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IN THE
COURT OF APPEALS OF INDIANA

COREY B. MOORE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0903-CR-117
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 15
The Honorable Lisa Borges, Judge
Cause No. 49F15-0809-FD-217162

December 8, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Corey B. Moore (Moore), appeals his conviction for theft, a Class D felony, Ind. Code § 35-43-4-2.

We affirm.

ISSUES

Moore raises two issues for our review, which we restate as follows:

(1) Whether there was sufficient evidence to support Moore's conviction beyond a reasonable doubt; and

(2) Whether his sentence is appropriate in light of his character and the nature of his offense.

FACTS AND PROCEDURAL HISTORY

On September 18, 2008, Joshua Gaither (Gaither) and Brandon Cohen (Cohen) were working as loss prevention officers at Walmart in Indianapolis, Indiana. At around 6:00 p.m., Gaither saw Moore and Kurtis Wilhite (Wilhite) select two X-Box game controllers off the counter and walk past the electronics cash register at the electronics department without paying for them. Gaither followed Moore into the toy department because he thought Moore was acting suspicious, as he was acting nervous and "kept looking over his shoulders." (Transcript p. 11). Gaither walked down to the opposite end of the aisle that Moore and Wilhite were in so that he could get a better at what they were doing. Gaither observed Moore place the controllers on the bottom shelf and while he did not directly see Moore take

the controllers out of the package, he heard "hard plastic being ripped open" and subsequently saw Moore hand the controllers to Wilhite, who placed the controllers in his pants. (Tr. p. 9). Gaither heard Moore tell Wilhite to calm down and exit through the Tire and Lube Express doors at the back of the store and that he would exit the front doors and meet Wilhite outside.

Moore and Wilhite separated, with Wilhite moving towards the Tire and Lube Express exit and Moore moving toward the front of the store. Gaither followed Wilhite as he walked past the cash registers in the tire and lube express department and exit out the doors. At this point, Gaither made contact with Wilhite and a brief chase ensued during which Wilhite threw the controllers on the ground. Eventually, Gaither and Cohen apprehended Wilhite and as they were leading him back, they saw Moore in the parking lot. A third loss prevention officer escorted Wilhite back to the store while Gaither and Cohen approached Moore and told him they were part of Walmart's asset protection. Moore said, "I didn't do nothing," and took off running. (Tr. p. 16). Gaither and Cohen chased Moore through the parking lot, across the street, and into a residential area until he was finally apprehended by an Indianapolis Metropolitan police officer.

On September 19, 2008, the State filed an Information charging Moore with theft, a Class D felony, I.C. § 35-43-4-2. On November 25, 2998, a jury trial was held. At the close of evidence, the jury found Moore guilty as charged and the trial court sentenced him to three years in the Department of Correction with 104 days credit.

Moore now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Insufficient Evidence*

Moore contends there was insufficient evidence to establish beyond a reasonable doubt that that he committed theft under the theory of accomplice liability. Our standard of review for reviewing sufficiency of the evidence claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id*. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id*.

The State alleged in the charging information that Moore knowingly exerted unauthorized control over the X-Box game controllers. *See* I.C. § 35-43-4-2. Moore argues that he was only present at the time of the offense, and that "his actions before, during, and after the commission of the offense are simply too vague and filled with unsupported inferences to allow a reasonable fact finder to find his guilt beyond a reasonable doubt." (Appellant's Br. p. 4).

Under the theory of accomplice liability, an individual who aids, induces, or causes the commission of a crime is equally as culpable as the person who actually commits the offense. I.C. § 35-41-2-4. The accomplice liability statute does not set forth a separate

crime, but merely provides a separate basis of liability for the crime that is charged. *Cowan v. State*, 783 N.E.2d 1270, 1276 (Ind. Ct. App. 2003). In Indiana, there is no distinction between the responsibility of a principal and an accomplice. *Wise v. State*, 719 N.E.2d 1192, 1198 (Ind. 1999). Thus, one may be charged as a principal yet convicted on proof that he or she aided another in the commission of a crime. *Id*.

The following factors are considered when determining whether a defendant aided another in the commission of a crime: (1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose the commission of the crime; and (4) the defendant's course of conduct before, during, and after the occurrence of the crime. *Vitek v. State*, 750 N.E.2d 346, 352 (Ind. 2001). "It is not necessary for the jury to infer that [the] defendant participated in every element of the crime." *Id*.

Applying the factors to the present case, the State presented evidence that Moore and Wilhite were initially together in the electronics department in Walmart. Gaither saw the two men take the X-Box controllers and walk past the cash registers as both the electronics department without paying for them. Based on his experience working in loss prevention, Gaither noticed that Moore was acting nervous because he "kept looking over his shoulders." (Tr. p. 11). Gaither followed Moore and Wilhite into the toy department, heard the sound of plastic being opened and saw Moore hand the X-Box controllers to Wilhite, who subsequently concealed them in his pants. Next, Gaither heard Moore tell Wilhite to calm down and exit the store at the tire and lube express department, where they planned to meet after they both successfully exited. Moore and Wilhite both left the store without paying for

the controllers. Thus, under the theory of accomplice liability, the State presented sufficient evidence to convict Moore of theft, as he was present at the scene, was working in companionship with Wilhite, and facilitated the theft.

II. *Inappropriate Sentence*

Moore argues that his three year sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue. *Id*. The burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

With regard to the nature of the offense, we note that while the theft of two X-Box controllers standing alone is not particularly egregious, we are concerned that this is Moore's third conviction for stealing X-Box controllers. In July 2007, Moore was convicted for stealing an X-Box controller from K-Mart. Once again, in May 2008, Moore was convicted of theft for stealing an X-Box controller from Target. Thus, in the aggregate, Moore's

repetitive behavior of stealing demonstrates that Moore "basically [does not] show respect for the property of others." (Sent. Tr. p. 12).

With regard to the character of the offender, Moore has not persuaded us that his sentence is inappropriate. Our review of his character reveals that Moore has demonstrated a pattern of breaking the law, specifically involving theft. Moore has been in the criminal justice system since he was a juvenile, with true findings of theft and of disorderly conduct. Moore continued his criminal behavior into his adult life, with three misdemeanor convictions and eight prior felony convictions, many of which involve theft and fraud.

Moreover, Moore has failed at attempts of probation, as he has frequently violated his probation by committing more offenses. In fact, the sentencing court stated, "Just pretty much every single time you're on probation, you violated that probation." (Sent. Tr. p. 12). Under the circumstances, a conclusion that less-harsh measures have proven ineffective in curtailing Moore's criminal activity is justified. Moore has demonstrated a persistent unwillingness to obey the law and learn from his mistakes. Thus, Moore's sentence is appropriate in light of his character.

Ultimately, Moore has not persuaded us that his sentence is inappropriate based on the character of the offender or the nature of the offense.

CONCLUSION

Based on the foregoing, we conclude that there was sufficient evidence to convict Moore of theft and that his sentence is not inappropriate when the nature of his offense and his character are considered.

Affirmed.

BAKER, C.J., and FRIEDLANDER, J., concur.