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IN THE
COURT OF APPEALS OF INDIANA

BRIAN E. CONNELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A04-1010-CR-642
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Dana J. Kenworthy, Judge Pro Tempore
Cause No. 27D02-0811-FB-186

May 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-defendant Brian E. Connell ("Connell") appeals following his conviction of two counts of Burglary, both as Class B felonies[1], Carrying a Handgun Without a License, as a Class C felony[2], two counts of Theft, both as Class D felonies[3], Resisting Law Enforcement, as a Class D felony[4], and Possession of Marijuana, as a Class A misdemeanor.[5] He challenges the enhancement of his handgun offense[6], his adjudication as a habitual offender[7], and the appropriateness of his aggregate sentence to sixty-three years imprisonment.

We affirm.

Issues

Connell raises two issues for our review, which we restate as:

I. Whether the State presented sufficient evidence of his prior convictions to support his adjudication as a habitual offender[8];

II. Whether his sentence is inappropriate.

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[1] Ind. Code § 35-43-2-1.
[2] I.C. § 35-47-2-1
[3] I.C. § 35-43-4-2.
[4] I.C. § 35-44-3-3.
[5] I.C. § 35-48-4-11.
[6] I.C. § 35-47-2-23.
[7] I.C. § 35-50-2-8.
[8] In his brief, Connell challenges the sufficiency of the evidence supporting both the enhancement of his handgun charge and the sufficiency of the evidence supporting his adjudication as a habitual offender. We consolidate his argument and reframe the issue to address only the sufficiency of the evidence supporting his adjudication as a habitual offender because the same felony used to enhance the handgun charge was also one of the two prior felonies used to show his habitual offender status. Thus, addressing the sufficiency of evidence underlying the habitual offender charge also necessarily encompasses review of the felony used to support the enhancement of the handgun charge. Regardless, the sentence for his handgun offense runs concurrent with the burglary sentence that was enhanced due to Connell's adjudication as a habitual offender.

Facts and Procedural History

On November 19, 2008, telephone repairman William Ferrell ("Ferrell") went to the home of Lonnie and Ella Crites ("the Crites") to perform a service call. When Ferrell arrived, he noticed a car running in the driveway and then knocked on the front door. Receiving no answer, Ferrell went around to the back and encountered a man later identified as Connell carrying something from the house. Ferrell noticed that a window and the door to the house had been broken and asked Connell whether his phone was working properly. Connell responded that it was, and told Ferrell that he had to break the window to get into his own house. Ferrell then left and drove to the end of the block, but, suspicious that something was wrong, called Ella Crites and wrote down Connell's license plate number and the make and color of Connell's car as he drove away.

Deputies Aaron Oyler ("Deputy Oyler") and Michael Moore ("Deputy Moore") of the Grant County Sherriff's Department were dispatched and given the license plate number and description of Connell's vehicle. At the Crites' home, the deputies noticed that the back door window was broken and the door was open. They determined that entry to the home was forced, and observed disarray inside.

As the deputies were waiting for support to arrive, Connell drove by the house. The deputies recognized Connell's car from the description they received, so Deputy Moore got into his vehicle to follow. A high-speed chase ensued. Connell ran a stop sign and continued driving at a high speed through two or three intersections until he veered off the road, hit a

ditch, and went airborne thirty feet before hitting the ground.

Deputy Moore approached the vehicle with his weapon drawn and ordered Connell out of the vehicle. Connell attempted to reach between the seat and the console for what was later identified as an H&K .45 caliber handgun stolen from the Crites with a bullet loaded in the chamber (a bullet that was not loaded when the gun was taken). Deputy Moore repeatedly ordered Connell to show his hands, and eventually Connell exited the vehicle.

A search of Connell's pockets yielded a bag of marijuana, two watches, and two commemorative coins. Inside his car, police found a .357 Magnum gun, a .22 caliber pistol, gun equipment, and some rolls of change. These items were all missing from the Crites' house. Police also discovered that on November 19, 2008, the home of Allen and Sylvia Pinkerton ("the Pinkertons") was burglarized. The police found the items missing from the Pinkertons' home (two wallets, jewelry boxes, and coins) in Connell's car. The two watches found in his pockets at the accident scene also belonged to the Pinkertons.

The police arrested Connell and charged him with two counts of Burglary, both as Class B felonies (counts I and II), one count of Carrying a Handgun Without a License, enhanced to a Class C felony for a prior felony conviction (count III), two counts of Theft, both as Class D felonies (count IV and V), one count of Resisting Law Enforcement, as a Class D felony (count VI), and one count of Possession of Marijuana, as a Class A misdemeanor (count VII). He was also alleged to be a habitual offender. A trifurcated trial was held on August, 12, 2010, at the conclusion of which the jury found Connell guilty of all charges and adjudicated him a habitual offender.

The trial court sentenced Connell to twenty years for count I which was enhanced to forty years because Connell is a habitual offender, twenty years for count II, eight years for count III, three years each for counts IV and V, three years for count VI, and one year for count VII. The court then ordered Connell to serve counts I, III, and IV concurrently for a total of forty years, and consecutive to that counts II and V concurrently for an additional twenty years, and consecutive to that counts VI and VII concurrently for an additional three years. His aggregate sentence is sixty-three years executed, and he now appeals.

Discussion and Decision

I. Evidence of Prior Convictions

Standard of Review

Connell appeals the sufficiency of the evidence supporting his adjudication as a habitual offender. In reviewing the sufficiency of the evidence supporting habitual offender adjudications, we will not reweigh the evidence or assess witness credibility. Parks v. State, 921 N.E.2d 826, 832 (Ind. Ct. App. 2010) (citing Firestone v. State, 838 N.E.2d 468, 472-32 (Ind. Ct. App. 2005)), trans. denied. We will consider only the evidence most favorable to the judgment, as well as all reasonable and logical inferences that may be drawn therefrom. Id. The conviction will be affirmed if there is substantial evidence of probative value to support the conclusion of the trier of fact. Id.

Supporting Evidence

Connell maintains that the State failed to meet its burden because it did not adequately connect him to the evidence it introduced to show his prior convictions. In order to establish

Connell as a habitual offender, the State had to prove beyond a reasonable doubt that Connell had accumulated two prior unrelated felony convictions. See I.C. § 35-50-2-8. "Certified copies of judgments or commitments containing a defendant's name may be introduced to prove the commission of prior felonies." Hernandez v. State, 716 N.E.2d 948, 953 (Ind. 1999). "While there must be supporting evidence to identify the defendant as the person named in the documents, the evidence may be circumstantial." Id. "If the evidence yields logical and reasonable inferences from which a finder of fact may determine beyond a reasonable doubt that it was a defendant who was convicted of the prior felony, then a sufficient connection has been shown." Id.

During the first phase of the trial, the arresting officer, Deputy Oyler, testified about certain information contained in Connell's arrest report. He recited Connell's name and middle initial, his date of birth, social security number, sex, race, height, weight, and address. During the second phase of the trial, the State introduced evidence of Connell's 1997 conviction, including the probable cause affidavit and information, abstract of judgment, sentencing order, chronological case summary, and the booking sheet into Delaware County Jail before the hearing on the motion to correct erroneous sentence. These documents indicate that a man named Brian E. Connell, with the same date of birth, social security number, address, sex, race, weight, and generally the same height as Connell as described by Deputy Oyler in the first phase of the trial was convicted of Carrying a Handgun Without a License, as a Class C Felony, on October 16, 1997, and was sentenced on December 11, 1997.

In the third phase of the trial, the State sought to prove Connell's prior conviction of Class B felony burglary. To that end, the State introduced the charging information, plea agreement, pre-sentence investigation report, docket sheet, and the abstract of judgment. These documents indicate that a man named Brian Connell, with the same date of birth, sex, and race, and approximately the same height and weight as Connell as described by Deputy Oyler, with a Muncie, Indiana address, pleaded guilty to two counts of Burglary, each as a Class B felony on July 17, 1989. There was sufficient evidence from which the jury could find beyond a reasonable doubt that Connell was convicted of two prior separate and unrelated felonies. See Tyson v. State, 766 N.E.2d 715, 718 (Ind. 2002) (finding sufficient information where the name of the offender and general identifying information on the prior felony's information, plea agreement, and minutes of the court of the guilty plea matched that of the defendant); also Lewis v. State, 769 N.E.2d 243, 247 (Ind. Ct. App. 2002) (finding sufficient evidence when the evidence of prior convictions contained the same social security number and general identifying information as that of the defendant), *clarified on reh'g*, 774 N.E.2d 941 (Ind. Ct. App. 2002), trans. denied.

II. Sentence

Connell next asks us to revise his sentence. In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

> Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a 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. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to "leaven the outliers" but not necessarily achieve a perceived "correct" result in each case. Id. at 1225. "Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." Id. at 1224.

Connell received the maximum possible statutory sentence for each offense. He also received an additional enhancement of twenty years for his adjudication as a habitual offender. A habitual offender may be sentenced to an additional fixed term no more than three times the advisory sentence for the underlying offense, not to exceed thirty years. I.C. § 35-50-2-8. The advisory sentence for a Class B felony is ten years. I.C. § 35-50-2-5. Thus, Connell's habitual offender term was ten years lower than the statutory maximum.

The trial court ordered that the sentences related to the burglary of the Crites's house and his habitual offender enhancement run concurrently (Burglary, Possession of a Handgun

Without a License, and Theft) for a total of forty years. Consecutive to that and concurrent to each other are the offenses related to the burglary of the Pinkertons's house (Burglary and Theft) for a total of twenty years. Consecutive to that and concurrent to each other are the offenses related to the ensuing chase (Resisting Law Enforcement and Possession of Marijuana) for a total of three years. His aggregate sentence is sixty-three years.

Connell argues that his sentence is inappropriate only in light of the nature of his offense, but not in light of his character. "[R]evision of a sentence under Indiana Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of *both* the nature of his offenses and his character." Williams v. State, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (citing Ind. App. R. 7(B)) (emphasis in original). Because Connell does not present a cogent argument regarding the inappropriateness of his sentence in light of his character, he has waived his argument as to revision. See id.; also App. R. 46(A)(8)(a); Ford v. State, 718 N.E.2d 1104, 1107 n.1 (Ind. 1999) (holding that the defendant's "argument with respect to the review and revise provision of the constitution is waived for failure to state a cogent argument").

Waiver notwithstanding, we make several observations regarding Connell's sentence. Connell's character is such that he has a significant criminal history extending back to the 1970's. His adult criminal career includes at least seventeen convictions, many of which were for theft, burglary, or handgun offenses. He also has been convicted of armed robbery and has previously been adjudicated a habitual offender. He has served a significant amount of his life in the Department of Correction, and his pre-sentence investigation report

demonstrates that he often committed his next offense soon after he was released from prison. The current offenses are no exception: he was last released from prison in June 2008, approximately five months prior to the commission of these offenses. Moreover, throughout sentencing, he continued to maintain his innocence, rather than accepting responsibility for his actions.

The nature of Connell's offenses is such that he drove from Muncie to Grant County to commit the burglaries. He broke into two different homes of two different families and stole several items from both homes, including three guns from the Crites. Connell lied to Ferrell to conceal his crime and then tried to elude police. He engaged in a high speed chase that included running one stop sign and could have endangered Deputy Moore or others. Chillingly, as Deputy Moore approached his vehicle, Connell attempted several times to reach for a gun, which he had made operational by racking a bullet in the chamber after stealing it. Given Connell's character as an offender with an extensive criminal history, the nature of his offenses against multiple victims, and the fact that his aggregate sentence was less than the maximum, we cannot conclude that his sentence is inappropriate.

Conclusion

The State sufficiently connected Connell to the evidence used to show that he was a habitual offender. His sentence of sixty-three years is not inappropriate in light of his character and the nature of his offenses.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.