

STATEMENT OF THE CASE

Ralph E. Farris appeals his sentence following a plea of guilty to aiding robbery as a class B felony.¹

We affirm.

ISSUE

Whether Farris' sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

On the night of January 26, 1997, Farris drove Nick Beiswanger and Gary Naegele to a Fort Wayne grocery store. Farris parked his vehicle behind the store and waited while Beiswanger and Naegele, armed with guns and wearing masks, entered the store. Once inside the store, Beiswanger and Naegele brandished their weapons and demanded money. After getting "a bag of money," Beiswanger and Naegele fled the store and got into Farris' waiting vehicle. (Guilty Plea Hr'g Tr. 11). With Farris driving, the three men "took off in the car." *Id.* As they fled, Farris nearly struck a by-stander.

Following Beiswanger's directions, Farris drove down several streets before stopping at a dead-end street. After realizing that a witness to the robbery had followed them, one of the occupants of Farris' vehicle began to shoot at the witness.²

¹ Ind. Code §§ 35-42-5-1; 35-41-2-4.

² According to the probable cause affidavit, a witness identified Farris as the shooter. During the guilty plea hearing, however, Farris testified that Beiswanger was the shooter.

On January 30, 1997, the State charged Farris with class B felony aiding robbery. After Farris posted bond, the trial court released him from custody. On May 23, 1997, the State filed a petition to revoke Farris' bond. On June 2, 1997, the trial court held a hearing on the State's petition; Farris, however, failed to appear. Finding probable cause that Farris had committed armed robbery in Huntington County while on bond, the trial court revoked Farris' bond and issued a warrant for his arrest. On or about August 28, 1997, law enforcement officers arrested Farris in Florida and extradited him to Indiana on or about September 14, 1997. At some point, Farris was convicted under Cause Number 35C01-9704-CF-18 ("Cause No. 18") of the armed robbery that he committed in Huntington County while on bond.

On July 30, 1998, Farris pleaded guilty to aiding robbery as a class B felony. The trial court ordered a pre-sentence investigation report ("PSI") and held a sentencing hearing on August 31, 1998.³ The trial court found as follows:

Court finds as aggravating circumstances, three prior felony convictions. In Whitley County in 1986 under two separate cause numbers, June of [19]86 and September of [19]86. Court finds as a further aggravator, the fact that [Farris] was on [p]robation in Whitley County when this offense was committed. Further aggravator is that [Farris] w[as] on bond for this offense and committed Armed Robbery in Huntington County. Court finds as a further aggravator that prior efforts at rehabilitation have failed in that [Farris] w[as] on [p]robation when [he] committed the instant offense. Court finds as a mitigating circumstance [the] entry of a plea of guilty. . . [and] acceptance of responsibility. However, the Court finds that the aggravating circumstances outweigh the mitigating circumstances.

³ Farris has not provided a copy of the PSI. Thus, the PSI is not before us on appeal. We remind Farris that, as the appellant, he bears the burden of presenting a record that is complete with respect to the issues raised on appeal. *See Ford v. State*, 704 N.E.2d 457, 461 (Ind. 1998).

(Sent. Hr'g Tr. 9-10). The trial court then sentenced Farris to fifteen years. The trial court ordered that the sentence be served consecutive to the sentences imposed under Cause No. 18 and another cause number.

With permission from the trial court, Farris filed a belated notice of appeal on September 10, 2009.

DECISION

Farris asserts that his sentence is inappropriate because “much of his criminal history contained theft related convictions.” Farris’ Br. at 11. He also maintains that his sentence is inappropriate because “[h]e did not threaten anyone and did not carry a firearm.” Farris’ Br. at 12. We disagree.

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. App. R. 7(B). It is the defendant’s burden to “persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007).

The “nature of the offense” refers to the statutory presumptive (now advisory) sentence for the class of crimes to which the offense belongs. *Id.* Thus, the presumptive (advisory) sentence is meant to be the starting point for the trial court’s consideration of the appropriate sentence for the particular crime or crimes committed. *Id.*

The “character of the offender” refers to the sentencing considerations in Indiana Code section 35-38-1-7.1, which contains general sentencing considerations, the balancing of aggravating and mitigating circumstances, and other factors within the trial court’s discretion. *Id.* “This court is mindful of the principle that ‘the maximum sentence enhancement permitted by law should be reserved for the very worst offenses and offenders.’” *Matshazi v. State*, 804 N.E.2d 1232, 1241 (Ind. Ct. App. 2004) (citing *Borton v. State*, 759 N.E.2d 641, 648 (Ind. Ct. App. 2001), *trans. denied*), *trans. denied*. Here, the trial court sentenced Farris to fifteen years, five years less than the maximum sentence for a class B felony.

As to Farris’ offense, the record reveals that Farris’ actions endangered several people. Specifically, he drove two armed men to a grocery store. Farris waited for his cohorts as they threatened people inside the store with guns and demanded money. Once the men were given money, they fled to Farris’ waiting vehicle. Farris then sped away, nearly striking a by-stander with his vehicle. In an attempt to evade police, Farris drove down several city streets. Once they were cornered, one of the occupants of Farris’ vehicle shot at a witness.

As to Farris’ character, the record indicates that he had three prior felony convictions and was on probation when he committed the instant offense; he committed armed robbery while on bond awaiting trial for the instant offense; and he violated the conditions of his bond by fleeing the jurisdiction. Given Farris’ obvious disregard for the

law and failed prior attempts to rehabilitate him, we cannot say that Farris' sentence is inappropriate, particularly given that he did not receive the maximum possible sentence.

Affirmed.

MAY, J., and KIRSCH, J., concur.