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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| FRANK JONES, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A02-0811-CR-983 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0807-FB-171023

**May 27, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

Frank Jones appeals his three-year sentence for Class D felony theft. We affirm.

## Issue

We consider whether Jones's three-year sentence is appropriate in light of the nature of the offense and his character.

## Facts

Jones stole a scooter from a homeowner's garage. Jones entered the open garage door, took the scooter and put it in his van, then crashed the van into a neighbor's landscaping while attempting to leave. He fled on foot and initially denied involvement, telling police an armed man forced him to take the scooter.

On July 23, 2008, the State charged Jones with Class B felony burglary and Class D felony theft. On September 24, 2008, Jones pled guilty to Class D felony theft pursuant to a written plea agreement.[1] In exchange for his plea, the State dismissed the Class B felony burglary count. The trial court held a sentencing hearing on October 1, 2008. It sentenced Jones to three years. This appeal followed.

## Analysis

Jones argues that his three-year sentence is inappropriate in light of the nature of the offense and his character. See Ind. Appellate Rule 7(B). Although Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still

[1] Although the written plea agreement specifically mentions Jones's waiver of his right to appeal any sentence, the trial court informed Jones during the plea hearing that he had a right to appeal the sentence. The State elects not to pursue a waiver defense and instead proceeds on the merits of appropriateness review.

must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

The trial court sentenced Jones to three years, the maximum available sentence for a Class D felony. See Ind. Code § 35-50-2-7(a). Jones argues that the nature of this crime was not extraordinary, nonviolent, and there was no property damage to the home or garage involved. Still, this does not negate the fact that Jones entered an open garage door on a Saturday morning, while the family was at home, and removed a scooter that did not belong to him. He then damaged nearby landscaping during his failed attempt at speeding away.

More importantly, Jones has also failed to convince us that his character merits a reduction to the sentence. Jones's criminal history spans decades and includes crimes in both Michigan and Indiana. It includes at least seven felony convictions and at least thirteen misdemeanors. He has had dozens of contacts with law enforcement. Jones has shown a complete disregard of the law throughout his adult years. Although it is unfortunate that Jones has also been diagnosed with prostate cancer, such condition does not warrant a reduction to this sentence in light of his criminal history.

## Conclusion

Jones's three-year sentence is appropriate in light of the nature of the offense and his character. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.