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IN THE
COURT OF APPEALS OF INDIANA

LUKUMAN ADERIBIGBE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0611-CR-986
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0512-FB-219884

September 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Lukuman Aderibigbe appeals his sentence for two counts of criminal confinement as class B felonies,[1] robbery as a class B felony,[2] two counts of battery as class C felonies,[3] carrying a handgun without a license as a class A misdemeanor,[4] and resisting law enforcement as a class A misdemeanor.[5] Aderibigbe raises one issue, which we revise and restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. On the evening of December 17, 2005, Temidayo Green was in his apartment with a friend, Romoni Sule. Aderibigbe knocked at the front door, and Sule went to answer it. However, after looking through the peephole, Sule decided not to let Aderibigbe in because Sule did not know him. Aderibigbe then addressed Green and Sule through the door in their native Nigerian dialect, claiming that he was "a brother to someone [Green] kn[e]w," that he was having a problem with his car, and that he needed help. Transcript at 72. When Green opened the door, Aderibigbe put on a ski mask and, pointing a gun at Green, rushed inside followed by an accomplice, Antonio McBrady, who also had a gun and ski mask. Aderibigbe hit Green in the back of the head with the gun and ordered him to face the wall and Sule to lie on the floor. They

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[1] Ind. Code § 35-42-3-3 (2004) (subsequently amended by Pub. L. No. 70-2006, § 1 (eff. July 1, 2006)).

[2] Ind. Code § 35-42-5-1 (2004).

[3] Ind. Code § 35-42-2-1 (Supp. 2005).

[4] Ind. Code § 35-47-2-1 (2004).

also hit Sule in the back of the head, and he began to bleed from the wound. Aderibigbe and McBrady told Green and Sule that they were going to kill them, put them in the trunk of a car, and take them to "God knows where." Id. at 76.

Aderibigbe and McBrady then moved Green and Sule to Green's bedroom. While McBrady held them at gunpoint, Aderibigbe ransacked the apartment. Aderibigbe loaded Green's possessions into Green's car. He took their wallets and debit cards and asked for their PIN numbers, threatening to kill them if they lied. He disconnected Green's telephone and took Green's and Sule's cell phones. Aderibigbe then left the apartment with Sule to withdraw money from a nearby ATM machine, leaving McBrady behind to keep watch over Green. Aderibigbe and Sule then walked to three different banks, where Sule withdrew $200 from his own account. When they approached a "public place," Aderibigbe removed his ski mask. Id. at 126.

In response to a suspicious persons dispatch, Deputy James Barrow pulled up behind Aderibigbe and Sule and activated his emergency lights. Deputy Barrow exited his patrol car, identified himself, and asked for their identifications. Aderibigbe "acted very nervous" and "kept looking around" and "putting his hand near his pocket." Id. at 187. Concerned for his own safety, Deputy Barrow attempted to put Aderibigbe in handcuffs. When Deputy Steven Scott arrived to assist Deputy Barrow, Aderibigbe "took off running." Id. Deputy Barrow pursued him on foot. Sule then informed Deputy Scott

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[5] Ind. Code § 35-44-3-3 (2004) (subsequently amended by Pub. L. No. 143-2006, § 1 (eff. July 1, 2006)).

that Aderibigbe was armed and that Green was being held hostage back at the apartment. Deputy Scott notified Deputy Barrow on the radio that Aderibigbe was armed, and Deputy Barrow gave up his pursuit. The deputies called for back-up and headed to Green's apartment, where McBrady soon surrendered.

The State charged Aderibigbe with two counts of criminal confinement as class B felonies, robbery as a class B felony, two counts of battery as class C felonies, carrying a handgun without a license as a class A misdemeanor, resisting law enforcement as a class A misdemeanor, and carrying a handgun without a license as a class C felony.[6] Following a jury trial, Aderibigbe was convicted of all charges except carrying a handgun without a license as a class C felony, which the State dismissed. At the sentencing hearing, the trial court found as a mitigating factor that Aderibigbe's imprisonment would result in hardship on his dependents. The trial court found the following aggravating factors: (1) Aderibigbe's criminal history; (2) Aderibigbe was on probation for an earlier conviction when he committed the present offense; and (3) Aderibigbe had been arrested five times pending the jury trial for the present offense. Finding that the aggravators outweighed the mitigator, the trial court sentenced Aderibigbe to ten years for each count of criminal confinement as a class B felony, ten years for robbery as a class B felony, and four years for each count of battery as a class C felony, to be served consecutively. Additionally, the trial court sentenced Aderibigbe to one year for carrying a handgun

[6] Ind. Code § 35-47-2-1 (2004).

without a license as a class A misdemeanor and one year for resisting law enforcement as a class A misdemeanor, both to be served concurrently to the other sentences. Thus, Aderibigbe received a total sentence of thirty-eight years in the Indiana Department of Correction.

The sole issue is whether Aderibigbe's sentence is inappropriate in light of the nature of the offense and the character of the offender.[7] 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." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that Aderibigbe tricked Green into admitting him into his home, robbed Green and Sule at gunpoint, beat them both with his gun, ransacked their apartment, threatened to kill them, stole their wallets, took Sule as a hostage to withdraw money from their bank accounts, and fled when the police arrived. In reviewing the facts, we fail to see how "the manner in which the crimes were

[7] Aderibigbe also argues that the trial court improperly relied on previous charges that were either dismissed or not filed to conclude that Aderibigbe "was violent." Appellant's Brief at 14. Specifically, he argues that information in his presentence report concerning those charges is "at least double hearsay." Id. Although, in addition to his six convictions, the trial court did recite some of the twelve charges against Aderibigbe that were either dismissed or not filed, the trial court concluded as follows: "I'm concerned about that criminal history because it is violent. But even having said that, I'm only considering those criminal arrests that were given convictions." Transcript at 296. We find no error in the trial court's use of Aderibigbe's criminal history.

committed undercuts the trial court's conclusion about Aderibigbe's violent nature." Appellant's Brief at 15.

Our review of the character of the offender reveals that Aderibigbe has six prior convictions, including convictions for theft as a class D felony, receiving stolen property as a class D felony, battery as a class A misdemeanor, driving while suspended as a class A misdemeanor, resisting law enforcement as a class A misdemeanor, and criminal trespass as a class A misdemeanor. Aderibigbe was on probation for one of these convictions when he committed the present offense. Finally, while the present offense was pending, Aderibigbe was arrested five more times. Taken together, Aderibigbe's prior convictions and ongoing arrest record reveal a strong pattern of contempt for the law.

After due consideration of the trial court's decision, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Fultz v. State, 849 N.E.2d 616, 625 (Ind. Ct. App. 2006) (holding that defendant's consecutive maximum sentences for murder and arson were not inappropriate where the defendant had amassed an extensive criminal history and was on probation when he committed the offense), trans. denied.

For the foregoing reasons, we affirm Aderibigbe's sentence for two counts of criminal confinement as class B felonies, robbery as a class B felony, two counts of battery as class C felonies, carrying a handgun without a license as a class A misdemeanor, and resisting law enforcement as a class A misdemeanor.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur