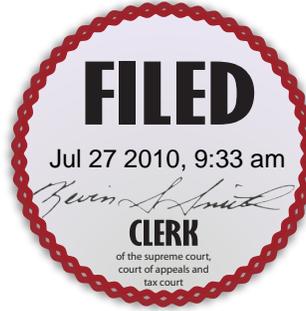


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

KRISTIN A. MULHOLLAND
Office of the Public Defender
Crown Point, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DIONTE-DAYMONE JONES,)

Appellant-Defendant,)

vs.)

No. 45A05-1001-CR-4

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause Nos. 45G02-0803-FD-26
45G02-0808-FD-86

July 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Dionte-Daymone Jones appeals his sentence for auto theft as a class D felony.¹ Jones raises one issue, which we revise and restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. In March 2008, the State charged Jones with auto theft as a class D felony under Cause No. 45G02-0803-FD-26 (“Cause No. 26”). In April 2008, Jones and the State entered into a plea agreement pursuant to which the State agreed to file an amended information adding a count of receiving stolen property as a class D felony, Jones agreed to plead guilty to the added count of receiving stolen property, the State agreed to dismiss all remaining charges, and the parties agreed that Jones would be sentenced to eighteen months in the Department of Correction, all of which was to be suspended and served on probation. Pursuant to the plea agreement, the State amended its charging information to add a count of receiving stolen property as a class D felony. On April 23, 2008, the trial court accepted Jones’s plea and sentenced him in accordance with the plea agreement.

On or about August 4, 2008, Gary Police Department Officer Frank Nanney responded to a call regarding a man driving a stolen 2002 Chrysler Concord, and upon locating the vehicle discovered Jones in the driver’s seat using a screwdriver to start the vehicle. The steering column of the vehicle “had been peeled,” the driver’s side door “had been popped out,” the “ignition switch had been popped out,” and as officers were

¹ Ind. Code § 35-43-4-2.5 (2004).

searching Jones “a flathead screwdriver fell out of [Jones’s] pocket.” Appellant’s Appendix at 53.

On August 12, 2008, the State filed information charging Jones with auto theft as a class D felony under Cause No. 45G02-0808-FD-86 (“Cause No. 86”).² On June 10, 2009, Jones and the State entered into a plea agreement pursuant to which Jones agreed to plead guilty to auto theft as charged. The plea agreement provided that the parties were free to fully argue their respective positions as to the sentence to be imposed by the trial court but that there shall be a maximum cap of two years as to the sentence imposed by the court. Also on June 10, 2009, the State filed a petition to revoke probation in Cause No. 26 alleging among other violations that Jones engaged in criminal activity as indicated by his August 4, 2008 arrest for auto theft.

After a hearing on October 28, 2009, the trial court revoked Jones’s probation under Cause No. 26 and ordered him to serve the previously-suspended sentence of eighteen months in the Department of Correction. The court also accepted Jones’s guilty plea under Cause No. 86 and, after finding Jones’s history of misdemeanor and felony convictions, juvenile adjudications, and probation violation in Cause No. 26 to be aggravating circumstances and Jones’s guilty plea to be a mitigating circumstance, sentenced Jones to two years to be served in the Department of Correction and ordered Jones to pay restitution in the amount of \$933.83 to the owner of the vehicle. The court

² In January 2009, the State amended the charging information to include Jones’s correct name.

further ordered that the sentence imposed in Cause No. 86 be served consecutive to the sentence ordered to be served in Cause No. 26.

The sole issue is whether Jones's sentence is inappropriate in light of the nature of the offense and the character of the offender.³ Indiana Appellate Rule 7(B) provides that this court "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 to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Jones argues that the sentence imposed by the trial court of two years "with no probation was inappropriate given [his] character and the nonviolent nature of the offense to which he pled guilty" and that his sentence "should be suspended and he should be allowed to serve the remaining portion of his sentence on probation." Appellant's Brief at 7, 9. Jones argues that he was "barely twenty (20) years old at the time of sentencing" and that he "grew up without a father, as his father has been incarcerated since Jones was three (3) years old." Id. at 9. Jones further argues that while he has a prior criminal record, the record consists of a juvenile adjudication for which he successfully completed probation, two misdemeanor convictions, and one adult felony conviction for receiving

³ This court ordered, upon a motion filed by Jones, that the separate trial court proceedings under Cause No. 26 and Cause No. 86 be consolidated into one appellate cause. Jones does not appeal the revocation of his probation or the trial court's order that he serve his previously-suspended sentence under Cause No. 26.

stolen property, and that none of these prior convictions were for violent crimes. Jones also argues that the nature of the instant offense of auto theft was nonviolent.

Our review of the nature of the offense reveals that Jones was in the driver's seat of a vehicle which had been reported stolen by its owner and was using a screwdriver to start the vehicle. The steering column of the vehicle "had been peeled," the driver's side door and the ignition switch of the vehicle "had been popped out," and a flathead screwdriver fell out of Jones's pocket. Appellant's Appendix at 53.

Our review of the character of the offender reveals that Jones's criminal history includes a juvenile adjudication for burglary and adult convictions for public intoxication, obstructing traffic, and receiving stolen property as a class D felony. The PSI also reveals that Jones admitted to smoking marijuana daily. We acknowledge that Jones took responsibility for his crime here by pleading guilty, but observe that he received a benefit of pleading guilty because the plea agreement provided that he would not receive a sentence of more than two years for a class D felony. We also acknowledge that Jones was twenty years old at the time of sentencing, that he may have grown up without a father, and that the record does not show that the instant offense or his prior offenses were violent in nature. However we are also mindful that Jones committed the instant offense of auto theft less than four months after he received a suspended sentence of eighteen months under Cause No. 26.

After due consideration, we cannot say that the sentence imposed by the trial court was inappropriate in light of the nature of the offense and the character of the offender.

See Shouse v. State, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006) (concluding in part that the defendant's three-year sentence for auto theft as a class D felony and for two counts of resisting law enforcement was not inappropriate given the defendant's criminal history), trans. denied.

For the foregoing reasons, we affirm Jones's sentence for auto theft as a class D felony.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.