

Carl S. Howard (“Howard”) pleaded guilty in Wells Circuit Court to Class D felony receiving stolen property and was sentenced to three years executed in the Department of Correction. Howard appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On July 9, 2008, the State charged Howard with Class C felony burglary. On February 19, 2009, the State added a charge of Class C felony operating a motor vehicle while privileges are forfeited for life. Finally, on October 6, 2009, the State added a charge of Class D felony receiving stolen property. On the same date, Howard pleaded guilty to Class D felony receiving stolen property in return for the dismissal of the remaining charges.

The trial court held a sentencing hearing on February 18, 2010. After reviewing Howard’s extensive criminal history and identifying aggravating and mitigating factors, the trial court sentenced Howard to three years executed in the Department of Correction. Howard now appeals.

Discussion and Decision

Howard argues that his three-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. Alvies v. State, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing

Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007)). This appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that a 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.” Anglemyer, 868 N.E.2d at 491. However, “we must and should exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires us to give ‘due consideration’ to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions.” Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007).

Howard committed Class D felony receiving stolen property, for which the sentence range is six months to three years, with an advisory sentence of one and one-half years. Ind. Code § 35-50-2-5 (2004). The trial court sentenced Howard to the three-year maximum sentence. Despite his lengthy criminal history, Howard argues that the maximum sentence was inappropriate because his offense was not particularly heinous, many of his past offenses were misdemeanors, and at the time of his sentencing, he was “on an upward trajectory in his life with working and with recent renewed focus on his family.”¹ Appellant’s Br. at 9.

¹ To the extent that Howard argues that the trial court placed undue weight on his criminal history, we note that we do not review the trial court’s weighting of proper aggravators and mitigators under Anglemyer. 868 N.E.2d at 491.

Generally, the maximum possible sentence is most appropriate for the worst offenders. Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002). This is not, however, an invitation to determine whether a worse offender could be imagined. Wells v. State, 904 N.E.2d 265, 274 (Ind. Ct. App. 2009), trans. denied. In stating that maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment, but this encompasses a considerable variety of offenses and offenders. Id. Thus, in our Appellate Rule 7(B) analysis, “[w]e concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant’s character.” Id.

Considering the nature of the offense, we note that the General Assembly has classified Howard’s offense as a Class D felony, together with the resultant sentencing range. On the record before us, we are unable to discern the facts surrounding Howard’s offense. In establishing a factual basis for Howard’s guilty plea, the State simply stated that on or about June 15th, 2008, “Howard did knowingly receive, retain or dispose of the property of Brett Green, to wit: Mini bike, said property having been the subject of theft[.]” Tr. p. 6; see also Ind. Code 35-43-4-2 (2004). We will therefore assume that Howard’s offense was unremarkable in nature.

However, Howard’s character alone, as reflected by his lengthy criminal history, easily supports the imposition of the maximum sentence. Howard, who was twenty-nine

years old at the time of his sentencing, has multiple felony convictions, including convictions for operating a motor vehicle while an habitual traffic offender, possession of marijuana, possession of paraphernalia, and resisting law enforcement, all class D felonies, as well as a conviction for C felony operating a vehicle while privileges are forfeited for life. Howard's criminal history also includes numerous misdemeanors and infractions, and a juvenile adjudication for child molesting. Moreover, Howard has repeatedly violated probation and he was on parole at the time of the instant offense. Finally, Howard has failed to pay child support and was more than \$19,000 in arrears at the time of his sentencing. Sentencing Tr. p. 16.

Under the facts and circumstances before us, and giving proper deference to the trial court's sentencing discretion, we cannot conclude Howard's three-year executed sentence is inappropriate.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.