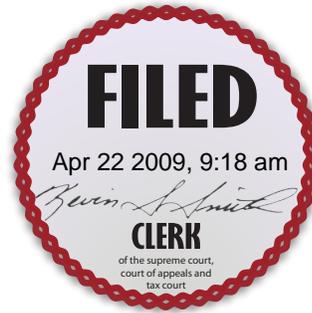


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MARIAM LAKHANI,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 24A01-0809-CR-426

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
Cause No. 24C01-0512-FB-1103

April 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Mariam Lakhani appeals her sentence, pursuant to a guilty plea, for class B felony burglary.¹

We affirm.

ISSUE

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

FACTS

Upon returning to her Franklin County residence on December 27, 2005, Ruth Cooper saw a strange car parked behind her home. A person was seated in the car and three people ran from Cooper's home carrying armloads of her personal property. Cooper attempted to block their exit with her car, but the driver managed to swerve around her. Cooper noted the license plate number of the car and went inside to call the police.

Inside, Cooper found her home ransacked. The doors had been kicked off their hinges, and the contents of the refrigerator, closets and dresser drawers were strewn about. Cooper gave the police the license plate number of the car. Later that day, the police stopped a vehicle matching Cooper's description. Lakhani and three other persons were in the car, along with Cooper's property.

On December 29, 2005, the State charged Lakhani with one count of class B felony burglary. On April 23, 2008, Lakhani pleaded guilty to class B felony burglary.

¹ Indiana Code § 35-43-2-1.

On July 29, 2008, Lakhani filed a sentencing memorandum, wherein she advanced potential mitigating circumstances and requested a suspended sentence.

The trial court conducted Lakhani's sentencing hearing on July 30, 2008. Lakhani testified that she had no prior knowledge of her co-defendants' intention to commit burglary. According to the Pre-Sentence Investigation report, Lakhani claimed that she was asleep in the car at the time of the burglary and awoke just as her co-defendants entered the car with Cooper's property.

Before imposing sentence, the trial court considered Lakhani's proffered mitigating circumstances, including the following: (1) Lakhani's entry of a guilty plea and acceptance of responsibility; (2) her youthful age, troubled childhood, and history of chronic depression and self-medication with drugs and/or alcohol, and the effect thereof on her decision-making ability;² (3) her pursuit of higher education; and (4) the unlikely possibility that she might re-offend. The trial court assigned minimal weight, if any, to Lakhani's proffered mitigating circumstances, but rejected outright Lakhani's assertion that she was "likely to respond affirmatively to probation," noting that in 2007, Lakhani had fled the jurisdiction of the court for approximately ten months. (Tr. 56). The trial court also rejected Lakhani's assertion that her "actions and involvement in th[e] crime neither caused nor threatened serious harm to person or property," after noting Lakhani's

² As to Lakhani's youthful age, troubled childhood, allegations of sexual molestation, and history of chronic depression, the trial court assigned these factors "little to no weight," stating,

I'm still perplexed as to . . . why you would argue these, uh, uh, problems [as mitigating circumstances], when you turn around and argue that she[']s overcome[] them, she's a CNA [certified nursing assistant] student, she, uh, -- she . . . can function highly, she, uh, can still choose who she, uh, wants to be around.

(Tr. 59).

testimony at the sentencing hearing that one of her co-defendants possessed a handgun during the burglary and brandished the gun with the intent to shoot Cooper during their getaway. (Tr. 57). Lastly, the trial court rejected Lakhani's assertion that she "had no history of delinquency or criminal history and had led a law-abiding life for a substantial period before the commission of the crime," after noting that Lakhani had admitted to abusing illicit and prescription drugs. (Tr. 58).

The trial court identified the following aggravating circumstances: (1) Lakhani's pending charge for class A misdemeanor theft; (2) her failure to appear for a prior plea hearing and absconding from the jurisdiction for approximately ten months; and (3) the impact of the offense on the Coopers. The trial court concluded that the aggravating and mitigating circumstances "basically cancel[ed] each other [out]" and, accordingly, imposed a ten-year advisory sentence. (Tr. 61). It ordered eight years executed and suspended the remaining two years to probation. The trial court also imposed a \$250.00 fine and ordered restitution paid. Lakhani now appeals.

DECISION

Lakhani argues that her sentence is inappropriate in light of the nature of the offense and her character.

We may revise a sentence if, "after due consideration of the trial court's decision," we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). "Although Rule 7(B) does not require us to be 'very deferential' to a trial court's sentencing decision, we still must give due consideration to that decision." *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct.

App. 2008). “We also understand and recognize the unique perspective a trial court brings to its sentencing decisions.” *Id.* The burden is on the defendant to persuade the reviewing court that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh’g*, 875 N.E.2d 218.

Lakhani asserts that her sentence was inappropriate because the trial court “agreed that most of [her] proposed mitigating factors were present . . . [but] declined to assign much weight to them, and instead, found that they were ‘non-compelling’ and . . . simply negated the aggravating factors.” Lakhani’s Br. at 7. Although she does not dispute the trial court’s finding of aggravating and mitigating circumstances, she believes that the trial court “improperly weighed [the aggravating and mitigating] factors when fixing the length of her sentence and, in doing so, settled upon a sentence that was inappropriate.” Lakhani’s Br. at 7. We cannot agree.

Inasmuch as Lakhani argues that the trial court improperly weighed the aggravating and mitigating circumstances, this claim is no longer available for review on appeal. Our supreme court has held that “trial court[s] no longer ha[ve] any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, [thus,] a trial court cannot not be said to have abused its discretion in failing to ‘properly weigh’ such factors.” *Anglemyer*, 868 N.E.2d at 490.

Moreover, after due consideration of the trial court’s decision, we cannot say that Lakhani’s sentence is inappropriate. The nature of the offense reveals that Lakhani

participated in a burglary during which one of her co-defendants was armed with a deadly weapon. She admits that she knowingly and intentionally broke and entered the Coopers' dwelling with the intent to commit theft therein. In reviewing Lakhani's character, we first acknowledge her personal struggles and the hardships that she has experienced and, admirably, overcome; that said, however, we cannot find that her sentence is inappropriate.

The advisory sentence for a class B felony is ten years, with a minimum of six and a maximum of twenty years. Here, the trial court imposed the advisory sentence, and effectively reduced the sentence by ordering two years suspended to probation; thus, the executed portion of Lakhani's sentence is two years above the statutory minimum for a class B felony. *See Childress*, 848 N.E.2d at 1081 (the advisory sentence is the starting point that the Legislature has selected as an appropriate sentence for the crime committed). Under the circumstances, we do not find that the eight-year executed sentence imposed is inappropriate.

Affirmed.

BAILEY, J., and ROBB, J., concur.