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IN THE
COURT OF APPEALS OF INDIANA

SCHERALL TINKER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0809-CR-469
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0806-FD-501

March 16, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Scherall Tinker appeals the sentence imposed by the trial court after she pleaded guilty to Theft,[1] a class D felony, and admitted to being a Habitual Offender.[2] Tinker argues that the trial court abused its discretion by failing to find a proffered mitigator and that the sentence is inappropriate in light of the nature of the offense and her character. Finding no error, we affirm.

FACTS

On May 2, 2008, Tinker stole merchandise from a department store in Allen County. On June 9, 2008, the State charged Tinker with class D felony theft, and on July 16, 2008, the State filed a habitual offender enhancement. On July 28, 2008, Tinker pleaded guilty to theft and admitted to being a habitual offender. On September 5, 2008, the trial court sentenced Tinker to three years for the theft conviction and enhanced that sentence by four and one-half years for the habitual offender finding. The trial court ordered that this sentence run consecutive to Tinker's three-year sentence imposed in Cause Number 02-D04-0801-FD-77[3] and three sentences by a trial court in Georgia. Tinker now appeals.

DISCUSSION AND DECISION

Tinker first argues that the trial court abused its discretion by failing to consider her nearly lifelong drug abuse as a mitigating circumstance. A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a

[1] Ind. Code § 35-43-4-2.

[2] Ind. Code § 35-50-2-8.

[3] Tinker also appealed that sentence. Our decision in that appeal is handed down today as well, under Cause Number 02A03-0809-CR-470.

sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Anglemyer v. State, 868 N.E.2d 482, 490-91 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (2007).

Tinker started drinking alcohol three to four times per week when she was fourteen years old, used marijuana daily from the age of fourteen to seventeen, and used heroin and cocaine on a daily basis from the age of eighteen through fifty. Although Tinker admits that she has a substance abuse problem, the record does not reveal that she has ever taken any constructive steps to address it. Furthermore, she fails to explain a nexus between her addictions and her criminal activity. In other words, as put by the State, she "may have shown a motivation to commit these crimes, but she has not shown a compulsion based on her addiction." Appellee's Br. p. 6. Under these circumstances, we do not find that the trial court erred by declining to consider Tinker's drug use to be a mitigating circumstance. See Bryant v. State, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004) (holding that when a defendant is aware that a substance abuse problem exists but does not seek treatment, the failure to act indicates something aggravating rather than mitigating about her character).

Next, Tinker contends that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and her character pursuant to Indiana Appellate Rule 7(B). 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 on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Here, the trial court imposed a three-year sentence for

Tinker's class D felony conviction, which is the maximum sentence she could have received. Ind. Code § 35-50-2-7. The trial court then enhanced the sentence by four and one-half years for the habitual offender finding. I.C. § 35-50-2-8.

As for the nature of the offense, Tinker stole merchandise from a department store while she was on probation for another offense. Turning to Tinker's character, we observe that she has amassed fourteen misdemeanor convictions and eighteen felony convictions, including forgery in 1980, two thefts in 1986, five thefts in 1988, theft in 1992, attempted theft in 1992, theft in 1994, possession of cocaine in 1996, possession of a controlled substance in 1996, theft in Georgia in 1999, theft in Georgia in 2001, possession of heroin in Georgia in 2006, and two thefts in 2006. It is evident, upon reviewing her substantial criminal history, that the police power of the State has had no deterrent effect upon her determined recidivism. It is equally evident that Tinker has no respect for the rule of law. Under these circumstances, we find that the sentence imposed by the trial court is not inappropriate in light of the totality of the nature of the offense and her character.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.