

Appellant-defendant Darrick Williams appeals the aggregate forty-year sentence imposed by the trial court following Williams's convictions for Burglary,¹ a class A felony, and Robbery,² a class A felony. Williams argues that the sentence is inappropriate in light of the nature of the offenses and his character. Additionally, Williams argues—and the State concedes—that the dual convictions as class A felonies violate double jeopardy. Finding that the sentence is not inappropriate but finding that the convictions as class A felonies violate double jeopardy principles, we affirm in part, reverse in part, and remand with instructions to reduce Williams's burglary conviction to a class B felony and impose a concurrent fifteen-year term on that conviction.

FACTS

On the evening of November 13, 2009, seventy-seven-year-old Ben Coppinger was sitting in the living room of his Indianapolis residence. His wife, seventy-six-year-old Helen Coppinger, was in the basement. At 6:15 p.m., Ben heard a knock on the front door. He went to the door and saw a man standing outside whose face was obscured; he thought it was his son so he opened the door.

A man later identified as Williams barged through the door and thrust a handgun into Ben's chest, knocking Ben to the floor. Williams went through Ben's pockets, found his keys, and handed the keys to an accomplice who was standing in the doorway.

¹ Ind. Code § 35-43-2-1.

² Ind. Code § 35-42-5-1.

Williams asked where Ben's wallet was; Ben told him and then Williams forced Ben into a bedroom and held him there, at gunpoint, for several minutes.

Williams forced Ben out of the bedroom, and the men encountered Helen at the top of the basement steps. Helen had heard noises and thought her grandchildren had come over to visit, so she went upstairs to greet them. Williams thrust the gun in her face and demanded to know where her purse was located. Helen said it might be in the bedroom, so Williams forced Ben and Helen, at gunpoint, into the bedroom.

Williams could not find the purse, and he forced Ben and Helen into the living room and ordered them to sit down. Williams went to unplug the television set in the living room, at which point Helen rose and ran for the front door. Williams followed her into the front yard and "slammed her into the ground." Tr. p. 50, 69. Helen screamed, and Williams ran away. Ben left the house through another door, went to a neighbor's house, and called the police. When the police arrived, they found Helen collapsed under a bush. Williams had cracked her pelvis, an injury that required her to stay in the hospital for eighteen days, undergo physical rehabilitation, and use a cane and walker for several months.

Police found Williams's fingerprints on the Coppingers' front door. Helen later identified Williams as the man who held them at gunpoint and slammed her to the ground in the front yard. She also remembered that Williams was one of the two men the Coppingers had seen loitering outside the house earlier that afternoon. Williams denied ever having been to the Coppingers' residence.

On January 26, 2010, the State charged Williams with class A felony burglary, class A felony robbery, class D felony pointing a firearm, and class A misdemeanor carrying a handgun without a license. Following Williams's June 24, 2010, jury trial, the jury found Williams guilty as charged. The trial court vacated Williams's convictions for pointing a firearm and carrying a handgun without a license because of double jeopardy concerns.³ Following a July 13, 2010, sentencing hearing, the trial court sentenced Williams to concurrent forty-year terms for the two class A felony convictions, with four years suspended and two years probation. Williams now appeals.

DISCUSSION AND DECISION

I. Double Jeopardy

Williams argues that his convictions for class A felony burglary and class A felony robbery violate double jeopardy principles. Specifically, he argues that they violate the actual evidence test, which requires the defendant to “demonstrate a reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the elements of a second challenged offense.” Richardson v. State, 717 N.E.2d 32, 53 (Ind. 1999). Relevant to this case is “the doctrine that where a burglary conviction is elevated to a Class A felony based on the same bodily injury that forms the basis of a Class B robbery conviction, the two cannot stand.” Pierce v. State, 761 N.E.2d 826, 830 (Ind. 2002); see

³ The State does not appeal this ruling because it agreed at trial that the trial court should vacate those convictions.

also I.C. § 35-43-2-1(2) (providing that burglary is elevated to a class A felony if it results in bodily injury or serious bodily injury); I.C. §35-42-5-1 (providing that robbery is elevated to a class A felony if it results in serious bodily injury).

Here, the basis of Williams’s liability for class B felony burglary conviction is the evidence that he was armed with a deadly weapon and that the Coppingers’ residence is a dwelling. But the burglary conviction was elevated to a class A felony based on the resulting serious bodily injury to Helen, meaning that the Pierce rule applies. The State observes that “[i]t would . . . be possible under Pierce to elevate Williams’[s] burglary conviction to a Class A felony on the fact of Helen’s pain, but elevate Williams’[s] robbery conviction to a Class A felony on the fact of Helen’s lengthy recuperation and impaired mobility.” Appellee’s Br. p. 11 (citation omitted). But the State then concedes that, given the way in which the case was tried to the jury, the Pierce rule applies:

The evidence regarding Helen Coppinger’s pain was confined to Williams’[s] pulling her down to the yard, breaking her hip, and the aftermath of that event. A generic discussion of this “pain” was offered as a sufficient basis for the jury to reach guilty verdicts on both the robbery and the burglary. The trial court’s instructions correctly set forth the distinction between “bodily injury” and “serious bodily injury,” but included “pain” and “extreme pain” in both definitions thereby failing to address the ambiguity regarding the legal use of Helen’s pain in the proof and elements of both offenses. . . . [T]here is . . . a “reasonable possibility” that the jury considered Helen’s pain as a sufficient basis for both class A felonies without regard to her loss of mobility.

Id. at 11-12 (citations omitted). The State concedes that Williams's dual convictions as class A felonies cannot stand, and we agree. Therefore, we will instruct the trial court to reduce the burglary conviction to a class B felony.

A class B felony conviction carries a sentencing range of six to twenty years imprisonment, with an advisory term of ten years. I.C. § 35-50-2-5. On Williams's class A felony conviction, the trial court imposed a forty-year term, which is slightly higher than the advisory but falls short of the maximum term. We are persuaded that the trial court would employ a similar strategy for a class B felony conviction. Consequently, we will instruct the trial court to impose a concurrent term of fifteen years for Williams's class B felony burglary conviction.

In sum, we reverse in part and remand with instructions to reduce Williams's burglary conviction to a class B felony and impose a concurrent fifteen-year term on that count.

II. Sentence

Williams argues that the forty-year sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character pursuant to Indiana Appellate Rule 7(B).⁴ 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

⁴ Our ruling that Williams's burglary conviction must be reduced to a class B felony does not reduce the aggregate sentence, inasmuch as his forty-year sentence for class A felony robbery still remains in place.

on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The class A felony robbery conviction has a sentencing range of twenty to fifty years, with an advisory term of thirty years. Ind. Code § 35-50-2-4. Williams received a forty-year term, which is higher than the advisory but still ten years less than the maximum possible term he faced.

Turning first to the nature of the offenses, the record reveals that Williams and an accomplice spent an afternoon loitering around the Coppingers' home, presumably planning their break-in. Williams invaded the residence in the early evening, increasing the risk that its occupants would be at home. Using a handgun, he knocked elderly Ben to the floor and forced him, and eventually Helen, to go to different places in the house. When Helen escaped through the front door, Williams followed her and slammed her to the ground, cracking the seventy-six-year-old woman's pelvis and causing her extreme pain, a lengthy hospital stay, and months of physical rehabilitation. The abhorrent nature of the offenses does not render the sentence inappropriate.

As for Williams's character, he had just turned eighteen years old weeks before committing the instant offenses. Consequently, he does not have an adult criminal record. He has, however, amassed a significant and sobering record as a juvenile offender:

- At the age of twelve, Williams was placed on informal home detention for a charge that would have been class A misdemeanor battery had it been committed by an adult; the

allegation was dismissed when Williams completed the home detention.

- At the age of thirteen, he committed an act that would have been class B misdemeanor criminal mischief had it been committed by an adult. He was again placed on informal home detention, which he failed. Over the next year, he failed the terms of his juvenile disposition seven times; seven other alleged failures were dismissed without adjudication.
- In October 2005, Williams committed an act that would have been criminal conversion had it been committed by an adult. He was again given home detention, both formal and informal, and later committed two violations of the terms of his disposition.
- That same month, he committed another act that would have been class B misdemeanor criminal mischief had it been committed by an adult. He again received informal detention and violated the terms of that disposition on two occasions.
- In March 2006, when Williams was fourteen, he committed acts that would have been class D felony intimidation and class B misdemeanor battery had they been committed by an adult. He was given electronic monitoring and suspended commitments to the Department of Correction (DOC).
- Around the same time but in a separate proceeding, Williams was found to have committed acts that would have been class D felony intimidation, class B misdemeanor battery, and class D felony resisting law enforcement had they been committed by an adult. He was given electronic monitoring and suspended commitments to the DOC.
- Over the next two years, Williams violated the terms of his suspended commitments ten times; twelve other alleged violations were dismissed.
- In early 2007, while still serving out the suspended DOC commitments, Williams committed an act that would have been class D felony battery had it been committed by an adult. He again received a suspended commitment to the DOC and violated the terms of that commitment on three occasions.

- In June 2008, when he was still sixteen, Williams committed an act that would have been class D felony possession of cocaine or narcotic drug had it been committed by an adult. He was given home confinement, electronic monitoring, and a suspended commitment to the DOC.
- While awaiting disposition in that case, Williams was alleged to have committed acts that would have been class A misdemeanor battery and class B misdemeanor public intoxication had they been committed by an adult. Those charges were not pursued.
- In July 2009, Williams was alleged to have committed an act that would have been class D felony theft had it been committed by an adult. That allegation was dismissed in September 10, 2009, two months before Williams committed the instant offenses.

While the current case was pending, Williams was charged with class D felony receiving stolen auto parts and class A misdemeanor criminal trespass. Williams admitted that during all these proceedings, including his suspended commitments to the DOC, he regularly used marijuana.

Although we would normally be loathe to sanction the imposition of a forty-year sentence on someone who had barely turned eighteen years old at the time of the offense, under these circumstances we do not find the sentence inappropriate. Williams began showing his disregard for the rule of law and his fellow citizens at the age of twelve. His law-breaking behavior has increased in frequency and severity as he has aged, culminating in the instant violent offense that resulted in a very serious injury to an elderly woman.

Williams was given countless opportunities by the juvenile justice system during his six years as a juvenile offender, but he continued to break the rules, violated the terms

of his dispositions, and refused to take advantage of second, third, fourth, and fifth chances. Unfortunately, he is not entitled to another chance this time. We do not find the forty-year sentence imposed by the trial court to be inappropriate in light of the nature of the offenses and Williams's character.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions to reduce Williams's burglary conviction to a class B felony and impose a concurrent fifteen-year term on that count.

VAIDIK, J., and BARNES, J., concur.