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IN THE
COURT OF APPEALS OF INDIANA

RALPH L. SMITH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1011-CR-557
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0412-FB-106

JUNE 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Ralph L. Smith appeals the sentence the trial court imposed for his conviction of robbery, a Class B felony. Ind. Code § 35-42-5-1 (1984). We affirm.

ISSUE

Smith raises one issue, which we restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

FACTS AND PROCEDURAL HISTORY

On the morning of October 26, 2004, Smith and his accomplices, Robert Desimone, Matthew Taylor, and Michael Taylor, met at a Cracker Barrel Restaurant parking lot in Merrillville, Indiana. The four of them got into a car that Desimone and Matthew Taylor had stolen the previous day. Smith drove the stolen car to a jewelry store in Hobart, Indiana.

Desimone and the Taylors entered the store while Smith stayed in the car. Upon entering the store, Desimone and the Taylors encountered two store employees and a customer. The three men drew handguns and ordered the three victims to enter a back room, where another store employee was present. Desimone and the Taylors ordered the four victims to lie on the floor and restrained them with plastic ties. Next, Smith entered the front of the store to warn his accomplices that he thought the police were coming. The four men left the store with the store's surveillance system and $600,000 in jewelry. Although they took the store's surveillance system, a backup system recorded Smith and his accomplices in the store. The four men returned to the restaurant's parking lot and

transferred the stolen goods to another vehicle. The restaurant's surveillance system recorded Smith and his accomplices as they transferred the goods. Smith received $6,000 for his role in the robbery.

The State charged Smith with four counts of criminal confinement, all Class B felonies, Indiana Code section 35-42-3-3 (2006), and robbery, a Class B felony. Smith and the State entered into a plea agreement, pursuant to which the State dismissed the four counts of criminal confinement and Smith pleaded guilty to robbery. The parties further agreed that Smith's sentence for robbery would not exceed ten years. The trial court accepted the parties' plea agreement and sentenced Smith to ten years, to be served consecutively to a twenty-year sentence Smith is serving in Illinois for robbery. Smith subsequently received the trial court's permission to pursue this belated appeal.

DISCUSSION AND DECISION

Smith's sentencing challenge is governed by Indiana Appellate Rule 7(B), which provides, in relevant part, "[t]he 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." To assess the appropriateness of the sentence, we look first to the statutory range established for the class of the offense. Here, the offense is a Class B felony, for which the advisory sentence is ten years, the minimum sentence is six years, and the maximum sentence is twenty years. Ind. Code § 35-50-2-5 (2005). Smith received a ten year sentence.

We then look to the nature of the offense and the character of the offender. The nature of the offense is found in the details and circumstances of the commission of the

offense and the defendant's participation in it. *See Gauvin v. State*, 883 N.E.2d 99, 105 (Ind. 2008) (noting that the defendant's crimes were "heinous and cruel"). The character of the offender is found in what we learn of the offender's life and conduct. *See generally Houser v. State*, 823 N.E.2d 693 (Ind. 2005) (reviewing the defendant's childhood, history of drug abuse, diagnosis of mental illness, and extensive criminal history).

An inappropriate sentence is not an erroneous sentence. It is a sentence authorized by statute, but one we find inappropriate and revise in light of the nature of the offense and the character of the offender. In reviewing a sentence, we give due consideration to the trial court's decision and its more direct knowledge of the offense and the offender. *See Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009) (stating, "[a]s in all sentencing, . . . we give considerable deference to the ruling of the trial court"). A defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review here of the nature of the offense shows that Smith's accomplices threatened and restrained four victims during the robbery, placing them in fear for their lives. One of the jewelry store employees was so traumatized by the robbery that he quit his job. Smith notes that he did not carry a gun or personally threaten the victims. However, he was aware that his accomplices were carrying guns when they entered the store. Furthermore, Smith entered the store to warn his accomplices that the police might be approaching, and he continued to assist them by driving them away from the jewelry

store and transferring the stolen goods to another vehicle. Smith also accepted a share of the proceeds from the robbery, in the amount of $6,000.

Our review here of the character of the offender shows that Smith, who was forty-seven years old at the time of the crime, has a lengthy criminal record beginning in 1976. He has numerous felony convictions, including aggravated battery, burglary, and retail theft. We note that he has four previous convictions for armed robbery, and two of them involved robberies of jewelry stores. One of these jewelry store robberies occurred only a year before his current crime. Smith's record demonstrates that he has rejected multiple opportunities to reform and willfully continues to engage in criminal behavior.

Smith notes that he has two young children, aged fourteen and six at the time of sentencing, who will be harmed by his incarceration. Therefore, he asserts that his lengthy sentence is inappropriate. The factor of hardship to a defendant's dependents can properly be assigned no weight when the defendant fails to show why incarceration for a particular term will cause more hardship than incarceration for a shorter term. *Weaver v. State*, 845 N.E.2d 1066, 1074 (Ind. Ct. App. 2006), *trans. denied*. In this case, Smith is currently serving a twenty-year sentence in Illinois. By the time Smith begins serving his Indiana sentence, one or both of his children will be adults. Smith has not explained how the harm to his children would be lessened by decreasing his Indiana sentence or by serving the sentence concurrently with his Illinois sentence. Furthermore, Smith's concern for his family did not deter him from committing the acts that resulted in his incarceration. Finally, we cannot conclude that the impact on his family counterbalances the gravity of the offense and Smith's criminal record.

Next, Smith argues that his sentence is inappropriate because he expressed remorse for his crime. The trial court, which has the ability to directly observe the defendant and listen to the tenor of his or her voice, is in the best position to determine whether a defendant's remorse is genuine. *Corralez v. State*, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004). We cannot say that Smith's expression of remorse at sentencing renders his sentence inappropriate in light of his continuing pattern of criminal conduct.

Smith also notes that he pleaded guilty, but his guilty plea does not provide a basis for reducing his sentence. When a defendant receives a benefit in exchange for a guilty plea, the weight of a defendant's guilty plea is reduced. *Roney v State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied*. Here, in exchange for Smith's plea of guilty to robbery, the State dismissed four Class B felony charges and agreed to a ten-year cap on his sentence. Therefore, Smith received a substantial benefit from pleading guilty.

We conclude that Smith has not carried his burden of persuading this Court that his sentence has met the inappropriateness standard of review.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.