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**IN THE  
COURT OF APPEALS OF INDIANA**

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JESUS D. RUSSELL, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 53A01-1009-CR-443  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MONROE CIRCUIT COURT  
The Honorable Marc R. Kellams, Judge  
Cause No. 53C02-0806-FB-511, 53C02-0809-FC-859

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**February 24, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Jesus Russell appeals his twenty-year sentence for two counts of Class B felony burglary and one count of Class C felony criminal recklessness. We affirm.

### **Issue**

Russell raises one issue, which we restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

### **Facts**

On May 28, 2008, Russell broke into two different apartments and stole items. The State charged Russell with three counts of Class B felony burglary. On September 23, 2008, while out on bond, Russell shot a firearm at a housing complex. The State charged Russell with Class C felony criminal recklessness and Class D felony criminal recklessness.

On January 15, 2009, Russell agreed to plead guilty to two of the Class B felony burglary charges and the Class C felony criminal recklessness charge and the State agreed to dismiss the remaining charges. According to the plea agreement, Russell's sentences on the burglary charges would be served concurrently and his sentence on the criminal recklessness charge would be served consecutive to the burglary sentence. The plea agreement also provided that the burglary sentences would be capped at twelve years.

On March 31, 2009, after a combined guilty plea and sentencing hearing, the trial court sentenced Russell to twelve years for the burglaries and eight years for the criminal

recklessness for a total sentence of twenty years to be executed at the Department of Correction (“DOC”). Russell now appeals.

### **Analysis**

Focusing on his difficult childhood, Russell argues that his sentence is inappropriate under Indiana Appellate Rule 7(B) in light of his character and the nature of the offense. Although Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

The principal role of Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). We “should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” Id. Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case. Id. at 1224.

On appeal, Russell points out that he was physically and sexually abused as a child, that he did not know his father, that his mother was in abusive relationships, that

his mother and stepfather had substance abuse issues, that he was diagnosed with attention deficit hyperactivity disorder, and that he had a learning disability and dropped out of school. Counterbalancing Russell's difficult childhood, however, is his extensive criminal history. Twenty-one-year-old Russell became involved with the criminal justice system when he was twelve. He has juvenile adjudications for illegal consumption, possession of marijuana, burglary, theft, criminal mischief, and intimidation. He has convictions for conversion, domestic battery, and operating without a license. Despite access to numerous services over the years, Russell's substance abuse problems remain untreated and he has repeatedly violated the terms of his probation by committing additional offenses.

Russell has been divorced twice and has three children. At the hearing, Russell explained that he committed the burglaries because he was going through a divorce, having problems with his ex-wife, and struggling with his mother's divorce. He stated that he was using drugs and pills and broke into the houses to steal things he could sell to buy more drugs and alcohol. He stated that his Social Security check was not enough to support his drug use. Russell also explained that, when he committed the criminal recklessness, he had been sitting on the porch at his fiancé's mother's house drinking beer. He was approached by men with whom he had an ongoing argument. Afraid the men were going to "jump" him, he fired a gun at the ground and into the air. Tr. p. 21. Nothing about the nature of the offenses or Russell's character warrants a reduction of his twenty-year sentence or placement somewhere other than the Department of Correction.

## **Conclusion**

Russell's twenty-year sentence is not inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Affirmed.

BAKER, J., and VAIDIK, J., concur.