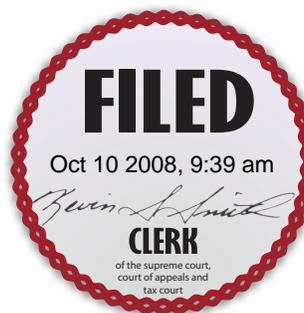


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CASEY L. SAMS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0712-CR-1108

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Marchal, Commissioner
Cause No. 49G06-0705-FC-084292

October 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Casey L. Sams appeals his convictions and sentence for Class C felony operating a motor vehicle after his license was suspended for life and criminal mischief as a Class A misdemeanor. On appeal, he argues that the evidence is insufficient to support both of his convictions because no witness made an in-court identification of him as the perpetrator and that the evidence is insufficient to support his criminal mischief conviction because the State failed to present evidence that Sams caused a pecuniary loss of at least \$250. Sams also argues that he should have received credit time for his pretrial home detention and that his eight-year sentence in the Department of Correction is inappropriate. We conclude that the evidence is sufficient, that the trial court did not abuse its discretion in denying Sams credit time for his pretrial home detention, and that Sams's sentence is not inappropriate. We therefore affirm.

Facts and Procedural History

Angel Frazier lived with her parents on South Alabama Street in Indianapolis. Sams lived in the neighborhood, as did his girlfriend, Marilyn Keener. Sams was a longtime family friend of the Fraziers.

On the evening of May 13, 2007,¹ Frazier was at home with her family celebrating Mother's Day. She walked outside toward her car and saw Sams driving a black truck with Keener as a passenger. He drove fast and pulled up as though to park. However, Sams did not park the truck. Instead, he hit Frazier's car just as she was unlocking her

¹ Both briefs provide that the evening events occurred on May 14, apparently because at trial the State asked a question of Frazier that referred to the events taking place on Sunday, May 14, 2007. Tr. p. 9. May 14, 2007, was a Monday. It is clear from the probable cause affidavit that Sams's charged offenses took place early in the morning on May 14, while the earlier altercation between Sams and Frazier was during the evening of May 13.

car door. Frazier asked Sams why he hit her car. Sams responded, “It wasn’t that bad.” Tr. p. 12. Frazier then left in her car after telling Sams not to do that again.

Frazier received a call from her father soon thereafter, asking her to come home because Sams had denied hitting her car. Frazier went home, and Sams “started screaming at [her] about it, saying it wasn’t that big of a deal” *Id.* After an altercation that “was so loud that [neighbors] heard it across the street,” Sams and Frazier returned to their respective homes, leaving their automobiles parked on the street. *Id.* at 13. Sams did not stay away for long, however. He soon returned to Frazier’s home, asking to use her telephone to call the police because his truck had been stolen. After five to ten minutes, he again left.

In the early morning hours of May 14, 2007, Frazier awakened to the sound of squealing tires. She looked out of her bedroom window and saw a maroon van ramming into the back of her parked car. Frazier and her father ran outside and saw Sams driving the van, which turned out to be Keener’s. Frazier called the police, and Sams exited the van and ran to Keener’s nearby house. Responding officers quickly apprehended him. Frazier later noticed cracks in her car’s bumper, and her insurance company ultimately reimbursed her approximately \$700. *Id.* at 22-23.

The State charged Sams with operating a motor vehicle after his license was suspended for life, a Class C felony,² and criminal mischief as a Class A misdemeanor.³ Frazier and other witnesses testified at Sams’s bench trial about the events of May 14,

² Ind. Code § 9-30-10-17.

³ Ind. Code § 35-43-1-2(a)(2)(A)(i).

2007. Sams stipulated to multiple prior driving-related convictions. Sams was convicted as charged.

During Sams's sentencing hearing, the trial court engaged in the following dialogue with defense counsel regarding whether to give Sams credit for time spent in pretrial home detention:

[Defense Counsel]: Judge, was Mr. Sams on pre-trial home detention for some period of time?

THE COURT: Yes. And I don't believe on case law that he is entitled to that.

[Defense Counsel]: Yes, your honor.

THE COURT: I think under a strict reading I could deny him that credit time since he was never placed back in custody.

Id. at 71. The court then denied Sams credit for the time he spent in pretrial home detention, calculated other credit time, and sentenced him to eight years executed for the Class C felony and one year executed for the Class A misdemeanor, to be served concurrently. Sams now appeals.

Discussion and Decision

Sams raises four arguments on appeal: (1) whether the evidence is sufficient to support his convictions because no witness made an in-court identification of him as the perpetrator, (2) whether the evidence is sufficient to support his criminal mischief conviction because the State failed to present evidence that he caused a pecuniary loss of at least \$250, (3) whether he should have received credit time for his pretrial home detention, and (4) whether his eight-year sentence in the Department of Correction is inappropriate. We address each argument in turn.

I. Sufficiency of the Evidence

Sams challenges the sufficiency of the evidence to support his convictions. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jones v. State*, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Id.*

A. Identification of Sams as the Perpetrator

First, Sams argues that the evidence is insufficient to identify him as the perpetrator of the offenses. Specifically, he contends that because the State's witnesses did not verbally identify him in-court as the perpetrator, we must vacate both convictions. However, this argument ignores that "[i]t is not necessary that a defendant be pointed out in the presence of the jury as the person who committed the crime." *Murphy v. State*, 555 N.E.2d 127, 129 (Ind. 1990). "The conviction may stand if there is evidence from which the jury could deduce that the defendant was in fact the perpetrator of the crime." *Id.* Identification of the defendant by name is sufficient. *Id.*; *State v. Schroepfel*, 240 Ind. 185, 162 N.E.2d 683, 684 (1959); *Iseton v. State*, 472 N.E.2d 643, 646-47 (Ind. Ct. App. 1984); *O'Brien v. State*, 422 N.E.2d 1266, 1271 (Ind. Ct. App. 1981).

Here, Frazier testified at trial that she had known Sams for her whole life, which was approximately twenty years. Tr. p. 9. He is an "old friend of the family" and lived in their neighborhood in the past. *Id.* After establishing this familiarity with Sams, Frazier unequivocally identified him as the person who drove the van into the back of her car and damaged it. *Id.* at 17, 22. Additionally, Frazier's mother identified Sams as the

lone person who got out of the van after the incident. *Id.* at 28-29. The evidence is sufficient to identify Sams as the perpetrator of the offenses.

B. Amount of Pecuniary Loss

Next, Sams argues that the State failed to present sufficient evidence that he caused a pecuniary loss of at least \$250 and that his conviction for criminal mischief must therefore be vacated. In order to convict Sams of criminal mischief as a Class A misdemeanor, the State had to prove that he: “recklessly, knowingly, or intentionally damage[d] or deface[d] property of another person without the other person’s consent; . . . [and] the pecuniary loss [was] at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500)[.]” Ind. Code § 35-43-1-2(a)(2)(A)(i).

The facts favorable to the State reveal that Sams rammed a van into Frazier’s parked car, damaging her rear bumper, and that Frazier’s insurance company reimbursed her in the amount of approximately \$700 to replace the damaged bumper. Tr. p. 23. Sams focuses upon the condition of Frazier’s car before the incident leading to his convictions and contends that the actual damage to the car was not \$700. Appellant’s Br. p. 8-9. However, this is merely a request for us to reweigh the evidence, which we cannot do. *Jones*, 783 N.E.2d at 1139. The evidence is sufficient to prove that Sams caused a pecuniary loss of at least \$250.

II. Credit Time

Sams argues that the trial court did not consider whether he should receive credit for the time he spent in pretrial home detention. Therefore, he asks us to remand the matter to the trial court and order it to consider whether he should receive credit.

Sams does not point to any provision in the Indiana Code that provides for credit for time spent in pretrial home detention, and he correctly observes that it was within the trial court's discretion to deny him credit for time spent in pretrial home detention. *Purcell v. State*, 721 N.E.2d 220, 224 n.6 (Ind. 1999), *reh'g denied*; *James v. State*, 872 N.E.2d 669, 672 (Ind. Ct. App. 2007); *Molden v. State*, 750 N.E.2d 448, 450-51 (Ind. Ct. App. 2001), *reh'g denied*. Acknowledging that the trial court was not required to give him such credit, he argues that the trial court abused its discretion in failing to examine the question at all because it found that he was not eligible for such credit. Appellant's Br. p. 11-12.

During Sams's sentencing hearing, the following exchange took place between the trial court and defense counsel:

[Defense Counsel]: Judge, was Mr. Sams on pre-trial home detention for some period of time?

THE COURT: Yes. And I don't believe on case law that he is entitled to that.

[Defense Counsel]: Yes, your honor.

THE COURT: I think under a strict reading I could deny him that credit time since he was never placed back in custody.

Tr. p. 71. Sams contends that the trial court's observation that he was not entitled to credit time for his pretrial home detention translates into "ruling that Sams was not legally eligible for such credit[.]" Appellant's Br. p. 12. We disagree with Sams's characterization of the trial court's determination. The trial court correctly observed that Sams is not *entitled* to credit for the time he spent in pretrial home detention. That is, the court properly determined that it did not *have to* award him credit time. *Purcell*, 721 N.E.2d at 224 n.6 ("[W]e . . . conclude that a trial court is within its discretion to deny a

defendant credit toward sentence for pre-trial time served on home detention.”). This is evidenced by the trial court’s statement that it “*could* deny him that credit time.” Tr. p. 71 (emphasis added). Because we read the transcript to reflect that the trial court properly considered whether to award Sams credit for time spent in pretrial home detention, we conclude that the court did not abuse its discretion in this regard.

III. Inappropriate Sentence

Sams also argues that his eight-year executed sentence is inappropriate in light of the nature of the offenses and his character. He asks that we reduce his sentence to four years and allow him to serve the remainder of his sentence in a community corrections program.

Article VII, § 4 of the Indiana Constitution provides the appellate courts of this state the “power to review all questions of law and to review and revise the sentence imposed” in all appeals of criminal cases. Ind. Const. art. VII, § 4. We exercise this authority under the standard set forth in Indiana Appellate Rule 7(B): “The 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.” Although we are reluctant to substitute our judgment for that of the sentencing court, *Hunter v. State*, 854 N.E.2d 342, 344 (Ind. 2006), we will do so where the considerations embodied in Appellate Rule 7(B) compel us to conclude that a defendant’s sentence is inappropriate. As an exercise of our review and revise authority, we can review the appropriateness of the location where a sentence is to be served. *Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007). Nevertheless, “it

will be quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate.” *King v. State*, --N.E.2d--, 2008 WL 4444267, *2 (Ind. Ct. App. Oct. 3, 2008) (citing *Fonner v. State*, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007)). “This is because the question under Appellate Rule 7(B) is not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate.” *King*, --N.E.2d, 2008 WL 4444267 at *2 (citing *Fonner*, 876 N.E.2d at 344). A defendant who challenges the placement of a sentence “must convince us that the given placement is *itself* inappropriate.” *Id.* (emphasis added).

We note that Sams makes no argument that an eight-year sentence is inappropriate in light of the nature of the offenses. However, we observe that Sams, while apparently intoxicated, Tr. p. 58, decided to drive his girlfriend’s van even though he knew that his driver’s license was suspended for life. In the middle of the night, he rammed the van into a parked car belonging to a longtime family friend and damaged the car. Sams does not explain to us how these facts render his sentence inappropriate.

As for Sams’s character, it, too, does not render the length of his sentence inappropriate. Sams contends that because eight years is the maximum sentence he could receive for a Class C felony,⁴ we should revise his sentence downward because he is “not among the worst offenders.” Appellant’s Br. p. 11. He acknowledges that he has a lengthy criminal history but argues that it does not warrant the maximum sentence because it does not involve violent crimes. We find this argument unavailing. Sams has

⁴ Ind. Code § 35-50-2-6(a).

an extensive criminal record. As the trial court explained at the sentencing hearing, by the age of forty-two, Sams accumulated the following criminal history:

[A]s a juvenile [Sams] has a true finding for operating while intoxicated from March of 1983. As an adult, his rather lengthy criminal history begins in April of 1984, when he was convicted of driving with [a] suspended license. He was convicted the next month for resisting. He then received his second conviction for driving with a suspended license in March of 1986. In February of 1986, he was convicted of operating a motor vehicle while intoxicated and his probation was subsequently revoked in that matter. In October of 1987, Mr. Sams was convicted of operating a motor vehicle as a habitual traffic violator. And then in July of 1988, he was convicted of possession of marijuana and trafficking with an inmate. His third conviction for driving with a suspended license came in March of 1990 and the Court notes that his probation was revoked in that matter as well. He then received a felony conviction for operating a motor vehicle while intoxicated in July of 1991. The first of what I now count are six separate convictions for operating a motor vehicle after license forfeited for life, took place in July of 1994. He was convicted in two separate cause numbers for that particular offense. What is a grave concern to the Court in that instance is that the Defendant first violated the terms of his Community Corrections placement, his placement was revoked and he was sent to the Department of Correction. Then upon being released to probation, he violated his probation not once, but twice. His third conviction for operating with a lifetime forfeiture took place in May of 1996 and the Court gave the Defendant five years executed in the Department of Corrections in that instance. Mr. Sams was subsequently convicted of escape in July of 1996 and given a four year executed sentence at DOC. His fourth and fifth convictions for operating after license forfeited for life took place in September of 1999 and October 2004, for which he received executed sentences of six years and two years respectively.

Tr. p. 83-85. Our review of Sams's criminal record reveals an individual who has amassed a bevy of alcohol-related driving offense convictions and habitually puts others and their property at risk. His eight-year sentence is not inappropriate in light of his character.

Finally, Sams presents no argument on appeal regarding how his placement in the Department of Correction rather than in community corrections is inappropriate. He does

point out that he has employment options, reliable transportation to and from work, and a residence. Appellant's Br. p. 11. However, the burden rests with him to show us how his placement in the Department of Correction is inappropriate, not that he could be a successful candidate for community corrections. In any event, given Sams's lengthy criminal history and failure in the past to comply with the requirements of probation and community corrections, there is nothing inappropriate about the trial court's decision to sentence him to the Department of Correction.

Affirmed.

KIRSCH, J., and CRONE, J., concur.