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IN THE
COURT OF APPEALS OF INDIANA

DONALD MUDICA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A05-0907-CR-381
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable J. Jerome Frese, Judge
Cause No. 71D03-0810-FD-1128

December 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Donald Mudica appeals his sentence for theft as a Class D felony and his habitual offender sentence enhancement. We affirm.

Issue

Mudica raises one issue, which we restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

Facts

In the early morning hours of October 19, 2008, Mudica and two accomplices stole a large amount of water softener salt from outside of a Kroger store in South Bend, Indiana. They then sold the water softener salt for money to buy crack cocaine. The State charged Mudica with theft as a Class D felony and being an habitual offender. A jury found him guilty as charged.

The trial court sentenced Mudica to three years for the theft conviction with two and one-half years suspended to probation. The trial court ordered the suspended portion of the sentence to be served in the Department of Correction as a condition of probation. The trial court enhanced the sentence by four and one-half years for Mudica's status as an habitual offender. The trial court informed Mudica that he could, at a later date, request a modification of placement to a forensic diversion program.

Analysis

The issue is whether Mudica's sentence of seven and one-half years is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by

statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." When considering whether a sentence is inappropriate, we need not be "extremely" deferential to a trial court's sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

According to Mudica, the trial court gave him the maximum sentence, and the maximum sentence should be reserved for the very worst offenses and offenders. The Indiana Supreme Court has observed that "the maximum possible sentences are generally most appropriate for the worst offenders." Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002).

> This is not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Id.

A review of the nature of Mudica's offense reveals that he, along with two accomplices, stole multiple bags of water softener salt from a Kroger grocery store. They

sold the salt to buy crack cocaine. The nature of the offense is not especially heinous. However, a review of the character of the offender reveals that thirty-three-year-old Mudica has an extensive criminal history and a long-standing drug addiction. Mudica has either five or eight felony convictions, including an auto theft conviction, a burglary conviction, and two cocaine-related convictions, four misdemeanor convictions, and three juvenile contacts.[1] He has spent eleven years of his adult life incarcerated. He was on probation at the time of this offense and has several previous probation violations. He admitted that he has been addicted to drugs for fifteen years. As part of his previous incarcerations, he has participated in four different drug treatment programs. Mudica is admittedly able to stay away from drugs only when he is incarcerated. He does not have a driver's license and has never had a job. Although Mudica claims that he now has family support, we note that his family has tried in the past to help him, without success. We conclude that, given his extensive criminal history, long-term drug addiction, and past lenient treatment, the trial court's maximum sentence of seven and one-half years is not inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

Mudica's sentence of seven and one-half years is not inappropriate in light of the nature of the offense and the character of the offender. We affirm.

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[1] Mudica failed to include a copy of the presentence investigation report ("PSI") in the appellate record. Thus, the information before us comes solely from the trial court and the parties' statements at the sentencing hearing. His failure to include the PSI in the record on appeal hampers our ability to consider his argument and review the trial court's sentencing decision. But see Ind. Appellate Rule 49(B) (providing that "[a]ny party's failure to include any item in an Appendix shall not waive any issue or argument"). We remind Mudica that, as the appellant, he bears the burden of presenting a record that is complete with respect to the issues raised on appeal. Ford v. State, 704 N.E.2d 457, 461 (Ind. 1998).

Affirmed.

MATHIAS, J., and BROWN, J., concur.