

MEMORANDUM DECISION

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

Ryan M. Gardner
Deputy Public Defender
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Nicole D. Wiggins
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Roderick V. Lewis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 18, 2022

Court of Appeals Case No.
22A-CR-1239

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D06-1102-MR-2

Brown, Judge.

[1] Roderick V. Lewis appeals his total sentence of 124 years for two counts of felony murder following remand by the Seventh Circuit for the issuance of a writ of habeas corpus. On remand the trial court revised its sentence from 65 years, consecutive on each count, to 62 years, consecutive on each count. We conclude the sentence imposed by the trial court is inappropriate and remand for resentencing to the advisory term of 55 years on each count to be served consecutively.

Facts and Procedural History

[2] The relevant facts as discussed in Lewis's direct appeal follow:

On June 29, 1999, Christopher Hale had a conversation with sixteen year old Richard Rogers in the presence of Angela Lawson during which Rogers asked Hale to visit a drug house in Fort Wayne, Allen County, Indiana, operated by Rogers and fourteen year old Sidney Wilson. Hale declined because he and Wilson were having problems, and Rogers stated that he "would talk to [Wilson] to squash it." Transcript at 83. Sometime later in the evening, Hale, Lewis, and Kajuanta Mays asked Lawson to visit the drug house and inform them who was inside, and Hale gave Lawson twenty dollars. Lawson went to the house, bought a rock of crack cocaine, returned to the men, and informed them that Rogers and Wilson were the only persons in the house. Hale, Lewis, and Mays decided to visit the house and obtain drugs. Lewis knew of the men's intentions to take the drugs they wanted and that he "was going to get something out of it." *Id.* at 361. Lewis, Hale, and Mays planned for Hale to arrive at the house first and for Lewis and Mays to arrive later so that it would appear to be happenstance that all three men were at the house at the same time so that Wilson and Rogers would not believe that the men meant to harm them.

At some point, the three men entered the house and started smoking and drinking with Wilson and Rogers. Lewis was armed with a .38 special

revolver, and Hale, who Lewis described as a violent person who had had a lot of problems with people, was armed with a nine millimeter firearm. Hale stated that he had to use the restroom and went upstairs, and Wilson and Rogers sat downstairs. While Wilson was sitting on a couch, Hale walked down the stairs and stated “die bitch” while shooting his nine millimeter at Wilson. *Id.* at 97. Hale shot Wilson five times, including in his chest, abdomen, left armpit, left leg, and the middle of his back. Rogers and Lewis both “started going for” a shotgun that was in the room, and Hale turned out the lights in the room and told Rogers to “sit down mother f——r.” *Id.* at 304, 354. Hale told Lewis to kill Rogers, and Lewis stated that he would not do it, handed his .38 revolver to Mays, and stated “if you want it . . . you do it.” *Id.* at 304. Mays then shot Rogers five or six times, including several times in the head from a distance of six to eighteen inches.

Lawson, who was returning to the house to purchase additional drugs, observed Lewis, Hale, and Mays running away from the house. Lewis took the shotgun from the house with him. Lewis, Hale, Mays, and Lawson entered another house, went into the basement, and Lewis, Hale and Mays split up the money and drugs they had taken from the drug house. The men gave Lawson some drugs to pay a person for a ride to a hotel. Lawson arranged for a ride, and the driver was given approximately seven rocks of crack, which the driver recognized to be from the house of Wilson and Rogers. Lewis, Hale, Mays, and Lawson entered a hotel room, and the men “were sittin around laughin’ and talkin” and discussing and describing the shootings. *Id.* at 97. At some point that night, Lawson and Lewis had sex or oral sex. At some point, Lewis’s uncle buried the .38 revolver and it was later exhumed. . . .

Lewis v. State, No. 02A03-1201-CR-18, slip op. at 1 (Ind. Ct. App. August 31, 2012) (“*Lewis I*”), *trans. denied*.

[3] We set forth the following additional facts on appeal from the denial of post-conviction relief:

The crime remained unsolved for quite some time, and Lewis lived in Arizona and Indiana over the next several years. He continued to be involved in drugs and crimes as a gang member until at least 2007. Between 2002 and 2006, Lewis committed five misdemeanors (resisting law enforcement, driving without a license, and disorderly conduct (Indiana 2002); assault and unlawful imprisonment (Arizona 2005)) and three felonies (possession of cocaine (Indiana 2002), theft (Arizona 2004), and burglary (Arizona 2006)). Lewis violated probation more than once, and he was released to parole in Arizona in March 2011.

In the meantime, investigators in Fort Wayne eventually identified Lewis as a suspect in the 1999 double murder. They located him in an out-of-state prison and interviewed him on May 21, 2009. Lewis gave a statement detailing his involvement with Hale and Mays in the robbery turned murder.

Lewis v. State, 116 N.E.3d 1144, 1149 (Ind. Ct. App. 2018) (“*Lewis II*”), *trans. denied*.

[4] On February 25, 2011, the State charged Lewis with two counts of felony murder and two counts of robbery as class A felonies. *Id.* Lewis was arrested in Indiana on June 27, 2011. *Id.* A jury found him guilty on all counts. The court sentenced Lewis to consecutive sentences of 65 years for each of his murder convictions for an aggregate term of 130 years.¹ On direct appeal, Lewis argued the evidence was insufficient to support his convictions, and this Court affirmed. *See Lewis I.*

¹ We stated on direct appeal that the court merged the robbery counts into the felony murder counts. *Lewis I*, slip op. at 2.

[5] Lewis filed a pro se petition for post-conviction relief in May 2013, which was amended by counsel in October 2016. The court denied his petition, and this Court affirmed the post-conviction court’s judgment. *See Lewis II* at 1160. Lewis filed a petition for a writ of habeas corpus, and the district court denied relief. *See Lewis v. Zatecky*, 993 F.3d 994, 997 (7th Cir. 2021), *reh’g and reh’g en banc denied, cert. denied*, 142 S. Ct. 897 (2022). On April 13, 2021, the Seventh Circuit issued an opinion finding that Lewis’s counsel “gave up on Lewis and left him entirely without the assistance of counsel at the sentencing stage of a felony murder case”² and remanded “for the issuance of a writ of habeas corpus, limited to the sentencing phase of petitioner Roderick Lewis’s case.” *Id.* at 1006. The trial court scheduled a new sentencing hearing for April 29, 2022.

[6] On March 10, 2022, the Allen County Adult Probation Department filed a presentence investigation report (the “PSI”) which indicated Lewis was born on March 14, 1981. With respect to his family, Lewis reported that he suffered from physical, mental, emotional, sexual, and verbal abuse by his mother, her

² The Seventh Circuit noted that this Court described the assistance of Lewis’s counsel at sentencing as follows:

“Judge I’m going to defer to Mr. Lewis if he has any comments. I don’t have anything to add.” Sentencing Transcript at 23-24. This is the sum total of trial counsel’s participation at Lewis’s sentencing hearing, at which Lewis was being sentenced for two counts of felony murder and faced a maximum sentence of 130 years in prison. The trial court found no mitigating circumstances—none being asserted by the defense—and sentenced Lewis to the maximum aggregate sentence of 130 years in prison.

Lewis, 993 F.3d at 998 (quoting *Lewis II* at 1148).

boyfriends and husbands, friends, and cousins from age nine to age seventeen. He reported that he was a member of a gang beginning at age thirteen and he is no longer a member. With respect to his mental health, Lewis reported being diagnosed with bipolar disorder in Fort Wayne in 2001, and that he was re-diagnosed with bipolar disorder and several other disorders which he could not recall in 2017 or 2018. He reported that he began using marijuana at age thirteen. The probation officer recommended that Lewis receive a sentence of sixty-five years for each of his murder convictions and did not make a recommendation as to consecutive sentences.

- [7] On April 27, 2022, Lewis filed a Defense Sentencing Memorandum which discussed in detail his childhood, substance abuse, and mental health and emphasized that he was only eighteen years old at the time of the offense. It stated that his mother struggled with addiction and mental illness, they moved often and stayed in shelters, he was placed in the foster care system for a period, his mother beat him with extension cords, switches, belts, and Power Wheels race tracks, and his mother now lives in a facility. With respect to his mental health, the memorandum states that a psychological assessment by Dr. James Cates in 2016 concluded that Lewis has bipolar disorder. Dr. Cates stated that Lewis “does not rely on internalized controls,” “[r]ather, he is impulsive and expedient in decision-making and problem-solving,” and “[h]e is less concerned by broader social norms than by the cultural mores of the group with which he is immediately aligned.” Appellant’s Appendix Volume II at 62.

- [8] On April 29, 2022, the trial court held a sentencing hearing. Lewis's father testified that Lewis had made a great number of changes since he was eighteen years old and had turned his life around. Lewis called D.T., who was on the jury in Lewis's trial in 2012. D.T. testified that she stayed in contact with Lewis and sent him Bibles and faith-based books. She testified that, when she first corresponded with him, he was a young, immature, angry, disillusioned man and that, over the years, she has seen him mature and become a caring, respectful, and mature person.
- [9] Lewis's counsel argued that, at first, Lewis was resentful but that "he has changed his ways in the sense that he could have done drugs, he could have been violent, he could have done all the things that we hear about people doing in prison, but instead, [he] needed to find out who he was and work on himself, which he has done, and it's had some very positive results." Transcript Volume II at 9. He argued that Lewis's childhood "was beyond horrible" and his mother was a drug addict who now resides in a mental health facility. *Id.* He argued that Lewis was regularly subjected to physical, mental, emotional, sexual, and verbal abuse by his mother, and his mother moved frequently to get away from violent men. He argued that Lewis withdrew from high school in the tenth grade and has earned a GED while incarcerated. He noted that Lewis's substance abuse began when he was thirteen years old when he started smoking marijuana. He argued that, at the time of the offense, Lewis was eighteen years old, he had never been diagnosed with any mental health disorder because he had never been seen by a doctor although he showed signs

of mental illness throughout his childhood, and he was later diagnosed with bipolar disorder.

[10] Lewis’s counsel further argued that Lewis was a participant in the robbery “but there was never a discussion about shooting anyone,” one of the other individuals shot one of the victims, the other men told Lewis to shoot the other victim, Lewis refused to do that and said “I’m not killing anyone,” and the other individual grabbed the gun and executed the other victim. *Id.* at 12. He stated that Lewis has shown remorse and that Lewis was eighteen at the time of the offense. He argued scientific research had determined that a person’s brain is not fully developed until they are in their early to mid-twenties, which leads to impulsivity, risk taking, and reckless behavior, and Dr. Cates confirmed that Lewis suffered from undiagnosed mental illnesses at the time of the offense which most likely influenced his decision-making abilities. He further stated that, the day after this incident, Lewis’s twin brother “was shot by one of the co-defendants as a warning to [Lewis] that, ‘If you testify, this is what’s gonna happen to the rest of your family.’” *Id.* at 13. He stated Lewis “actually signed a plea agreement in this matter, but his attorney didn’t adequately, in my opinion, explain . . . the concepts of felony murder, which is hard for a younger person to understand, especially when they have a drug addiction, mental illness, the childhood that they’re brought up in.” *Id.* at 13-14. He argued that, since his incarceration, Lewis voluntarily participated in the Recovery While Incarcerated Program. He also argued that Lewis had no criminal history at the time of the offense. Lewis’s counsel asked the court to consider Lewis’s

remorse, his mental illness, his drug use at the time, his childhood, and that he had no criminal history to be mitigating factors. He requested that Lewis receive a sentence of forty-five years on each count and that the sentences be served concurrently.

[11] The State called one of the victim's siblings, who testified that the crime affected her family tremendously, her mother was still in mental anguish, and she did not believe Lewis was remorseful. The State also called the victim's mother, who testified as to the impact of her son's death, that she had to have intensive therapy, and that she was institutionalized for fifteen months. The prosecutor stated that he did not contest Lewis's diagnoses but argued there was a limited nexus between that psychological history and his participation in this offense, it essentially describes him as having impulse-control problems and that he would go along with a crowd, and his psychological history does not rise to the level of an inability to understand right from wrong or being incapable of restraint in participating in two homicides. He argued that, although Lewis was eighteen at the time of the offense, he continued to commit crimes which were escalating in nature. He asserted Lewis's remorse appeared to be genuine but asked that it be given limited weight based on his actions. The prosecutor requested aggravated, consecutive sentences.

[12] Lewis stated that he took responsibility for what happened, that he knew better and should have taken the initiative to take control when he had the power to do so, and that he acknowledged the hurt he caused to the victims' families.

[13] The court found that Lewis expressed remorse and accepted responsibility. It found that he had a difficult childhood which it accepted at face value as indicated in his sentencing memorandum and stated it did not weigh the factor very heavily. It found Lewis had untreated mental health issues which it considered a mitigating circumstance. It found an aggravating factor was that, after this offense, Lewis became a multi-state offender with a criminal record from 1999 to 2012 and that he had active gang membership from ages thirteen to twenty-six. The court stated this was a senseless and horrific murder of a sixteen-year-old and a fourteen-year-old and noted the impact on the victims' families. The court sentenced Lewis to 62 years for each felony murder conviction to be served consecutively for an aggregate sentence of 124 years.

Discussion

[14] The issue is whether Lewis's sentence is inappropriate in light of the nature of the offenses and his character. Lewis argues the offense occurred approximately twenty-three years ago and his character has changed significantly since that time as evidenced by the testimony of the juror who stayed in contact with him for approximately eleven years. He pointed to Dr. Cates's opinion of his mental capacity. He argues that, "as is undisputed in the evidence, while [he] was a willing participant of the robbery, [he] refused to participate in the actual murders of either victim." Appellant's Brief at 17. He argues that "[a] nearly fully maximum sentence, on both counts and run consecutive, provides [him] with a near worst case scenario – the maximum sentence possible." *Id.* He requests this Court to order an advisory sentence on

both courts to be served concurrently. The State argues that Lewis received an enhanced but not a maximum sentence. It argues that Lewis exhibited extreme callousness following the murders, that he avoided justice for a decade, and the fact that he is remorseful is outweighed by the senseless murders.

[15] Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute 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.” “[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, 1225 (Ind. 2008).

“[A]ppellate review should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Id.* Whether we find a sentence inappropriate ultimately boils down to our collective sense of what is appropriate, and the trial court’s findings of aggravators and mitigators does not limit our review under Appellate Rule 7(B). *State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (citations omitted), *reh’g denied*.

[16] Ind. Code § 35-50-2-3 provided at the time of the offense that a person who committed murder shall be imprisoned for a fixed term of fifty-five years, with not more than ten years added for aggravating circumstances or not more than

ten years subtracted for mitigating circumstances.³ Lewis received a sentence above 55 years on both counts. While he did not receive the maximum possible sentence of 130 years, the court sentenced him to a total of 124 years.

[17] The brutal killing of Rogers and Wilson was indeed senseless. Hale shot Wilson five times. Hale told Lewis to kill Rogers, and Lewis stated that he would not do it. Lewis gave his revolver to Mays, and Mays shot Rogers five or six times. Lewis presented information regarding his difficult childhood, his associations, his substance abuse, and his undiagnosed and untreated mental health in his memorandum and at sentencing. Further, Lewis presented testimony regarding the steps he has taken to reform his character since his incarceration. We also observe the PSI did not recommend consecutive sentences. Significantly, Lewis was eighteen years old at the time of the crimes and had no previous criminal or juvenile history. While he was not a juvenile, Lewis's age weighs against a near-maximum sentence. The Indiana Supreme Court has recognized that, because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments. *Stidham*, 157 N.E.3d at 1196 (citing *Miller v. Alabama*, 567 U.S. 460, 471, 132 S. Ct. 2455, 2464 (2012)). This conclusion flows from the recognition that their lack of maturity and underdeveloped sense of

³ Subsequently amended by Pub. Law No. 117-2002, § 1 (eff. July 1, 2002); Pub. Law No. 71-2005, § 6 (eff. April 25, 2005); Pub. Law No. 99-2007, § 212 (eff. May 2, 2007); Pub. Law No. 117-2015, § 56 (eff. July 1, 2015). Ind. Code § 35-50-2-3 now provides that a person who commits murder shall be imprisoned for a fixed term of between forty-five and sixty-five years with the advisory sentence being fifty-five years.

responsibility leads to recklessness, impulsivity, and heedless risk-taking, their susceptibility to negative influences and outside pressures along with their limited ability to control their environment can leave them lacking the ability to extricate themselves from horrific, crime-producing settings, and their traits are less fixed and their actions less likely to be evidence of irretrievable depravity. *Id.* (citing *Miller*, 567 U.S. at 471, 132 S. Ct. at 2464).

[18] In considering all aspects of his character and the nature of the offenses, including that Lewis was not the person who shot either victim and refused to shoot Rogers, we conclude the 124-year sentence imposed by the trial court is inappropriate. While the crimes were brutal, his relative youth makes this case less suitable for a near-maximum sentence. We conclude that Lewis should receive the advisory term of 55 years for each of his convictions and that the terms should be served consecutively with each other. Thus, we revise Lewis's overall sentence from 124 years to 110 years. *See Stidham*, 157 N.E.3d at 1197-1198 (finding that, considering all the aspects of the nature of the offenses and the defendant's character, the maximum 138-year sentence imposed for crimes he committed as a juvenile was inappropriate and the defendant's character made the case less suitable for a maximum sentence and revising the defendant's overall sentence from 138 years to 88 years); *Wilson v. State*, 157 N.E.3d 1163, 1179-1184 (Ind. 2020) (noting that *Fuller v. State*, 9 N.E.3d 653 (Ind. 2014), and *Brown v. State*, 10 N.E.3d 1 (Ind. 2014), involved two defendants, ages fifteen and sixteen years old, who were convicted of the robbery and murder of a couple in their home, the defendants were originally

given 150-year sentences, and the Court reduced their sentences to 85 and 80 years, noting the reduction meant the defendants had “a realistic chance at release by their early sixties,” observing the defendants’ offenses in *Fuller* and *Brown* were largely analogous to Wilson’s offenses, where Wilson fired a single shot at the victim and was an accomplice to another victim’s death,⁴ acknowledging that Wilson’s conduct while incarcerated and awaiting trial showed that he had learned little following his arrest, holding that Wilson’s age was a major factor that required careful consideration during Appellate Rule 7(B) review, and reducing his sentence to an aggregate term of 100 years which meant that, “after receiving good time credit Wilson will likely be eligible for release in his mid-to-late sixties, meaning that he has reasonable hope for a life outside prison”), *reh’g denied*; see also *Ellis v. State*, 736 N.E.2d 731, 736 (Ind. 2000) (“Focusing on chronological age is a common shorthand for measuring culpability, but for people in their teens and early twenties it is frequently not the end of the inquiry. There are both relatively old offenders who seem clueless and relatively young ones who appear hardened and purposeful.”).⁵

⁴ The Court stated: “Although shocking, these shootings do not rise to the same level of heinousness of recent murders by juveniles where we found an enhanced sentence appropriate. See, e.g., *Conley [v. State]*, 972 N.E.2d [864,] 876 [Ind. 2012] (finding the heinousness of the murder justified a life without parole sentence for a seventeen-year-old because—while babysitting his ten-year-old brother—he strangled the young child to death for over twenty minutes while the victim begged him to stop before slamming the victim’s head on the concrete to ensure he was dead).” *Wilson*, 157 N.E.3d at 1182.

⁵ To the extent Lewis argues that the court abused its discretion in sentencing him, we do not address the issue because we remand for resentencing pursuant to Ind. Appellate Rule 7(B).

[19] For the foregoing reasons, we remand to the trial court for resentencing and to enter a sentencing order consistent with this opinion.

[20] Reversed and remanded.

Altice, J., and Tavitas, J., concur.