



Baker v. State

908 N.E.2d 1277 (2009) | Cited 0 times | Indiana Court of Appeals | June 17, 2009

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.

MEMORANDUM DECISION

NOT FOR PUBLICATION

Appellant-defendant Robert Martin Baker appeals the forty-year sentence that was imposed following his guilty plea to Voluntary Manslaughter,¹ a class A felony. Specifically, Baker contends that the sentence is inappropriate when considering the nature of the offense and his character. Concluding that the sentence is appropriate, we affirm the judgment of the trial court.

FACTS

On October 29, 2007, at approximately 1:30 a.m., Robert Milligan was standing outside the home of Brandon Johnson talking to Johnson. Baker, a passenger in Johnson's vehicle, got out of the vehicle carrying a handgun. He walked over to Milligan to confront him about a prior incident in which Milligan had refused to shake Baker's hand. Baker began yelling at Milligan, and the argument escalated. Milligan pretended like he was going to hit Baker, which enraged Baker. Baker then raised the handgun, placed it to Milligan's head, and fired one shot into the top of Milligan's head, killing him.

As a result of the incident, the State charged Baker with murder. On September 8, 2008, Baker entered into a plea agreement with the State. The agreement provided that Baker would plead guilty to voluntary manslaughter in exchange for the dismissal of the murder charge. Sentencing was left to the trial court's discretion.

The trial court accepted Baker's guilty plea, and, at a sentencing hearing on October 23, 2008, the trial court identified Baker's criminal history, the fact that he has not been deterred from criminal behavior, and the specific circumstances surrounding the offense as aggravating factors. In mitigation, the trial court noted that Baker pleaded guilty and accepted responsibility for his actions. The trial court then determined that the aggravating factors outweighed the mitigating circumstances and sentenced Baker to forty years imprisonment.² He now appeals.



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DISCUSSION AND DECISION

Baker claims his sentence is inappropriate in light of the nature of the offense and his character under Indiana Appellate Rule 7(B). This court shows deference to the trial court when reviewing a Rule 7(B) challenge. *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).

As for the nature of the offense, several days prior to the events in this case, Milligan refused to shake hands with Baker. On the day in question, Baker, armed with a handgun, confronted Milligan about this alleged snub. Milligan responded by pretending to strike Baker. In response, Baker shot Milligan in the head, killing him. Though Baker claims to have been intimidated because Milligan was larger than Baker, his use of deadly force is vastly disproportionate to any provocation Baker may have felt.

As for Baker's character, the trial court found that previous leniency had done little to deter his criminal behavior. Baker has one previous conviction for class D felony battery and has admitted to prior gang affiliations with the Vice Lords. Little more than one month into his eighteen-month term of probation, Baker's probation was revoked for his continued use of marijuana and failure to satisfy the other requirements of his probation. Despite the court's leniency, Baker admits to continued, excessive alcohol and marijuana abuse prior to his most recent arrest. Given the totality of the nature of the offense and Baker's character, we cannot conclude that his forty-year sentence is inappropriate.

The judgment of the trial court is affirmed. MAY, J., and BARNES, J., concur.

1. Ind. Code § 35-42-1-3.

2. The sentencing range for a class A felony is a fixed term of twenty to fifty years, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4.

