

BROWN, Judge

Michael Freckman appeals his sentence for burglary as a class B felony.¹

Freckman raises two issues, which we revise and restate as:

- I. Whether the trial court abused its discretion in sentencing Freckman; and
- II. Whether Freckman's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On February 22, 2007, Freckman, along with his sister's boyfriend, John Florek, approached and entered the home of William Pearson with the intent to commit theft. While Freckman and Florek were in the house, Pearson returned home. Florek appeared to be removing a computer belonging to Pearson from the residence. When Pearson confronted Florek, Florek struck him with a screwdriver. Pearson fell to the floor and Florek struck him again. Florek called for Freckman and as Freckman entered the room, Pearson told the two men that the police were on their way. Florek and Freckman then left the home.

Pearson gave the police a description of Florek and Freckman and their vehicle. Shortly thereafter, officers of the Randolph County Sheriff's Department located the vehicle and attempted to stop it by using their lights and siren. The vehicle eventually

¹ Ind. Code § 35-43-2-1 (2004).

left the roadway and entered a field. Florek and Freckman then exited the vehicle. The officers pursued them on foot and arrested them.

The State charged Freckman with Count I, burglary resulting in bodily injury as a class A felony; Count II, armed robbery as a class B felony; Count III, theft as a class D felony; and Count IV, resisting law enforcement as a class D felony. Freckman pled guilty to the lesser offense of Count I, burglary as a class B felony, and the State dismissed the remaining counts. The plea agreement capped the possible executed sentence at fourteen years.

In sentencing Freckman, the trial court found Freckman's criminal history and the injury to Pearson to be aggravators and found Freckman's attempts to better himself through education and his youth to be mitigators. The trial court sentenced Freckman to eighteen years, with thirteen years executed and five years suspended.

I.

The first issue is whether the trial court abused its discretion in sentencing Freckman. We review the sentence for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances” before the court. Id.

A trial court abuses its discretion if it: (1) fails “to enter a sentencing statement at all;” (2) enters “a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not

support the reasons;” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration;” or (4) considers reasons that “are improper as a matter of law.” Id. at 490-491. As previously mentioned, we will remand for resentencing only “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491. However, the relative weight or value assignable to reasons properly found, or those that should have been found, is not subject to review for abuse of discretion. Id.

Freckman argues that the trial court used an improper aggravator to enhance his sentence. Specifically, he argues that the trial court should not have considered the fact that Pearson was injured during the commission of the burglary as an aggravator because this fact is an element that distinguishes burglary as a class A felony from the lesser included offense to which he pled guilty, burglary as a class B felony. Even assuming that the fact of Pearson’s injury was an improper aggravator, we can still affirm the trial court’s decision if other valid aggravating circumstances exist. Gibson v. State, 702 N.E.2d 707, 710 (Ind. 1998), reh’g denied, cert. denied, 531 U.S. 863, 121 S. Ct. 155 (2000).²

² There is case law to support the conclusion that because the sentence was less than the minimum sentence for the next greater felony, then it was not an abuse of discretion to consider injury to the victim. Page v. State, 878 N.E.2d 404, 410-411 (Ind. Ct. App. 2007), trans. denied. On the other hand, Carlson v. State, 716 N.E.2d 469 (Ind. Ct. App. 1999), conflicts with Page, concluding that the element that distinguished the crime to which the defendant pled guilty from the next higher offense could not be used as an aggravator. In addressing the Carlson case, the Page court merely stated that it declined to follow Carlson. 878 N.E.2d at 411 n.8.

Here, in addition to considering the injury to the victim, the trial court also found Freckman's criminal history to be an aggravator. The record reveals that nineteen-year-old Freckman has been in trouble with the law many times. His juvenile criminal history reflects that, among other things, he has been adjudicated a delinquent for theft, unauthorized use of a vehicle, unauthorized use of property, assault, and for two counts each of criminal damaging and receiving stolen property. He has also been adjudicated a delinquent on three separate counts of truancy, two counts of "obtain[ing]/possess[ing]/us[ing]" marijuana, and four counts of violation of a court order. See Presentence Investigation Report.

Upon review of Freckman's criminal history, the trial court explained that Freckman had "continued violations throughout juvenile Court [for] receiving stolen property, assault, obtaining possession of controlled substance, marijuana, other receiving stolen property, unauthorized use of a vehicle. I could go on and on." Transcript at 28. Freckman does not challenge the trial court's use of his prior criminal history as an aggravator. We can say with confidence that the trial court would have imposed the same sentence based on Freckman's extensive criminal history alone. See, e.g., Drakulich v. State, 877 N.E.2d 525, 535 (Ind. Ct. App. 2007) (holding that we could say with confidence that the trial court would have imposed the same sentence if it considered only the proper aggravators), trans. denied.

II.

The next issue is whether Freckman's sentence is inappropriate in light of the nature of the offense and the character of the offender. 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 character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Freckman argues that his sentence is inappropriate because he is young, remorseful, working to better himself, and he had no part in injuring Pearson. Freckman argues that his sentence should be reduced to twelve years with six years suspended.

Our review of the nature of the offense reveals that Freckman and Florek broke into Pearson's home with the intent to steal from him. During the course of the burglary, Florek struck Pearson several times with a screwdriver. Although Freckman did not strike Pearson himself, he did nothing to stop Florek or to aid Pearson. Once Pearson alerted Florek and Freckman that he had called the police, they fled.

Our review of the character of the offender reveals that Freckman pled guilty to one count of burglary as a class B felony, but the State reduced the charge from a class A felony to a class B felony and dismissed the remaining charges. Freckman is only nineteen years old, has expressed remorse, and has attempted to improve himself by obtaining his G.E.D. and continuing his education. However, he has already accumulated an extensive criminal record. As discussed above, he has been adjudicated a delinquent a

number of times, including adjudications for offenses against property like the burglary in this case. In fact, he committed the instant burglary while on probation. In addition, he has admitted to daily marijuana use since he was fourteen years old.

After due consideration of the trial court's decision, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and character of the offender. See, e.g., Howard v. State, 873 N.E.2d 685, 692 (Ind. Ct. App. 2007) (holding that the defendant's fifteen-year sentence was not inappropriate when nature of offense involved breaking into someone's home in broad daylight and then fleeing police, and character of offender included extensive criminal history).

For the foregoing reasons, we affirm Freckman's sentence.

Affirmed.

CRONE, J., and BRADFORD, J., concur.