



Austin Knight appeals his sentence for burglary as a class A felony,<sup>1</sup> burglary as a class B felony, four counts of robbery as class B felonies,<sup>2</sup> and two counts of criminal confinement as class B felonies.<sup>3</sup> Knight raises one issue, which we revise and restate as whether Knight's sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. In the early morning hours of February 19, 2007, Knight and three other men used keys they had previously stolen from an apartment complex office to gain entry to two separate units in the complex. Upon entering the first apartment, the four men found a lone resident asleep in her bed. The men tied the resident up, stuffed a rag in her mouth, covered her face, and then proceeded to ransack the apartment, stealing money and property from her. Before leaving, one of the men shot the resident in the legs "more than 10 times at close range with a pellet gun."<sup>4</sup> Appellant's Appendix at 31. The resident's goldfish was also shot and killed.

The men then entered a second apartment and encountered four occupants therein. Brandishing guns, the men rounded up the occupants from their two bedrooms and ordered them to the floor in the main room. One of the four occupants was ordered to drive to an ATM to make a withdrawal. The intruders remaining at the apartment ordered one of the female occupants to disrobe. After taking money and property from

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<sup>1</sup> Ind. Code § 35-43-2-1 (2004).

<sup>2</sup> Ind. Code § 35-42-5-1 (2004).

<sup>3</sup> Ind. Code § 35-42-3-3 (Supp. 2006).

<sup>4</sup> The resident at one point also heard one of the men say to "shoot her in the pee pee."

the occupants, and after the others had returned, the men heard sirens and fled. Three of the four men, including Knight, were apprehended nearby, and various guns were also located by the Officers.

On February 22, 2007, the State charged Knight with: (1) Count I, burglary as a class A felony; (2) Count II, robbery as a class B felony; (3) Count III, criminal confinement as a class B felony; (4) Count IV, burglary as a class B felony; (5) Count V, robbery as a class B felony; (6) Count VI, robbery as a class B felony; (7) Count VII, criminal confinement as a class B felony; (8) Count VIII, criminal confinement as a class B felony; (9) Count IX, criminal confinement as a class B felony; (10) Count X, robbery as a class B felony; and (11) Count XI, criminal confinement as a class B felony.

Initially, Knight and the State entered into a plea agreement in which Knight agreed to plead guilty to Counts I and IV, and in exchange the State agreed to dismiss the other nine Counts. As a condition of the plea agreement, Knight agreed to testify against the others involved. However, Knight later refused to testify against Antonio Wright, and the State moved to rescind the plea agreement. The trial court granted the motion, and a date was set for a jury trial. On August 13, 2008, as the State was preparing to call its first witness, Knight again decided to plead guilty, this time to all counts and without any agreement with the State.

On September 22, 2008, a sentencing hearing was held for Knight relating to the sentences being appealed here as well as on an unrelated matter. The trial court identified three mitigators, but accorded each of them nominal mitigating weight. First, the court

considered that the defendant had pled guilty, but it dismissed the plea's mitigating value because "[i]t saved little or nothing on the part of anyone," and also that Knight had "no intention of acknowledging any responsibility beyond that which is absolutely necessary to gain the most benefit." Sentencing Transcript at 37-38. Second, the trial court noted that Knight was still a minor at the time of the offenses, but it determined that to be not significant given Knight's "record in the juvenile system, having had many opportunities again to change his ways and accept responsibility . . . and additionally has committed some serious, even horrifying offenses." Id. at 38. Third, the trial court cited Knight's troubled childhood as a mitigating factor, but did not give that fact much weight, noting others have similar backgrounds and do not use it "as an excuse to victimize others." Id. at 39. The trial court also considered Knight's argument that he should be punished less severely because he was not the ring leader but found the supporting evidence to be insufficient, and that at the very least Knight did not try to stop any of the conduct intended to humiliate the victims.

The trial court identified four aggravating factors. First, the trial court cited Knight's juvenile criminal history, consisting of four previous offenses, and characterized it as extensive given Knight's young age. Second, the trial court took note of the fact that the crimes were committed in the middle of the night, when Knight would expect to "find [people] home, mak[ing] it far more terrifying for [the occupants] as they're awakened from deep sleep and confronted by four armed or apparently armed men . . . ." Id. at 40. Third, the trial court noted that there were separate offenses and separate victims, and

therefore separate punishments were appropriate. Finally, the trial court cited the “exceptional humiliation of [the victims] . . . show[ing] [Knight’s] power to all in the room far far beyond that necessary to perpetuate a robbery or criminal confinement . . . .” as an aggravator. *Id.* at 40-42. In particular, the trial court gave the shooting of the first victim with a pellet gun, shooting and killing the same victim’s goldfish, and forcing a female victim at the second apartment to disrobe as examples of such humiliation.

The trial court found that each aggravator outweighed the cumulative mitigators. Knight was sentenced to thirty years for Count I and ten years for Count II to be served concurrently. Knight was sentenced to six years on each of Counts IV, V, VI, X, and XI, to be served consecutively. Knight was sentenced to ten years for Count IX, also to be served consecutively. Counts III, VII, and VIII were merged into Counts I, V, and VI, respectively. Thus, the aggregate sentence Knight received was seventy years.

The sole issue is whether Knight’s sentence is inappropriate in light of the nature of the offense and the character of the offender.<sup>5</sup> Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute 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.” Under this rule, the burden is on the defendant

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<sup>5</sup> Knight argues that “the trial court failed to adequately recognize certain mitigating circumstances, namely Mr. Knight’s young age, his lack of adult criminal history, his childhood and the cooperation that was provided to law enforcement.” Appellant’s Brief at 18. To the extent that Knight is arguing that the trial court abused its discretion in sentencing him by failing to give these mitigators proper weight, such a claim is no longer subject to review. *See Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (holding that the relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse of discretion), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007). Consequently, we cannot review Knight’s argument. *See, e.g., id.*

to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that on February 19, 2007 Knight burglarized two apartments in the same complex using keys that were previously stolen from the apartment complex office. The burglaries were committed in the middle of the night, when it could be expected that people would be home. Inside the first apartment, Knight or his accomplices tied up the lone resident, who was asleep. They gagged her, covered her face, and shot her in the legs with a pellet gun more than ten times. They took money and property from her. They also killed her goldfish. We agree with the trial court that this was done “just to humiliate her or make things harder on her,” rather than to help effectuate the crimes. Sentencing Transcript at 41.

At the second apartment, Knight and his accomplices barged into each of the unit’s two bedrooms and ordered everyone to the ground in the main room. They took money and property from the occupants. Some of the perpetrators drove with one of the occupants to an ATM so that she could withdraw more money to hand over. Knight and the others made one of the female occupants disrobe in front of everyone including her boyfriend. Knight and the other three accomplices shortly thereafter heard sirens and fled.

Our review of the character of the offender reveals that Knight was seventeen at the time of the offenses, and he had a “very rough childhood.” Id. at 21. Knight initially entered into a plea agreement in which Knight agreed to plead guilty to Counts I and IV,

and in exchange the State agreed to dismiss the other nine Counts. Knight had his original guilty plea agreement rescinded when he failed to comply with the terms of the arrangement by not testifying against one of his accomplices. As a juvenile, Knight was adjudicated delinquent for the following offenses if committed by an adult: criminal recklessness as a class B misdemeanor, theft as a class D felony, and two separate instances of escape, both as class D felonies. Knight was on probation at the time he committed the offenses at issue. Knight has been given many chances at rehabilitation, including placements at “Erin’s House” and with “Christian Haven,” as well as having a previous probation modified to the electronic monitoring program.

After due consideration of the trial court’s decision, which consisted of the minimum and advisory sentences to be served consecutively,<sup>6</sup> we cannot say that the sentence imposed is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Rose v. State, 810 N.E.2d 361, 368-369 (Ind. Ct. App. 2004) (holding that consecutive sentences for offenses including burglary, criminal confinement, and robbery were not inappropriate for a juvenile defendant where the defendant received presumptive sentences and had a number of adjudications as a juvenile delinquent).

For the foregoing reasons, we affirm Knight’s sentence for burglary as a class A felony, burglary as a class B felony, four counts of robbery as class B felonies, and two counts of criminal confinement as class B felonies.

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<sup>6</sup> See Ind. Code §§ 35-50-2-4; 35-50-2-5 (Supp. 2005).

Affirmed.

CRONE, J. and BRADFORD, J. concur.