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IN THE
COURT OF APPEALS OF INDIANA

JASON EDWARD THOMAS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1102-CR-61
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause Nos. 45G03-1003-FA-6 and 45G03-1001-FB-1

October 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jason Edward Thomas appeals his sentence following a plea of guilty to robbery as a class B felony[1] and auto theft, a class D felony.[2]

We affirm.

ISSUE

Whether Thomas's sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

On January 5, 2010, the State charged Thomas with Count 1, robbery as a class B felony; and Count 2, auto theft as a class C felony under cause number 45G03-1001-FB-00001 ("Cause No. 01"). On March 3, 2010, the State charged Thomas with Count 1, kidnapping, a class A felony; Count 2, criminal deviate conduct as a class A felony; Count 3, rape as a class A felony; Count 4, attempted criminal deviate conduct as a class A felony; Count 5, criminal deviate conduct as a class B felony; Count 6, attempted criminal deviate conduct as a class B felony; Count 7, rape as a class B felony; Count 8, robbery as a class B felony; Count 9, carjacking, a class B felony; Count 10, criminal confinement as a class B felony; Count 11, criminal confinement as a class C felony; Count 12, sexual battery as a class D felony; and Count 13, auto theft, a class D felony under cause number 45G03-1003-FA-00006 ("Cause No. 06").

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[1] Ind. Code § 35-42-5-1.

[2] I.C. § 35-43-4-2.5.

On November 5, 2010, Thomas and the State entered into a plea agreement, whereby Thomas agreed to plead guilty to class B felony robbery under Cause No. 01 and class D felony auto theft under Cause No. 06. In return, the State agreed not to file habitual offender allegations and agreed to dismiss all remaining charges. As to sentencing, the parties agreed to a maximum sentence of two years for the auto theft charge with the trial court to determine the sentence for the robbery charge and whether to impose consecutive or concurrent sentences.

Regarding the robbery charge, Thomas stipulated that on or about January 3, 2010, he went into a bar where Stella Thompson was working as a bartender. He then "rushed [her] from behind, armed with a black handled knife, and asked [her] where the money was . . . ." (App. 29). Thomas then took $1,235.00 and Thompson's car keys.

Regarding the auto theft charge, Thomas stipulated that on or about September 5, 2010, he approached R.J. as she was getting into her vehicle at a Hammond gas station and forced her into the passenger's seat. He then got in the driver's seat and drove R.J. to Munster, where he let R.J. out of the vehicle before driving away.

The trial court accepted the plea agreement and held a sentencing hearing on January 20, 2011. According to the pre-sentence investigation report ("PSI"), Thomas had been convicted of several misdemeanors. He also had been convicted of felony theft in Illinois in 1999 and 2008; class D felony theft in 2003 and 2005; felony possession of a stolen vehicle in Illinois in 2007; and class D felony auto theft in 2006. The PSI also

showed that Thomas was on parole in Illinois when he committed the robbery and had violated probation on two occasions.

The trial court found Thomas's criminal history to be an aggravating circumstance and Thomas's acceptance of responsibility by pleading guilty and addiction to drugs to be mitigating circumstances. The trial court then sentenced Thomas to two years for the auto theft charge and twelve years for the robbery charge. The trial court ordered that the sentences be served consecutively.

DECISION

Thomas asserts that his sentence is inappropriate. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "'persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress*, 848 N.E.2d at 1081. The advisory sentence for a class B felony is ten years with a potential maximum sentence of twenty years. I.C. § 35-50-2-5. The advisory sentence for a class D felony is one and one-half years with a potential maximum sentence of three years. I.C. § 35-50-2-7.

Here, Thomas argues that his total sentence of fourteen years is inappropriate in light of his character, namely his expression of remorse and efforts to overcome his alcoholism, and because he did not commit "egregious" crimes.[3] Thomas's Br. at 6. As to Thomas's crimes, we cannot agree that they were not egregious. Regarding the robbery, Thomas approached Thompson while he was armed with a deadly weapon and demanded money. He then took the money and Thompson's car keys. Regarding the auto theft, he not only took R.J.'s vehicle but confined her to her vehicle and then drove her from Hammond to Munster; he therefore kidnapped R.J.

As to Thomas's character, we acknowledge that he expressed remorse for his crimes during the sentencing hearing and that, according to his statement during the sentencing hearing, he is seeking sobriety. We, however, also note that Thomas has a lengthy criminal history, spanning thirteen years and consisting of several felony theft convictions. Thomas has violated probation and was on parole when he committed the robbery offense. Thus, his criminal history indicates no deterrence from criminal activity and an escalation of his crimes. In light of the nature of the offenses and the character of the offender, we cannot conclude that Thomas's total sentence is inappropriate.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.

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[3] We note that Thomas does not argue that the trial court failed to consider these factors as mitigators. He therefore has waived any argument regarding the trial court's finding and weighing of mitigating circumstances. *See* Ind. Appellate Rule 46(A)(8)(a) ("Each contention must be supported by citations to the authorities . . . ."); *see also Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005) ("A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record."), *trans. denied*.