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IN THE
COURT OF APPEALS OF INDIANA

JAMES SAMPSON,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A02-1003-CR-355
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marie Kern, Master Commissioner
Cause No. 49F24-0910-FD-88110

November 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

James Sampson appeals his three-year executed sentence following his conviction of residential entry, a Class D felony. The sole issue for our review is whether Sampson's maximum sentence is inappropriate in light of the nature of his offense and his character. Concluding Sampson's sentence is not inappropriate, we affirm.

Facts and Procedural History

On October 15, 2009, Marianne Doubek left her apartment in the early morning to go to work and locked her door on the way out. Shortly before 8 a.m., Sampson approached the apartment and banged loudly on the door, which woke Doubek's neighbor Thomas Robinson from his sleep. Sampson kicked in the door and entered Doubek's apartment. Robinson saw the door close behind Sampson, looked outside to see that Doubek's car was no longer parked in front, and had his roommate call the police. Sampson, upon seeing Robinson through a window of the apartment, left and walked away without taking anything. Police apprehended him shortly thereafter. Doubek came back to find muddy footprints inside the apartment, a gash to the wall near the door, and fragments of wood strewn over the floor.

The State charged Sampson with residential entry, a Class D felony. He was tried to a jury and found guilty. The trial court held a sentencing hearing and found as aggravating factors Sampson's "extensive" criminal history, his six probation revocations, and the fact he was "released from custody approximately 10 days prior to his arrest on this offense." Transcript at 341-42.[1] The trial court found as a mitigating

[1] The pre-sentence investigation report ("PSI") indicates that on or about October 5, 2009, Sampson was released from serving a previously suspended part of his sentence for his March 2009 convictions of possession of

factor Sampson's "willing[ness] to pay restitution." Id. at 342. Concluding the aggravators outweighed the mitigator, the trial court sentenced Sampson to three years executed. He now appeals.

Discussion and Decision

Article 7, sections 4 and 6 of the Indiana Constitution authorizes independent appellate review of the appropriateness of a sentence, an authority implemented through Indiana Appellate Rule 7(B). Childress v. State, 848 N.E.2d 1073, 1079-80 (Ind. 2006). This court may revise a sentence "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." App. R. 7(B). In making this determination, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. The defendant bears the burden to persuade this court that his or her sentence is inappropriate. Childress, 848 N.E.2d at 1080.

We acknowledge Sampson received the maximum sentence and that maximum sentences are generally reserved for the worst offenses and offenders. See Buchanan v. State, 699 N.E.2d 655, 657 (Ind. 1998). However, our review focuses not on comparing Sampson's case to others, real or hypothetical, but on what the record reveals about the nature of his offense and his character. See Brown v. State, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), trans. denied. As our supreme court has observed, whether a defendant receives maximum or minimum sentences is in most cases "of far less significance than

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paraphernalia and domestic battery. See PSI at 7-8. While the PSI states Sampson was on probation at the time of his present offense, that would appear inconsistent with his probation being revoked on July 28, 2009, as the PSI also states. We need not resolve this discrepancy, as Sampson at sentencing conceded the correctness of the PSI and does not claim on appeal that the trial court erred when it found as a further aggravating factor that he was on probation when he committed the present offense.

the aggregate term of years." Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008). "And whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." Id.

The nature of Sampson's offense strikes us as a typical instance of residential entry. "A person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry, a Class D felony." Ind. Code § 35-43-2-1.5. While there is nothing particularly aggravating about the manner in which Sampson committed this crime, his characterization of it as "unremarkable," Brief of Appellant at 3, is unpersuasive insofar as none of the circumstances are particularly mitigating. Sampson argued a necessity defense at trial, testifying he was being chased by a female friend's angry boyfriend who had a gun. The jury's rejection of this defense comments adversely on Sampson's credibility in this respect.

Turning to Sampson's character, his criminal history is lengthy, dating back to 1989. His prior convictions include the following, among others: residential entry as a Class D felony in 1993; auto theft or receiving stolen auto parts as a Class D felony in 1994; carrying a handgun without a license as a Class C felony, in both 1995 and 1996; two counts of auto theft as Class C felonies in 2001; theft or receiving stolen property as a Class D felony in 2005; escape as a Class D felony in 2007; and domestic battery as a Class A misdemeanor in 2009. Sampson has nine prior felony convictions and nine prior misdemeanor convictions. In sum, he has a well-established pattern of criminal activity that includes numerous property-related offenses and other offenses of similar gravity to

his present offense. The significance of a criminal history "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999). Sampson's criminal history is therefore highly significant in relation to his present offense. It is also significant that he has been placed on probation six times and all six times violated his probation and had it revoked, showing prior attempts at leniency have proved unsuccessful in reforming his behavior.

The record is devoid of other factors that would shed significant positive light on Sampson's character. While he indicated his willingness to make restitution to Doubek, there is no documentation of his financial means to do so. Neither is there any indication he has made significant efforts to reform his life or curb his patterns of substance abuse which are another part of his criminal history. For instance, he was convicted of possession of paraphernalia both as a Class A misdemeanor in 2008 and a Class D felony in 2009, yet in the interview for the pre-sentence investigation report in the present case, described his marijuana use as "social" and stated he did not believe he had a problem with illegal drugs. PSI at 10. Sampson bears the burden to persuade this court that his three-year sentence is inappropriate and, particularly in light of his character, we conclude he has failed to do so.

Conclusion

Sampson's sentence is not inappropriate in light of the nature of his offense and his character, and is therefore affirmed.

Affirmed.

MAY, J., and VAIDIK, J., concur.