



Justin A. Van Brunt pleaded guilty without the benefit of a plea agreement to three counts of burglary, class B felonies, and three counts of theft, class D felonies. The trial court sentenced him to an aggregate term of thirty years, with ten suspended to probation. On appeal, Van Brunt argues that the trial court abused its discretion in failing to find certain mitigating circumstances and that the aggregate executed sentence is inappropriate.

We reverse.

On March 5, 2010, eighteen-year-old Van Brunt and two of his high school friends, Dillon Phillips and Johnny Gulasa, burglarized a rural home in Orange County, Indiana. Van Brunt had chosen the home because he knew from the daughter that the McBride family would be out of town and he had seen several guns at the home only days before. Among other things, the three stole a Wii game system and games, jewelry, prescription drugs, and a large number of firearms (shotguns and handguns). The teens sold most of the firearms at a Salem gun and knife show and, according to Van Brunt, made “a fair amount of money.”

*Transcript at 77.*

On March 20, Phillips spent the night at Van Brunt and Gulasa’s apartment. The three planned their next target, Bill and Jill Morgan’s home. The following evening, March 21, they drove to the Morgans’ home and forced their way in through the front door. Like the previous burglary, the teens knew the family was out of town. They stole a rifle, knives, a video camera, a Wii system, jewelry, and two cigar humidors. This time, they also vandalized the home, kicking holes in the walls and overturning furniture and the refrigerator. Though they did a significant amount of property damage, Van Brunt opined that they did not net much of value from this burglary.

Therefore, on March 23, Van Brunt and the two others broke into another home, that of Indiana State Police (ISP) Detective David Henderson. Henderson was a close family friend of Van Brunt's family and knew the teen well.<sup>1</sup> Like the others, Van Brunt knew the Hendersons were out of town at the time of the burglary. The trio stole four rifles, a shotgun, ammunition, a bullet-proof vest, handcuffs, a watch, a flashlight, and the keys to the detective's police car, which they also broke into.

The following day, Henderson and another ISP detective went to Van Brunt's place of employment to speak with him regarding the two recent burglaries and to see if he knew anything, since he lived in the area. Van Brunt cooperated with the detectives from the start and within short order allowed them to search his truck, admitted to burglarizing the three homes with Gulasa and Phillips, and told them where the remaining stolen items could be found. According to ISP Detective Richard Magill, Van Brunt's cooperation was "very helpful" in solving the case. *Id.* at 22. After Van Brunt provided his statement to police, the other two were interviewed and cooperated with police.

The State subsequently charged Van Brunt with three counts of class B felony burglary and three counts of class D felony theft. In November 2010, Van Brunt pleaded guilty as charged on all counts without the benefit of a plea agreement. A number of witnesses testified at the sentencing hearing on March 4, 2011, including Van Brunt. In sum, the witnesses for the defense generally testified that while Van Brunt had been going through a rebellious time leading up to the instant crimes, he was an intelligent young man with potential, had been active in the FFA for a number of years, he had strong family support,

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<sup>1</sup> Henderson was also related by marriage to the Morgans. He is their son-in-law.

and the instant crimes were not representative of his character.<sup>2</sup> Further, Van Brunt expressed remorse and a desire to repay the victims for their damages.

The trial court sentenced Van Brunt to an aggregate sentence of thirty years, with ten of those years suspended to probation for an executed sentence of twenty years. Specifically, the court sentenced him to the maximum sentence of three years on each of the theft counts and the advisory sentence of ten years on each of the burglary counts. *See* Ind. Code Ann. §§ 35-50-2-5, -7 (West, Westlaw through 2011 1st Regular Sess.). With respect to the first and third burglaries, the court suspended four years of each sentence. The court suspended only two years of the sentence for the second burglary (the Morgan home). The burglaries were ordered to run consecutive to each other and concurrent with the sentences for theft. In sentencing Van Brunt the trial court found his cooperation, remorse, and guilty plea to be mitigating circumstances. In aggravation, the court noted that these were planned burglaries of multiple homes on separate dates, firearms were stolen from each, one of the victims was a police officer, and the destruction at the Morgan home was senseless.

On appeal, Van Brunt challenges his sentence. He initially argues that the trial court abused its discretion by failing to consider his young age and limited juvenile record as

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<sup>2</sup> One of his victims, Detective Henderson, expressly forgave him and stated in part:  
I don't hold anything against you. If you get out tomorrow you're welcome to come and see me. You know and if you guys stay for however long that is beyond my control. I have nothing to do with it. But I think the world of you, so does Heather. You know, you just screwed up, you made a huge mistake, you know. I just wanted to tell you that you know, there is no, no ill will. I set [sic] here today and I look at this crowd and I see your dad, I see Jeff, I see Megan, I see the girls and Jack. You know, I have been here a lot, Bud, this is what I do and I hate being here. I hate this chair because usually whenever somebody is in your spot everybody runs. Nobody wants to be around....  
You're lucky.

*Id.* at 84.

mitigating circumstances. Further, he claims that the aggregate sentence imposed by the trial court is inappropriate in light of the nature of his offenses and his character. We agree that the aggregate thirty-year sentence, with twenty of those years executed, is inappropriate and therefore proceed to that analysis.

We have the constitutional authority to revise a sentence if, after careful consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Ind. Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Even if a trial court follows the appropriate procedure in arriving at its sentence, we maintain the constitutional power to revise a sentence we find inappropriate. *Hope v. State*, 834 N.E.2d 713 (Ind. Ct. App. 2005). Although we are not required under App. R. 7(B) to be “extremely” deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Our Supreme Court has provided the following guidance for our review of sentences: “[A]ppellate review should focus on the forest – the aggregate sentence – rather than the trees – consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The burden of persuading us that the sentence is inappropriate is on the defendant. *Rutherford v. State*, 866 N.E.2d 867.

With respect to the nature of the crimes, we recognize that Van Brunt planned<sup>3</sup> and committed three separate burglaries over a period of a little over two weeks. In addition to

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<sup>3</sup> Though the crimes were planned, it is important to note that Van Brunt made sure the families in the targeted homes were out of town.

stealing a number of other items from each home, Van Brunt and his companions stole a significant number of firearms, including police weapons, and then sold many of them. Further, they engaged in senseless destruction of the Morgan residence. Were we merely considering the nature of the crimes, we would hold that the aggregate sentence was not inappropriate. *See Pittman v. State*, 885 N.E.2d 1246, 1259-60 (Ind. 2008) (“[c]onsecutive sentences reflect the significance of multiple victims”).

Van Brunt’s character, however, counsels against a twenty-year executed sentence. Of particular note is Van Brunt’s young age and relative lack of juvenile history. The record reflects that Van Brunt was a high school senior who had recently moved out of his parents’ home and, though still in school, had been making some poor choices and by his own account was “headed down the wrong path”. *Transcript* at 67. Prior to the instant crimes Van Brunt committed with his friends, he had only one brush with the law, an informal adjustment for possession of a controlled substance on a school bus when he was fourteen. He successfully completed the informal adjustment period, including community service and a substance-abuse program for juveniles, and therefore had no formal adjudication on his record.

Van Brunt testified that being imprisoned for nearly a year prior to sentencing had certainly gotten his attention. While incarcerated, he graduated from high school with his

class, and he testified he planned to continue his education. Van Brunt had significant family support at the sentencing hearing, as well as from a teacher who had known him for a number of years through school and the FFA. Though all agreed that he needed direction, his teacher opined that he is an intelligent young man with potential. Detective Henderson, one of the victims and a family friend, also indicated that Van Brunt was generally a good young man that “just screwed up”. *Transcript* at 84.

Van Brunt expressed genuine remorse for his actions and explained that he understood the broad effect his crimes had on the victims beyond simply loss of property and the effect on his own family. Van Brunt cooperated with police, providing a full confession and assisting in their investigation. Moreover, he took responsibility for his actions and pleaded guilty as charged without receiving any benefits from the State in exchange. He also indicated a desire to provide restitution to the victims.

Based on this evidence, we conclude that Van Brunt’s aggregate twenty-year executed sentence is inappropriate. Particularly in light of his age and lack of prior criminal record or juvenile adjudications, he should be given a real chance at rehabilitation that the aggregate length of his executed sentence essentially precludes during his young-adult life. Therefore, we reduce his aggregate sentence by running all counts concurrent to each other for a sentence of ten years, of which eight years will be executed and two years will be served on probation.

Judgment reversed.

DARDEN, J., and VAIDIK, J., concur.