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IN THE
COURT OF APPEALS OF INDIANA

WINFRED JEFFERSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-1103-CR-191
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Wendy W. Davis, Judge
Cause No. 02D06-1012-FD-1268

August 16, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Winfred Jefferson appeals the three-year sentence imposed after he pleaded guilty to Theft,[1] a class D felony. Specifically, Jefferson maintains that the trial court's sentence is inappropriate in light of the nature of the offense and his character. Concluding that Jefferson was appropriately sentenced, we affirm.

FACTS

On December 8, 2010, Jefferson exited a Fort Wayne Kroger Store with $65.84 of meat that he had stolen. Jefferson was confronted outside the store by Allen County Police Department Officer Duane Gillum, who was working security detail that day. Jefferson admitted to Officer Gillum that he stole the meat. PSI p. 5.

On December 14, 2010, the State charged Jefferson with one count of theft, a class D felony. On January 20, 2011, Jefferson pleaded guilty to theft and a pre-sentence report was ordered and filed on February 10, 2011.

At the sentencing hearing on February 17, 2011, Jefferson admitted responsibility and affirmed his substantial criminal history. In sentencing Jefferson, the trial court found Jefferson's guilty plea and acceptance of responsibility to be mitigating factors. Appellant's App. p. 7. In aggravation, the trial court noted Jefferson's lengthy criminal history dating back to 1974, which included two juvenile adjudications, ten felony convictions, and ten criminal conversion convictions. Id. The trial court highlighted the fact that Jefferson had been released from parole only one day before committing the instant offense and that past attempts to rehabilitate him had failed. Id. The trial court

[1] Ind. Code. § 35-43-4-2(a)

sentenced Jefferson to the maximum of three years at the Indiana Department of Correction. Jefferson now appeals.

DISCUSSION AND DECISION

Jefferson contends that his three-year sentence is inappropriate in light of the nature of the offense and his character pursuant to Indiana Appellate Rule 7(B). Specifically, Jefferson argues that the trial court overlooked his history of substance abuse as a mitigating circumstance of Jefferson's character.

On appeal, this 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." Ind. Appellate Rule 7(B). However, this court does not substitute its judgment for that of the trial court. Foster v. State, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003). Under Appellate Rule 7(B), the question is not whether it is more appropriate to impose a different sentence upon the defendant, but whether the defendant's sentence is appropriate. Steinberg v. State, 941 N.E.2d 515, 535 (Ind. Ct. App. 2011). The defendant bears the burden of persuasion on appeal that the sentence he received is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

In the instant case, Jefferson was guilty of committing theft as a class D felony. The Indiana legislature has assigned a sentencing range for a class D felony from six months to three years with an advisory sentence of one and one-half years. Ind. Code § 35-50-2-7(a). We have recognized that, "with regard to the nature of the offense, the

advisory sentence is the starting point in our consideration of the appropriateness of a sentence for the crime committed." Gervasio v. State, 874 N.E.2d 1003, 1005 (Ind. Ct. App. 2007). Here, with regard to the nature of the offense, Jefferson stole $65.84 worth of meat from a grocery store.

As for Jefferson's character, he is correct in that "whether and to what extent a sentence should be enhanced turns on the weight of an individual's criminal history. This weight is measured by the number of prior convictions, their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on defendant's culpability." Appellant's Br. p. 4-5 (quoting Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006)). As an adult, Jefferson has twelve misdemeanor convictions and ten felony convictions. PSI p. 4. Of those convictions, Jefferson had been found guilty of theft three times; robbery twice; burglary four times; and criminal conversion ten separate occasions. Id. Moreover, Jefferson committed this theft only a day after he was released to parole for committing the exact same offense. Id. These facts alone speak to the character of Jefferson.

Nevertheless, Jefferson maintains that his long history of substance abuse is a significant mitigating factor. However, the "trial court is not required to consider as mitigating circumstances allegations of appellant's substance abuse or mental illness." James v. State, 643 N.E.2d 321, 323 (Ind. 1994). Nor is a trial court required to accept a defendant's proffered mitigator or to assign it the same weight as the defendant argues. Steinberg, 941 N.E.2d at 534. Moreover, a trial court is not required to explain why it

has rejected a mitigating factor the defendant believes was significant. Widener v. State, 659 N.E.2d 529, 533 (Ind. 1995).

Therefore, we find that Jefferson's sentence is not inappropriate in light of the nature of the offense and Jefferson's character, and we affirm the decision of the trial court.

The trial court's judgment is affirmed.

KIRSCH, J., and BROWN, J., concur.