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IN THE
COURT OF APPEALS OF INDIANA

JOHN BOOKER,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A05-0902-CR-57
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARIONSUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0808-FB-191439

September 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

John Booker appeals his convictions, following a bench trial, of burglary, a Class B felony, and theft, a Class D felony, and his fourteen-year aggregate sentence. For our review, Booker raises two issues, which we expand and restate as: 1) whether sufficient evidence supports his burglary conviction; 2) whether sufficient evidence supports his theft conviction; and 3) whether his sentence is inappropriate in light of the nature of the offenses and his character. Concluding sufficient evidence supports both convictions and Booker's sentence is not inappropriate, we affirm.

Facts and Procedural History

On July 13, 2008, Andrea Anibal left her home for a week-long trip. Anibal left a key with her neighbor, Sandy Noe, asking Noe to look after her cat. Noe entered Anibal's house daily to feed the cat until she left for a vacation on July 18th. Noe did not notice any broken windows when she checked the house. On July 20, 2008, Anibal returned home and found a window broken in the great room of the house. The house had been rummaged through, many items had been moved from their original places, and several items were missing, including a television, a home theater system, a VCR, a lawnmower, and some jewelry.

Police investigating the crime discovered a number of latent prints and a smudge of blood. Further investigation identified Booker as the source of the prints and the blood. On August 15, 2008, the State charged Booker with burglary, a Class B felony, and theft, a Class D felony. Booker waived a jury trial, and the trial court held a bench trial on December 19, 2008. At the trial, Booker testified that a friend, James Gibson,

took him to Anibal's house, claiming it belonged to his cousin. Booker claims he saw the broken window and cut himself while trying to pick up the glass. Booker also explained that he picked up some pictures, asking Gibson why he wasn't in any of them. Booker testified he then left because he did not believe Gibson, but he did not take anything from the house. Following the bench trial, the trial court convicted Booker of both counts. The trial court then held a sentencing hearing on January 8, 2009, and sentenced Booker to fourteen years executed for burglary and one and one-half years executed for theft, with the sentences to run concurrently. Booker now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

In reviewing sufficiency of the evidence claims:

> [we] must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. [T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations and quotations omitted) (emphasis in original).

B. Burglary

In order to sustain a conviction of burglary as a Class B felony, the State was required to prove beyond a reasonable doubt that Booker broke and entered the dwelling of another person with the intent to commit a felony therein. Ind. Code § 35-43-2-1(1)(B). The State charged Booker with burglary alleging Booker intended to commit theft. Booker argues the evidence is insufficient to establish his intent to commit theft.

"[I]ntent is a mental function, and without a confession, it must be determined from a consideration of the conduct and the natural consequences of the conduct giving rise to the charge that the defendant committed theft." Long v. State, 867 N.E.2d 606, 614 (Ind. Ct. App. 2007), reh'g denied. "Accordingly, intent may be proven by circumstantial evidence, and it may be inferred from a defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points." Id. The evidence here established that someone entered Anibal's house by breaking through a window, went through her possessions, and took a television, home theater system, and VCR, among other items. The physical evidence ties Booker, and only Booker, to the scene. As a result, a finder of fact could logically and reasonably conclude that Booker broke into the house with the intent to steal items therein. Booker's assertion that his testimony explains the physical evidence amounts to a request for us to reweigh the evidence and his credibility, which we will not do. Drane, 867 N.E.2d at 146. Therefore, sufficient evidence supports Booker's conviction of burglary.

C. Theft

In order to sustain a conviction of theft, the State must prove beyond a reasonable doubt that Booker knowingly or intentionally exerted unauthorized control over Anibal's

property with the intent to deprive her of any part of its value or use. Ind. Code § 35-43-4-2(a). Booker argues that no evidence ties him to the stolen property. A theft conviction may be sustained by circumstantial evidence alone if the evidence supports a reasonable inference of guilt. Hayworth v. State, 798 N.E.2d 503, 507 (Ind. Ct. App. 2003). As discussed above, Anibal returned to find several items missing from her home. The physical evidence in the case ties Booker alone to the crime scene. To the extent that Booker presents an alternate theory to explain his presence, it is the trial court's responsibility to determine his credibility and to weigh the evidence, not ours. Drane, 867 N.E.2d at 146. It is not necessary that the evidence overcome every reasonable hypothesis of innocence, only that an inference may reasonably be drawn from the evidence to support the verdict. Id. at 147. Therefore, sufficient evidence supports Booker's conviction of theft.

II. Appropriateness of Sentence

Booker's sentence for burglary is four years above the advisory sentence, see Ind. Code § 35-50-2-5; his one and one-half year sentence for theft is the advisory sentence, see Ind. Code § 35-50-2-7(a). Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence 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." When making this decision, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 196 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) ("[I]nappropriateness review should not be limited … to a simple rundown of the aggravating and mitigating circumstances found by

the trial court."). However, the defendant bears the burden to "persuade the appellate court that his … sentence has met this inappropriate standard of review." Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

A. Nature of the Offenses

Nothing in the record indicates that Booker's crimes are other than garden variety burglary and theft. No one was home at the time of the crimes, and there is no evidence that Booker carried a weapon with him. In addition, the value of the items stolen, while substantial, is not so substantial as to make this a particularly egregious crime. Therefore, the nature of Booker's offenses alone does not merit an increase from the advisory sentence.

B. Character of the Offender

Booker has an extensive criminal history, which consists of the following convictions: battery, criminal mischief, driving while suspended, criminal trespass, possession of paraphernalia, and two convictions for resisting law enforcement, all misdemeanors; a juvenile adjudication for what would be theft if committed by an adult; and three felony convictions for possession of and dealing cocaine. The felony convictions occurred in 1994 and 1996. Our supreme court has observed that the weight assigned to a defendant's criminal history "varies based on the gravity, nature[,] and number of prior offenses as they relate to the current offense." See Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999). Booker's most serious convictions are over ten years old and his most recent convictions have been for relatively minor crimes unrelated to his

present convictions. Therefore, at first blush, we are inclined to find Booker's fourteen-year sentence inappropriate in light of his character.

However, a closer look at Booker's criminal record reveals that he has been arrested four times since July 8, 2008. Although he has never been placed on formal probation, on four occasions, Booker committed a subsequent crime within the period of a suspended sentence from a previous crime. In addition, Booker: was adjudicated a delinquent on the basis of what would be theft if committed by an adult; was charged with residential entry and invasion of privacy in 2004, but the charges were dismissed due to the absence of an essential witness; was convicted of criminal trespass in 2006; and was arrested but not charged for theft and criminal trespass in 2008, just over two weeks prior to his arrest on these present charges.

In light of Booker's extensive criminal history and his apparent propensity for property-related crimes, we cannot say that his fourteen-year sentence is inappropriate in light of his character. Booker bears the burden of demonstrating that his sentence is inappropriate in light of the nature of his offenses and his character, Childress, 848 N.E.2d at 1080, and he has failed to do so.

Conclusion

Sufficient evidence supports Booker's convictions of burglary and theft, and his sentence is not inappropriate in light of the nature of his offenses and his character.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.