone and left shortly thereafter. A few days after the attack, Harrington's sister told him that "somebody"[2] had been murdered in the house the night Harrington was there. Id. at 38.

---

[1] Ind. Code § 35-42-2-1.

[2] Woods and Yeley were shot and Yeley died from his injuries. Harrington testified that he was not at the residence during the shootings.

On January 25, 2006, the State charged Harrington with two counts of class B felony criminal confinement, two counts of class C felony battery, and class A misdemeanor carrying a handgun without a license. The trial court accepted Harrington's guilty plea to two counts of class C felony battery on May 30, 2007, and dismissed the remaining counts. A sentencing hearing was held the same day, and the trial court sentenced Harrington to six years imprisonment for each count, to be run consecutively, with eight years to be executed and three years to be suspended to probation, with one of those years to be served on home detention. Harrington now appeals.

DISCUSSION AND DECISION

Harrington committed the offenses at issue herein after the April 2005 amendments to the Indiana sentencing statutes; thus, we apply the amended versions thereof. Gutermuth v. State, 868 N.E.2d 427, 431 n.4 (Ind. 2007). Indiana Code section 35-38-1-7.1(d) provides that a trial court "may impose any sentence that is . . . authorized by statute . . . regardless of the presence or absence of aggravating circumstances or mitigating circumstances." We review challenges to the trial court's sentencing process for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). While a trial court must enter a sentencing statement whenever imposing a felony conviction, sentencing statements are not required to contain a finding of aggravators or mitigators. Id. Rather, they need include only a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." Id. If the statement does, however, include a finding of aggravators or mitigators, then it must "identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating." Id.

A person who commits a class C felony shall be imprisoned for a fixed term of between two and eight years, with the advisory sentence being four years. Ind. Code § 35-50-2-6. At the sentencing hearing, the trial court found three aggravating factors: (1) Harrington was on pretrial release for a class A felony charge at the time he committed the instant offenses, (2) his prior criminal history, and (3) there were multiple victims of the offenses. The trial court found Harrington's guilty plea to be a mitigating factor, but concluded that the aggravating factors outweighed the mitigating factor and sentenced Harrington as detailed above.

I. Multiple Victims Aggravator

Harrington argues that the trial court abused its discretion when it found the fact that there were multiple victims to be an aggravating factor because "the existence of a victim is an element of battery" and he was convicted of two counts of battery—one for each victim. Appellant's Br. p. 12. Therefore, Harrington asks that we order the sentences for each count of battery to run concurrently instead of consecutively.

Although Harrington argues that proof of each victim's identity is a material element, our Supreme Court has rejected a similar argument. In McCann v. State, the defendant was convicted of burglary, attempted rape, and attempted murder, and the attempt crimes involved two distinct victims. 749 N.E.2d 1116, 1118 (Ind. 2001). The trial court, in imposing two consecutive fifty-year sentences, cited as an aggravating factor the nature and circumstances of the defendant's crimes, including the fact that the "offenses or this series of acts involves multiple victims." Id. at 1120. In affirming that aggravator, our Supreme Court acknowledged the rule that "the trial court may not use 'a factor constituting a material

element of an offense as an aggravating circumstance[;]'" however, "[i]njury to multiple victims has been cited several times by this Court as supporting enhanced and consecutive sentences." Id. (quoting Walton v. State, 650 N.E.2d 1134, 1137 (Ind. 1995)). Therefore, we cannot say that the trial court abused its discretion by relying upon the existence of multiple victims to be an aggravating factor, and we deny Harrington's request for us to order his sentences to run concurrently.[3]

II. Appropriateness

Harrington argues that his aggregate sentence is inappropriate in light of the nature of the offenses and his character. Pursuant to Indiana Appellate Rule 7(B), our court has the constitutional authority to 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." We defer to the trial court during appropriateness review, Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007), and we refrain from merely substituting our judgment for that of the trial court, Foster v. State, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Regarding the nature of the offenses, Harrington battered two men with his fists and kicked them "[i]n the head, back, [and] legs." Tr. p. 51. Harrington struck both men in the

---

[3] Even assuming for the sake of the argument that the trial court abused its discretion by finding Harrington's multiple victims to be an aggravating factor, the trial court also found two additional aggravating factors that Harrington does not challenge—the fact that Harrington was on pretrial release at the time of the offenses and his criminal history. These aggravators are sufficient to support the sentence imposed by the trial court. See Hildebrandt v. State, 770 N.E.2d 355, 359 (Ind. Ct. App. 2002) (holding that a single aggravating factor may be sufficient to support enhanced, consecutive sentences).

head with the handgun he brought to the residence and only stopped the attack "[b]ecause it was bloody everywhere" and he was "tired." Id. at 31, 52. While Harrington testified that he was no longer at the residence when Woods and Yeley were shot and did not participate in that crime, the trial court opined that

> I'll be perfectly frank with you, having sat through the trial and listened to both you and Mr. Hubbard and listened to everybody else, I don't think anybody told the truth as to what happened there. I think everybody pretty much covered up what was going on. I don't believe for a minute that you all left, came back, just happened not to be [there] when the shooting was there . . . . I think that was a crock, quite frankly.

Id. at 78. Regardless of whether Harrington was present when Woods and Yeley were shot, he initiated the violence by attacking the men. In sum, we do not find the nature of the offenses to render Harrington's sentence inappropriate.

Turning to Harrington's character, his contact with the criminal justice system began as a juvenile and has escalated as an adult. Harrington was adjudicated a delinquent at the age of seventeen for a crime that would have been class A misdemeanor possession of marijuana had it been committed by an adult. As an adult, Harrington was convicted of class A misdemeanor criminal conversion. Additionally, he was charged with class A felony dealing in cocaine, class C felony possession of cocaine, and class A misdemeanor possession of marijuana on November 2, 2005, and was on pretrial probation for those offenses when he committed the offenses underlying this appeal. The frequency and severity of Harrington's criminal activity has escalated despite his numerous contacts with the criminal justice system, showing Harrington's disregard for the law. Furthermore, despite his criminal history, Harrington never received an executed sentence until he was sentenced for

the underlying offenses. In sum, we do not find Harrington's sentence to be inappropriate in light of the nature of the offenses and his character.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.