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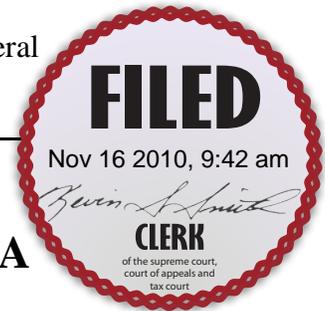
ATTORNEYS FOR APPELLANT:

JOHN PINNOW
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

CHRISTOPHER MARTIN,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A04-1003-CR-152

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
Cause No. 49G04-0811-MR-254868

November 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Christopher Martin appeals the sentence imposed by the trial court following his conviction for Reckless Homicide,¹ a class C felony. Martin argues that the eight-year sentence is inappropriate in light of the nature of the offense and his character. Finding that the sentence is not inappropriate, we affirm.

FACTS

On November 1, 2008, Marcus Self, nineteen-year-old Charles Carter, and eighteen-year-old Tory Carter went to an apartment complex in Indianapolis and discovered that there was a large house party going on with approximately fifty people in attendance. On their way inside, the three men encountered nineteen-year-old Martin, who was holding a handgun. At some point, Self, Charles, and Tory walked out of the party. The party then ended, and all of the attendees, one of whom was thirteen years old, walked outside.

After exiting the party, Charles saw Martin's friend, Justin Whitsey, become upset about something. Charles then retrieved a broken handgun from the glove box of Self's vehicle and held the weapon at his side. Martin armed himself with an AK-47 rifle, and Whitsey armed himself with a handgun.

At that time, Tory was speaking to a sixteen-year-old girl as she sat in her vehicle, which was parked near Self's car. Charles was standing on the sidewalk between the two vehicles.

¹ Ind. Code § 35-42-1-5.

Martin shot his AK-47 four times in the air, and Whitsey also began to fire. Martin lowered his rifle and emptied it in Charles's direction. Martin, however, could not control the AK-47 as he fired ten shots. One of his shots hit the sixteen-year-old girl's windshield and pierced her hand. One bullet also hit Tory, tearing apart the blood vessels and bowel in his pelvic region, causing him to bleed to death in his abdomen. A bullet from Whitsey's handgun hit Charles in the head, killing him. Martin fled the scene and assisted in hiding the rifle, which was never found.

On November 12, 2008, the State charged Martin with two counts of murder for the deaths of Tory and Charles, class A felony attempted murder for his shot that hit the sixteen-year-old girl in the hand, two counts of class C felony carrying a handgun without a license, and class D felony criminal recklessness. Martin's jury trial took place on December 7-9, 2009, and the jury was presented with three charges: two counts of murder and one count of attempted murder. Martin also requested and received a jury instruction on class C felony reckless homicide as a lesser-included offense of the murder charge relating to Tory. The jury acquitted Martin of murdering Charles and attempting to murder the sixteen-year-old girl, but found him guilty of the reckless homicide of Tory.

At Martin's January 6, 2010, sentencing hearing, the trial court found Martin's age and his young son to be mitigators. It found his criminal history, the fact that he was on probation at the time he committed this offense, the fact that he used an automatic weapon in committing this offense, and the fact that he was a member of a gang to be

aggravating factors. Finding that the aggravators outweighed the mitigators, the trial court imposed a maximum eight-year term. Martin now appeals.

DISCUSSION AND DECISION

Martin's sole argument on appeal is that the eight-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). 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). Martin was convicted of a class C felony, meaning that he faced an advisory term of four years, with a minimum of two and maximum of eight years. Ind. Code § 35-50-2-6.

As for the nature of Martin's offense, Martin—who cannot legally own any firearm because of his criminal history—shot an automatic assault rifle that was so powerful he could not control it around a large group of people, one of whom was only thirteen years old. That there was not a greater loss of life was sheer luck. Martin shot and killed Tory, one of his friends, who even Martin characterizes as an “innocent bystander.” Tr. p. 383. After the incident, Martin fled the scene and hid the AK-47, which has never been recovered. The severity and recklessness of this offense certainly does not aid Martin's inappropriateness argument.

As for Martin's character, Martin, who was twenty years old at sentencing, had amassed several true findings of delinquency as a juvenile for burglary, theft, operating

without a license, and unlawful entry of a vehicle. As an adult, he had convictions for auto theft and resisting arrest, and he was on probation at the time he committed the instant offense. He has failed every attempt at rehabilitation, including electronic monitoring, substance abuse counseling, home-based counseling, and probation. He was an admitted gang member. Furthermore, despite having a young son, Martin has never finished high school and has never held a job. He admitted that he has been using marijuana and alcohol since the age of fourteen, and stated that he used marijuana on a daily basis, though he denied that he needed substance abuse counseling.

At a relatively young age, Martin has demonstrated an unwillingness to abide by the rule of law. He shows no intention of taking personal responsibility for his actions despite the fact that he is a father. He has abused drugs and alcohol since the age of fourteen but refuses to admit that he needs substance abuse counseling. And his actions in this case evince a callous disregard for human life and his fellow citizens. Under these circumstances, we do not find the maximum eight-year term imposed by the trial court to be inappropriate in light of the nature of the offense and his character.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.