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IN THE
COURT OF APPEALS OF INDIANA

DENNIS J. TURNER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 06A05-1006-CR-427
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BOONE SUPERIOR COURT
The Honorable Matthew C. Kincaid, Judge
Cause No. 06D01-1002-FB-46

January 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Dennis Joseph Turner appeals his conviction of Burglary[1] as a class B felony as well as the sentence imposed thereon. Turner presents the following restated issues for review:

1. Was the evidence sufficient to support Turner's conviction?

2. Was Turner's sentence inappropriate in light of the nature of the offense and the character of the offender?

We affirm.

The facts favorable to the conviction are that Douglas Thompson and his wife, Bonnie, were friends of Turner's. In fact, Turner occasionally lived with the Thompsons and kept his belongings at their home. On September 3, 2008, Turner and Thompson were driving in Indianapolis looking for houses to burglarize. They stopped near Daugherty Drive and Turner got out of the car. They agreed that Turner would contact Thompson by cell phone when he was ready to be picked up.

A short time later, Turner forced open the door to the sun porch of the home of Kent and Kelly McCarthy on Daugherty Drive, smashed a large interior glass door, and entered the home. Turner removed items from the home including sapphire and diamond earrings, gold earrings, a wood-cross necklace with a heart-shaped ivory inlay, two laptops, several computer-related devices, and an expensive Kensington brand computer bag. Turner left the home with these items and, while walking through an adjacent wooded area, called Thompson and asked to be picked up. The two maintained cell-phone contact until they met near South Michigan Road/Highway 421, where Turner got into Thompson's car and they

[1] Ind. Code Ann. § 35-43-2-1 (West, Westlaw through 2010 2nd Regular Sess.).

returned to the Thompsons' home. Once there, they looked over the items taken from the McCarthys' home. Thompson and Turner later traded one of the stolen computers for drugs.

Meanwhile, at about 2:15 p.m. that day, the McCarthys arrived home and discovered their home had been burglarized. Kent McCarthy notified authorities. Kent McCarthy noted that the back-yard gate to his yard was open. He told investigators of this and informed them that they never left the gate open. Investigators walked through the woods behind the McCarthy's property, following a path of disturbed vegetation through the woods, over a creek, and exiting approximately where Thompson later claimed he had picked up Turner.

Turner became a person of interest in the McCarthy burglary in November 2008. When the investigators learned of Turner's friendship with the Thompsons, they checked the Thompsons' pawn history and learned that at about 2:15 p.m. on September 4, 2008, Bonnie Thompson pawned jewelry at an Indianapolis pawn shop that included sapphire and diamond earrings, gold earrings, and a wood cross necklace with an ivory-heart detail. Officials procured a search warrant for the Thompson home on November 13, 2008.[2] Before serving the warrant, however, an investigator telephoned Thompson's wife so that she could let them in and avoid damage to her home. Coincidentally, Turner was in the same car when the investigator telephoned Thompson's wife. He asked to be let out of the car before the Thompsons returned home. Law enforcement officers served the warrant and discovered items that had been taken from the McCarthys' home, including a Kensington computer bag and several computer-related devices. The McCarthys later identified these items as the ones taken from their home. On December 1, 2008, Thompson gave a statement to the authorities

implicating himself and Turner in the burglary.

The State charged Turner with burglary as a class B felony. A jury trial was held on May 27, 2010, at which Turner represented himself. The jury found Turner guilty as charged. He was sentenced to nineteen years in prison.

1.

Turner contends the evidence was not sufficient to support his conviction. We have set forth the applicable standard of review as follows:

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id*. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id*.

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009). Turner contends "there was no physical evidence in this case linking Turner to the burglary". *Appellant's Brief* at 13. In support of this contention, he claims the evidence was insufficient to place him at the McCarthys' home on the day of the burglary. Also, he points to what he claims were fatal deficiencies in the evidence linking him to the items stolen from the McCarthys' home that were eventually pawned by Thompson's wife. Ultimately, however, Turner's challenge implicates the credibility of the State's main witness – Thompson – because Thompson's testimony was the linchpin of the State's case against Turner.

Thompson testified that he let Turner out his car at Daugherty Drive near the McCarthys' home. In fact, Thompson recalled he and Turner laughed about the street name

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[2] Turner was also living there at the time.

because it "was spelled weird." *Transcript* at 249. Thompson recalled talking to Turner on the phone as Turner described walking through a wooded area with a creek. He remembered picking up Turner some time thereafter on South Michigan Road/Highway 421, and returning to their home to examine the items Turner had in his possession when he got back into the car. These items included two computers and some jewelry. Such items were included among the items removed from the McCarthys' home. This evidence, presented primarily through the testimony of Thompson, who acted as Turner's accomplice, is sufficient to support a reasonable inference that Turner is the person who broke into the McCarthys' home and stole their property. It is of no moment that Thompson did not actually see Turner break into the home or that he could not remember when questioned weeks later the exact date these events transpired.

Moreover, we note that Thompson's testimony does not stand alone and uncorroborated. He claimed to have picked up Turner a short time after the burglary in approximately the same place where a trail presumably made by the person who committed the burglary ended. Also, at about that time, Turner gave McCarthy's wife a unique item of jewelry that had been stolen from the McCarthys' home. *See, e.g.*, *Fortson v. State*, 919 N.E.2d 1136 (Ind. 2010). We note also that the Kensington bag and computer devices taken from the McCarthys' home were found at the Thompsons' home, which also served as Turner's residence at the time. The evidence was sufficient to support the conviction.

2.

Turner was convicted of a class B felony. Our legislature has prescribed the sentencing range for that classification of offenses as spanning from six to twenty years. *See* Ind. Code Ann. § 35-50-2-5 (West, Westlaw through 2010 2nd Regular Sess.). Turner contends his nineteen-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Article 7, section 4 of the Indiana Constitution grants our Supreme Court the power to review and revise criminal sentences. Pursuant to Ind. Appellate Rule 7, the Supreme Court authorized this court to perform the same task. *Cardwell v. State*, 895 N.E.2d 1219 (Ind. 2008). Per App. R. 7(B), we may revise a sentence "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." *Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009), *cert. denied*, 131 S.Ct. 414 (2010). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d at 1223. Turner bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

We begin by observing that Turner broke into the home of someone else, stole their property, and used it or disposed of it for his own benefit without the owner's permission. His actions and their consequences upon the McCarthys fall within the typical boundaries of this particular criminal offense. Nothing about the nature of the offense committed by Turner strikes this court as either aggravating or mitigating.

We turn now to an examination of Turner's character. The State argued and the trial

court found that Turner's juvenile and criminal history were deserving of significant aggravating weight. This included five separate delinquency adjudications for acts that, if committed by an adult, would constitute the offenses of theft, two instances of criminal mischief, burglary, curfew violation, disorderly conduct, resisting law enforcement, and possession of paraphernalia. As an adult, he was convicted of, in chronological order, burglary as a class B felony, tattooing a minor as a class A misdemeanor, battery resulting in bodily injury as a class A misdemeanor, criminal conversion as a class A misdemeanor, burglary as a class B felony, theft as a class D felony, possession of a firearm by a serious violent felon as a class B felony, receiving stolen property as a class D felony, another conviction for battery resulting in bodily injury as a class A misdemeanor, disorderly conduct as a class B misdemeanor, and the instant offense. All of the adult convictions occurred within a ten-year period. We also note that Turner was on probation when he committed the instant offense. In fact, Turner has a history of probation violations. The only factor we can find in mitigation identified by the trial court is the hardship incarceration will cause to Turner's children. In the end, we agree with the trial court that the aggravating factor, i.e., Turner's juvenile and criminal history, far outweighs the lone mitigating factor and conclude that the nineteen-year sentence imposed by the trial court is not inappropriate.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.