

STATEMENT OF THE CASE

Defendant-Appellant Earlie B. Berry, Jr., appeals the sentence the trial court imposed for his conviction of theft, a Class D felony. Ind. Code § 35-43-4-2 (2009). We affirm.

ISSUE

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

FACTS AND PROCEDURAL HISTORY

On March 24, 2010, Berry entered a Wal-Mart store in Fort Wayne. He picked up several video games and took them into a restroom. In the restroom, Berry removed the electronic alarm tags from the games and put the games in his book bag. He was stopped by store security personnel as he exited the store.

The State charged Berry with theft. Subsequently, Berry pleaded guilty to theft without a plea agreement, and the trial court sentenced him to two years.

DISCUSSION AND DECISION

Berry's sentencing challenge is governed by Indiana Appellate Rule 7(B), which provides, in relevant part, "[t]he 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." We may look to any factors appearing in the record to conduct the examination. *Schumann v. State*, 900 N.E.2d 495, 497 (Ind. Ct. App. 2009). The burden is on the defendant to

persuade us that his sentence is inappropriate. *Major v. State*, 873 N.E.2d 1120, 1130 (Ind. Ct. App. 2007), *trans. denied*.

The “nature of the offense” portion of the standard articulated in Appellate Rule 7(B) speaks to the statutory advisory sentence for the class of crimes to which the offense belongs. *Id.* We first look to the advisory sentence to guide us in determining whether the sentence imposed is appropriate given the nature of the offense and the character of the offender. Here the offense is a Class D felony, for which the advisory sentence is one and one-half years, the shortest sentence is six months, and the longest sentence is three years. Ind. Code § 35-50-2-7 (2005). Berry received a two-year sentence.

We agree with the State that the nature of the offense is “unremarkable.” Appellee’s Br. p. 3. Berry stole several video games.

The character of the offender portion of the inappropriateness standard refers to the general sentencing considerations and the relevant aggravating and mitigating circumstances. *Major*, 873 N.E.2d at 1131. Our review of the character of the offender shows that Berry has a lengthy criminal history. Berry, who is thirty-one years old, has accumulated twelve misdemeanor convictions and five felony convictions as an adult. His convictions include several counts of battery, several counts of possession of cocaine or narcotic drug, and possession of paraphernalia. Berry’s parole has been revoked twice, and he has had misdemeanor suspended sentences revoked on three occasions. Furthermore, Berry admits to a lengthy history of marijuana and cocaine use. Berry’s criminal history demonstrates disrespect for the law and consistent failure to correct his behavior.

Berry asserts that his lengthy history of drug addiction renders his sentence inappropriate. The trial court determined that Berry's drug abuse was a mitigating factor. However, when reviewing whether a sentence is appropriate, we are not obligated to consider a defendant's drug abuse as a basis for reducing a sentence. *See Calvert v. State*, 930 N.E.2d 633, 644 (Ind. Ct. App. 2010) (noting that the defendant's "substance abuse reflects poorly on his character").

Berry also argues that his sentence is inappropriate due to his history of bipolar disorder. We note that Berry did not present this argument to the trial court. Nevertheless, there are several considerations that bear on the weight, if any, which should be given to mental illness in sentencing. These factors include: (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. *Krempetz v. State*, 872 N.E.2d 605, 615 (Ind. 2007).

In this case, the record indicates that Berry was diagnosed with bipolar disorder in 2007, but there is no evidence that the disorder renders him unable to control his behavior, that it affects his overall limitations on functioning, or that there is a nexus between his disorder and the commission of this crime. Under these circumstances, Berry's mental illness bears little weight on our analysis of his character. *See Scott v. State*, 840 N.E.2d 376, 384 (Ind. Ct. App. 2006), *trans. denied* (concluding that defendant's bipolar disorder was not a significant consideration where the defendant was

capable of controlling his behavior, did not have significant limitations on his functioning, and failed to identify a nexus between his mental illness and the offense).

We conclude that Berry has not carried his burden of persuading this Court that his sentence has met the inappropriateness standard of review.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.