

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

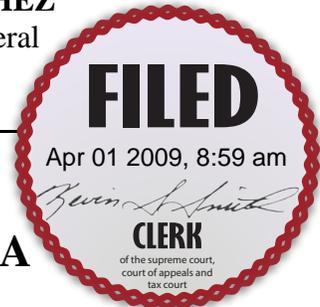
ATTORNEY FOR APPELLANT:

**PHYLLIS EMERICK**  
Monroe County Public Defender  
Bloomington, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**ANGELA N. SANCHEZ**  
Deputy Attorney General  
Indianapolis, Indiana



---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

RODNEY M. BREWER,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 53A04-0808-CR-507

---

APPEAL FROM THE MONROE CIRCUIT COURT  
The Honorable Kenneth G. Todd, Judge  
The Honorable Marc R. Kellams, Judge<sup>1</sup>  
Cause No. 53C03-0703-FB-258

---

**April 1, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

---

<sup>1</sup> Judge Todd's name appears on the covers of the briefs and appendix, is noted in various CCS entries, and has been stamped on the abstract of judgment. However, apparently Judge Kellams presided over the sentencing hearing, decided Brewer's sentence, appointed a public defender for the appeal, and completed the judgment of conviction and sentencing order of probation/commitment. As such, we list both judges here.

## Case Summary

Raising an Indiana Appellate Rule 7(B) challenge, Rodney Brewer asserts that the sentence he received after pleading guilty to class B felony burglary<sup>2</sup> was inappropriate in light of the nature of the offense and his character. Specifically, he focuses on the fact that he did not actually steal anything. He also contends that drugs caused his crime, that he is remorseful, and that his health is fragile. We affirm.

## Facts and Procedural History

The facts that support the guilty plea are basically undisputed. On March 19, 2007, after having taken four doses each of methodone, Klonopin, and Loritab, Brewer drank alcohol and smoked crack cocaine at his home. PSI at 8-9; Sent. Tr. at 6. Thereafter, an acquaintance drove Brewer to a residence. Intending to steal money to buy illegal drugs, Brewer used a crowbar to break into the residence through a basement window. PSI at 9. Once Brewer was inside, a fourteen-year-old girl appeared at the top of the basement stairs. At that point, Brewer quickly exited, hitting his head and breaking his glasses as he hastily retreated. *Id.* Brewer's acquaintance drove him back home, where police quickly found and arrested him. Brewer's glasses were found at the crime scene; Brewer admitted that he had committed the burglary; and the teenage victim positively identified him.

In March 2007, the State charged Brewer with burglary; a habitual offender allegation was added later. App. at 1. On November 5, 2007, Brewer pled guilty to the burglary charge, and the State dismissed the habitual offender count. A sentencing hearing was set for

---

<sup>2</sup> See Ind. Code § 35-43-2-1(1)(B)(i)(breaking and entering a dwelling).

January 23, 2008. Brewer failed to attend that hearing, and the court issued an arrest warrant.

A few months later, Brewer was apprehended in California and returned to Indiana. On July 29, 2008, the court held a sentencing hearing, ordered a twenty-year sentence, and appointed a public defender for Brewer's appeal.

### **Discussion and Decision**

Indiana trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.* So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. *Id.* A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* Under the advisory sentencing scheme, trial courts no longer have any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, therefore, the weight the trial court gives to such factors is not subject to appellate review. *Id.* at 491.

Here, the court provided a thoughtful, lengthy explanation of its reasoning before imposing sentence on Brewer:

Mr. Brewer your situation is very sad. You've um, you've created a terrible mess for yourself over your life, your criminal convictions start back, way back in 1981 maybe, oh, 1975. You have a conviction in 1975, '85, '-95, that's thirty-three years ago, Possession of an Unlabeled Drug in Butler County, Ohio. Followed by Possession of Marijuana in Los Angeles County, California. Driving Under the Influence in Clayton County, Georgia in '81. Disorderly Conduction and Trespassing in '85 in Palm Beach County, Florida. Vehicle Theft, you said was dismissed so we won't consider that. A second Operating While Intoxicated in January of 1990 in Marion County, Indiana. A Public Intoxication in October of '90 in Marion County, Indiana. Your third Operating While Intoxicated in December of 1990 in Marion County, Indiana. An unsuccessful discharge from probation in 1991. A revocation in April, May of 1992. Conviction for felony in Marion County, Indiana in 1995. Visiting a Common Nuisance in 1996. Public Intoxication in '96. Furnishing Alcohol to a Minor in '97. Forgery in two counts in 1998. Petition to Revoke with community service ordered in '99. And then in 2000 a discharge from Probation after a revocation in Owen County. And then this Burglary. Which even alone and on its face is a significant crime because obvious harm to the victim and her family. It, it was a dangerous considering the fact that you had a crowbar with you and you broke into somebody's basement, and, you were doing it all for, to, to obtain apparently the resources to buy illegal drugs. Your medical situation is sad and then treatment with the, all the drugs that you were receiving one might wonder what that contributed to this whole situation. But I'm going to presume that your plea was made freely and voluntarily and intelligently at the time. There's an order to that effect. You've been unsuccessfully discharged from three (3) of six (6) prior orders of probation. And I think it would [be] foolish at this point to make any further attempt so we're looking just to the matter of whether we, what sentence we assess to the Department of Correction from my perspective. And there was a Habitual Offender Information which was, was it dismissed as part of the Plea Agreement or was it dismissed in anticipation of [Brewer's] cold plea or . . . ? [State responds, "Anticipation of cold plea."]

Pleading guilty to a B felony that would have, could have added another ten (10) to thirty (30) of imprisonment for [Brewer's] underlying sentence. I think you're a menace to the community, unfortunately, and a danger to society. I think that it was a real benefit to you that the Habitual Offender Petition was dismissed. It did not help your cause that you absconded from the jurisdiction and w[ere] wanted on warrant and had to [be] extradited from the state of California. I'm going to accept the State's recommendation and enter a sentence of twenty (20) years executed. With the credit for the time we've discussed and agreed upon.

App. at 33-36.

Indiana Appellate Rule 7(B) allows a court on review to revise a sentence if the sentence is inappropriate in light of the nature of the offense and the character of the offender. Although Rule 7(B) does not require us to be extremely deferential to a trial court's sentencing decision, we still give due consideration to that decision. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007) (recognizing the unique perspective a trial court brings to its sentencing decisions); *see also Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008) ("sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference"). The defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate. *Krempez v. State*, 872 N.E.2d 605, 616 (Ind. 2007).

Regarding the nature of the offense, the advisory sentence is the starting point our legislature has selected as an appropriate sentence for the crime committed. *Anglemyer*, 868 N.E.2d at 494. As a class B felony, burglary of a dwelling carries an advisory sentence of ten years, with a fixed term of between six and twenty years. Ind. Code § 35-50-2-5. The court sentenced Brewer to twenty years in prison. Brewer's offense consisted of using a crowbar to break into a family's home with the goal of stealing money to purchase drugs. He did this after ingesting alcohol, taking several doses of methodone, Klonopin, and Loritab, and smoking crack cocaine. Upon being discovered by a teenage girl at the home, Brewer fled. There is no indication that he suddenly realized the error of his ways; his plan was simply thwarted. The incident so affected the teenager that the family has moved, yet she is

still fearful.

Moving next to the question of character, we often look at criminal history. Our supreme court has emphasized that “the extent, if any, that a sentence should be enhanced [based upon prior convictions] turns on the weight of an individual’s criminal history.” *Duncan v. State*, 857 N.E.2d 955, 959 (Ind. 2006). “This weight is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant’s culpability.” *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006). Despite the dismissal of several charges over the years, Brewer’s criminal record includes three felony convictions and numerous drug/alcohol-related offenses. In fact, his criminal history consumes almost five full pages of the presentence investigation report. Although offered probation in the past, Brewer has wasted half of his opportunities by violating probation. His illegal activity, first noted in 1975, is not limited to Indiana and does not appear to have abated in recent years. Indeed, he admitted to regularly using marijuana over the past few years and was arrested in 2003. *See Drakulich v. State*, 877 N.E.2d 525, 536 (Ind. Ct. App. 2007) (analyzing defendant’s character under Rule 7(B) and noting that defendant “was not living a law-abiding life for a period of time”), *trans. denied*; *Roney v. State*, 872 N.E.2d 192, 207 (Ind. Ct. App. 2007) (assessing defendant’s character and noting that he had used illegal drugs throughout his life), *trans. denied*. All in all, Brewer’s criminal history does not reflect positively on his character.

Another factor that reflects poorly on Brewer’s character is that he pled guilty just

days before his scheduled trial date, thereby still consuming substantial State resources. Further, he received a considerable benefit (dismissal of habitual charge that could have added significant time to his sentence) for pleading guilty. *See Fields v. State*, 852 N.E.2d 1030, 1034 (Ind. Ct. App. 2006) (noting that defendant “received a significant benefit from the plea, and therefore it does not reflect as favorably upon his character as it might otherwise”), *trans. denied*. As for Brewer’s suggestion that drugs caused him to commit the crime, this cuts against a true acceptance of responsibility.<sup>3</sup> Regarding his expression of remorse, we agree with the State that it was murky. Finally, Brewer’s attempt to evade sentencing by fleeing to California speaks volumes about his character.<sup>4</sup>

Considering the nature of his offense and his character, Brewer has failed to persuade us that his sentence is inappropriate. *Cf. Craig v. State*, 883 N.E.2d 218, 223 (Ind. Ct. App. 2008) (affirming appropriateness of twenty-year sentence for class B felony possession of a firearm by a serious violent felon); *see Caldwell*, 895 N.E.2d at 1225 (“appellate review should focus on the forest – *the aggregate sentence* – rather than the trees”) (emphasis added); *Hollin v. State*, 877 N.E.2d 462, 465 (Ind. 2007) (ordering an aggregate sentence of twenty years for defendant who committed class B burglary and was a habitual offender); *see also Frye v. State*, 837 N.E.2d 1012, 1014 (Ind. 2005) (revising aggregate sentence for

---

<sup>3</sup> Given his numerous prior substance-related offenses, Brewer should have taken steps to address these issues.

<sup>4</sup> To the extent Brewer advocates a lesser sentence due to his medical problems, we note the lack of documentation detailing his maladies. More importantly though, the court was aware of Brewer’s medical issues and spoke of them; Brewer may not challenge the weight accorded them. *See Anglemeyer*, 868 N.E.2d at 491. In addition, there is no indication that Brewer will not receive appropriate medical care while in prison.

burglary and habitual finding from forty to twenty-five years).

Affirmed.

ROBB, J., and BROWN, J., concur.