



Following remand for resentencing, Appellant-Defendant Anthony Hopkins appeals the 119-year sentence imposed for his convictions for two counts of Class A felony Attempted Murder,<sup>1</sup> two counts of Class B felony Robbery,<sup>2</sup> two counts of Class D felony Criminal Confinement,<sup>3</sup> and the finding that Hopkins is a habitual offender.<sup>4</sup> On appeal, Hopkins contends that his sentence is inappropriate in light of the nature of his offenses and his character and that the abstract of judgment should be updated pursuant to an order by the Indiana Supreme Court. We affirm in part and remand with instructions.

### **FACTS AND PROCEDURAL HISTORY**

The opinion of the Indiana Supreme Court in *Hopkins v. State*, 759 N.E.2d 633 (Ind. 2001) (“*Hopkins I*”), Hopkins’s first appeal to the Indiana Supreme Court, instructs us as to the underlying facts leading to this appeal:

[I]n the early morning of March 9, 1999, the victims, George Martinez and Paula McCarty, were on their way to Martinez’s home. They encountered [Hopkins] and his brother, Edward, who were stranded on the roadside attempting to get a jump from another car. Martinez and [Hopkins] had engaged in drug transactions in the past. Martinez and McCarty stopped the car and assisted [Hopkins] and his brother. [Hopkins] told Martinez that his car had been breaking down. Martinez told [Hopkins] that if he had anything he did not want to get caught with, they could stop by his house and drop it off.

Soon after Martinez and McCarty returned home, [Hopkins] and Edward showed up. [Hopkins] asked Martinez to hold onto his gun for him. About fifteen minutes later, [Hopkins] and Edward returned. When Martinez returned [Hopkins’s] gun, [Hopkins] locked the door and then pointed the gun at Martinez and ordered Martinez and McCarty into the basement and told them to take their clothes off. McCarty resisted and [Hopkins] hit her on the

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<sup>1</sup> Indiana Code §§ 35-42-1-1, 35-41-5-1 (1998).

<sup>2</sup> Indiana Code § 35-42-5-1 (1998).

<sup>3</sup> Indiana Code § 35-42-3-3 (1998).

<sup>4</sup> Indiana Code § 35-50-2-8 (1998).

head with the gun. Once in the basement, [Hopkins] took \$4,500 from Martinez and \$40 from McCarty. [Hopkins] said that that was not enough, gave Edward the gun, and went upstairs to look for drugs and more money. [Hopkins] found approximately two or three pounds of marijuana upstairs. [Hopkins] yelled, “Where’s it at?,” as he searched the house.

While [Hopkins] was still upstairs, Edward shot Martinez in the shoulder as Martinez and McCarty both pleaded for their lives. Edward was about three feet away and the bullet entered Martinez’s shoulder, ricocheted into his neck, hit his carotid artery, and exited through his ear. Martinez lost consciousness. McCarty assumed that Martinez was dead, and testified that she thought Edward had blown the back of Martinez’s head off. Martinez survived, but was in an intensive care unit for thirteen days as a result of being shot.

After Edward shot Martinez, [Hopkins] returned to the basement and took the gun from Edward. [Hopkins] then shot McCarty. As [Hopkins] shot her, McCarty moved around so that he wouldn’t hit her in the head. When she fell to the ground she pretended to be dead. [Hopkins] and Edward went upstairs and left the house. Martinez regained consciousness and they were able to call for help. McCarty had been shot in the chest, and suffered a severed spinal cord, punctured lung, paralysis in her arm, and is now confined to a wheelchair.

[Hopkins] was convicted of two counts of Attempted Murder, two counts of robbery, two counts of criminal confinement, and one count of carrying a handgun without a license. [Hopkins] then pled guilty to being a habitual offender. The trial court sentenced [Hopkins] to 50 years incarceration for Count I, the attempted murder of McCarty. The trial court also enhanced the sentence by 20 years under the habitual offender statute. The trial court sentenced [Hopkins] to 50 years for count II, the attempted murder of Martinez; 20 years incarceration for counts III and IV, robbery; and three years incarceration each for the criminal confinement convictions. The trial court ordered all the terms to run consecutively for total executed time of 166 years.

*Hopkins I*, 759 N.E.2d at 636-37.

In *Hopkins I*, the Indiana Supreme Court affirmed all of Hopkins’s convictions except for his conviction for Count II, the attempted murder of Martinez. *Id.* at 641. The Court remanded for a new trial on Count II and instructed the trial court as follows: “the abstract of

judgment should be corrected to show that judgment has been entered on the two convictions for robbery as Class B felonies ... [and that] judgment has been entered on the two convictions for criminal confinement as Class D felonies.” *Id.*

Following a new trial, Hopkins was convicted of Count II, the attempted murder of Martinez, and was sentenced to fifty years to be served consecutively to his prior sentence, again for a total sentence of 166 years. Hopkins’s conviction on Count II was subsequently affirmed by this court in a memorandum decision. *See Hopkins v. State*, No. 49A02-0209-CR-780 (Ind. Ct. App. Sept. 30, 2003).

On September 2, 2004, Hopkins filed a petition for post-conviction relief (“PCR”). The PCR court granted relief in part, “finding that appellate counsel had been ineffective, and ordered sentencing relief on the attempted murders.” *Hopkins v. State*, 889 N.E.2d 314, 315 (Ind. 2008) (“*Hopkins II*”). The Indiana Supreme Court subsequently affirmed the judgment of the PCR court. *Id.* at 317.

Following a new sentencing hearing, Hopkins was resentenced by the trial court on October 1, 2008. Pursuant to the order granting post-conviction relief, the trial court sentenced Hopkins as follows: thirty years for Count I, attempted murder, to be enhanced by twenty years pursuant to the determination that Hopkins is a habitual offender; twenty-five years for Count II, attempted murder; twenty years each for Counts III and IV, robbery; and two years each for Counts V and VI, criminal confinement, all to be served consecutively for an aggregate sentence of 119 years. Hopkins now appeals.

## **DISCUSSION AND DECISION**

## I. Appropriateness of Sentence

Hopkins challenges his maximum 119-year sentence, claiming that it is inappropriate in light of the nature of his offenses and his character. Indiana Appellate Rule 7(B) provides that “[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.”

Although appellate review of sentences must give due consideration to the trial court’s sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied. The defendant has the burden of persuading us that his or her sentence is inappropriate.

*Fonner v. State*, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007) (citations and quotation marks omitted).

With respect to Hopkins’s claim that his maximum sentence is inappropriate in light of the nature of his offenses, Hopkins concedes that he was convicted of very serious crimes for which his sentence should be significant but argues that his crimes do not warrant maximum consecutive sentences. We disagree. The nature of Hopkins’s offenses is particularly deplorable. Hopkins and his brother, Edward, forced the victims, who had previously attempted to assist Hopkins and Edward when they were stranded with car trouble, into the basement of one of the victim’s home at gunpoint. Hopkins and Edward then forced them to strip and hit one of the victims in the head with Hopkins’s gun when she protested, robbed both victims of money and property, shot them, and left them alone in the basement to die. In fact, the injuries inflicted upon Hopkins’s victims were so severe that

one victim was in intensive care for thirteen days following the incident and the other victim is permanently disabled. Considering the nature of the victims' wounds, it is mere luck that both victims survived at all.

With respect to Hopkins's character, Hopkins does not dispute his substantial criminal history, but argues that his 119-year sentence was inappropriate because there was no direct connection between his criminal history and the instant offenses. To the extent such a "direct connection" is relevant, we disagree. Hopkins's criminal history includes eight juvenile arrests, five of which were theft-related; three felony burglary convictions; felony convictions for auto theft, escape, and theft; two misdemeanor convictions for resisting law enforcement; and misdemeanor convictions for operating a vehicle having never received a license and unlawful use of a police radio. We believe this substantial criminal history, much of it involving property crimes like those at issue here, is indicative of Hopkins's poor character. Also indicative of Hopkins's poor character is the fact that after stripping, shooting, and robbing his victims, he left them for dead. Hopkins's maximum 119-year sentence is most certainly appropriate in light of his poor character and the nature of his offenses.

## **II. Abstract of Judgment**

Hopkins further argues, and the State concedes, that the abstract of judgment should be amended to the extent that it does not parallel the trial court's order. Again, in *Hopkins I*, the Indiana Supreme Court instructed the trial court as follows: "the abstract of judgment should be corrected to show that judgment has been entered on the two convictions for

robbery as Class B felonies ... [and also that] judgment has been entered on the two convictions for criminal confinement as Class D felonies.” *Hopkins I*, 759 N.E.2d at 641. To the extent that the abstract of judgment has yet to be modified pursuant to the Supreme Court’s instructions in *Hopkins I*, we instruct the trial court to so correct the abstract of judgment.

The judgment of the trial court is affirmed in part, and the cause remanded with instructions.

CRONE, J., and BROWN, J., concur.