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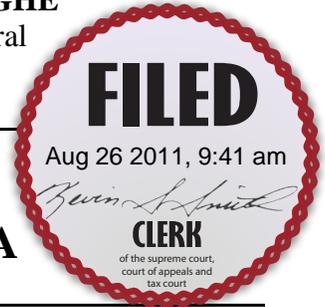
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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRANDON D. WILLIAMS,  
Appellant- Defendant,

vs.

STATE OF INDIANA,  
Appellee- Plaintiff,

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No. 71A05-1103-CR-180

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable John M. Marnocha, Judge  
Cause No. 71D08-1011-FD-1083

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**August 26, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Chief Judge**

## Case Summary and Issue

Following a guilty plea, Brandon D. Williams was convicted of receiving stolen property, a Class D felony, and sentenced to three years. For our review, Williams raises one issue: whether the sentence is inappropriate in light of the nature of his offense and his character. Concluding the sentence is not inappropriate, we affirm.

## Facts and Procedural History

Sometime between September 17, 2010 and October 11, 2010, Williams knowingly received a Fender Telecaster guitar that had been stolen from Gordy Young, the father of Williams's ex-girlfriend.<sup>1</sup> On November 1, 2010, the State charged Williams with receiving stolen property, a Class D felony. On January 24, 2011, Williams pled guilty to receiving stolen property without a written plea agreement with the State. On February 23, 2011, the trial court held a sentencing hearing, entered judgment of conviction, and sentenced Williams to three years in the Department of Correction. Williams now appeals his sentence.

## Discussion and Decision

### I. Standard of Review

Article 7, Section 6 of the Indiana Constitution gives this court the authority to review and revise sentences. Pursuant to this authority, an appellate 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); Watson v. State, 784 N.E.2d 515,

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<sup>1</sup> Because Williams pled guilty, the record is somewhat sparse regarding the facts surrounding this incident.

521 (Ind. Ct. App. 2003). A defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

## II. Nature of the Offense

Williams was convicted of receiving stolen property, a Class D felony. A person who commits a Class D felony shall be imprisoned for a fixed term of between six months and three years, with the advisory sentence being one and one-half years. Ind. Code § 35-50-2-7(a).

The nature of this offense stems from the trust that Young extended to Williams, and the betrayal of that trust during Williams's time with Young. Young's daughter and Williams were in a volatile relationship when she requested that Williams leave her apartment. Since Williams had nowhere to live, Young offered to take him into his household. During Williams's four-week stay at Young's residence, Young provided Williams with medical counseling, psychiatric help, and attempted to find him a job and a permanent place to live. Young also found a mentor for Williams and helped pay for a rehabilitation facility that was willing to take him in. However, instead of taking advantage of the treatment, Williams refused after one meeting and left Young's home. A few weeks after Williams left, a break-in occurred at Young's home and his guitar was stolen. The violation of Young's trust enhances the severity of Williams's offense.

Williams's offense had such a negative impact on Young that he stated, "Every time my doorbell rings or there is a knock at the door, I get apprehensive and defensive." Transcript at 26. He further stated he has "continued to live in fear for my well-being . . . considering there were others that were probably involved, who are not in jail, but may

know that I'm testifying to the Court.” Id. at 25. Moreover, due to Williams's offense, Young had to make drastic lifestyle changes. Specifically, Young resigned from his TV weatherman job of sixteen years to move to another state and find another job; he also had to put his house up for sale. Young also testified that he continues “to take every measure possible to increase my security, and I've sought counseling to deal with my feelings of being violated.” Id. at 27. Therefore, the three-year sentence imposed on Williams is not inappropriate in light of the nature of the offense. See Ind. Code § 35-38-1-7.1(a)(1) (providing it may be an aggravating circumstance that harm suffered by victim was significant and greater than the elements of the offense).

### III. Character of Offender

Although we acknowledge Williams entered a plea of guilty without a written plea agreement and without getting any benefit from the State, Williams's conduct at the sentencing hearing and his violation of Young's trust indicates his poor character. Williams contends that his plea and acceptance of responsibility is a significant mitigating factor, however, there's no indication that Williams exhibited any remorse for his offense. During his sentencing hearing, Williams did not apologize to Young for betrayal of his trust; instead he attributed his behavior to his drug abuse, and questioned the rationale of the trial court in sentencing him by stating, “So you're going to send me to a place where there is [sic] even more drugs?” Tr. at 36. Williams conduct indicates that his guilty plea was not a true acceptance of responsibility.

Williams also contends “[m]aximum possible sentences are generally most appropriate for the worst of offenders.” Brief of Appellant-Defendant at 13 (citing Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002)). However, the court in Buchanan

further held that this is not “a guideline to determine whether a worse offender could be imagined . . . we refer generally to the class of offenses and offenders that warrant the maximum punishment.” Id. (emphasis in original). Given Williams’s pre-existing relationship with Young, the substantial time and effort Young had extended to assist Williams in a situation in which most fathers would write off their daughters’ ex-boyfriends, and the financial and psychological impact of the crime on Young, Williams is within the class of offenders for whom the maximum sentence is appropriate.

Williams further contends that his criminal history does not warrant the maximum sentence, and the court should show him leniency. However, the record indicates that Williams has been shown leniency in the past and has failed to take advantage of it. Williams’s criminal history began in 1997 when he was nine years old. From 2001 to 2005, the juvenile court showed Williams leniency in an adjudication for theft through probation, electronic monitoring, drug treatment, and testing and counseling. In 2008, however, Williams was charged with possession of marijuana. He entered a conditional discharge program but failed to complete the program because he was convicted of criminal conversion in 2009 and judgment was therefore entered on the possession case. In addition to failing to benefit from the treatment and other lesser sanctions offered to him, Williams has committed several property offenses. See Bryant v. State, 841 N.E.2d 1154, 1156-57 (Ind. 2006) (holding that the significance of a criminal history in assessing a defendant’s character and an appropriate sentence is based on the gravity, nature, and number of prior offenses in relation to the current offense).

Williams also contends that mental health issues and substance abuse are valid mitigating factors; however, this court has held that is not always the case. See Bryant v.

State, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004) (holding that a defendant’s drug abuse was properly considered an aggravating circumstance and not a mitigating circumstance, considering that defendant was aware of his drug and alcohol problem, yet had taken no positive steps to treat his addiction), trans. denied. Other than self-reporting anxiety issues, Williams did not present any evidence of a mental health diagnosis. As for his drug abuse, in 2010, prior to this offense, Williams was arrested and charged with possession of heroin, and was once again admitted to the drug court program which has two goals: to help defendants “kick their habit” and “not commit additional criminal offenses.” Tr. at 34. Williams failed that program by committing the instant offense. The trial court acknowledged Williams’s addiction, but noted, “essentially what’s being asked, is that I excuse one type of illegal conduct because of another type of illegal conduct.” Tr. at 32.

Williams’s criminal history and relationship with Young demonstrate that he has received several second chances from the judicial system and individuals who trusted him, yet has squandered them every time. Thus, Williams’s three-year sentence is not inappropriate in light of his character.

#### Conclusion

For the foregoing reasons, Williams’s three-year sentence is not inappropriate in light of the nature of his offense and his character.

Affirmed.

BARNES, J., and BRADFORD, J., concur.