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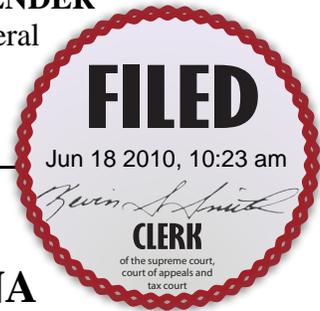
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**IN THE  
COURT OF APPEALS OF INDIANA**

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LINDA RUTH PARKS,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 20A04-1001-CR-21

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APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable Stephen R. Bowers, Judge  
Cause No. 20D02-0306-FB-72

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**June 18, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Linda Ruth Parks challenges via belated appeal her aggregate thirty-year sentence for class B felony burglary with a habitual offender enhancement. We affirm.

### **Issues**

We restate the issues as follows:

- I. Did the trial court exceed the statutory maximum sentence by imposing an aggregate thirty-year term?
- II. Is Parks's sentence inappropriate in light of the nature of the offense and her character?

### **Facts and Procedural History**

On June 16, 2003, Parks broke into and entered the residence of the Miguel Martinez family while the family slept. While inside, she took a beer and some jewelry. She attempted to take a paycheck belonging to Miguel Martinez, but he returned home while she was inside the residence.

On June 18, 2003, the State charged Parks with class B felony burglary. On July 1, 2003, the State filed an information charging her as a habitual offender, based on her 1993 class D felony theft conviction and her 1997 class B felony burglary conviction. On November 17, 2003, Parks pled guilty without plea agreement to both the burglary and habitual offender charges, and the trial court entered judgment of conviction. On January 12, 2004, the trial court cited her extensive criminal history and sentenced her to fifteen years for class B felony burglary, with a fifteen-year enhancement for the habitual offender count.

Parks now challenges her sentence via belated appeal. Additional facts will be provided as necessary.

## **Discussion and Decision**

### ***I. Statutory Maximum Sentence***

Parks contends that the trial court imposed a sentence that exceeded the statutory maximum. At the outset, we note that Parks's underlying offense pre-dated the 2005 amendments to the Indiana sentencing scheme; thus, we address her case in terms of the "presumptive" rather than the "advisory" sentence. We review a trial court's sentencing decision for an abuse of discretion, including a trial court's decision to increase a sentence based on aggravating circumstances. *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before it, or the reasonable, probable, and actual deductions to be drawn from it. *Id.*

Under the sentencing scheme in place at the time of Parks's offense, she received an enhancement of five years over the ten-year presumptive sentence for a class B felony. *See* Ind. Code § 35-50-2-5 (2003) ("A person who commits a Class B felony shall be imprisoned for a fixed term of ten (10) years, with not more than ten (10) years added for aggravating circumstances or not more than four (4) years subtracted for mitigating circumstances[.]"). In imposing a fifteen-year term, the trial court cited as an aggravating circumstance Parks's extensive criminal history, which consists of illegal consumption of alcohol as a minor and a lengthy list of adult convictions, including class B felony burglary, class D felony cocaine

possession, class D felony theft, misdemeanor battery, misdemeanor frequenting a common nuisance, and misdemeanor maintaining a common nuisance. She had two additional burglary charges dismissed on Criminal Rule 4 grounds. Her history also includes one probation violation and one parole violation, and she was on probation when she committed the instant burglary. The trial court used the prior unrelated felony burglary and theft convictions to impose a fifteen-year habitual offender enhancement. *See* Ind. Code § 35-50-2-8(h) (2003) (“The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three (3) times the presumptive sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.”)

Parks argues that her aggregate thirty-year sentence exceeded the statutory maximum. Essentially, she argues that the trial court impermissibly used the same factor—her criminal history—to enhance the burglary sentence and impose the habitual offender sentence. First, we note that she was convicted on two counts under two statutes; these statutes provide for a maximum aggregate sentence exposure of fifty years: twenty years for the class B felony underlying offense and thirty years for the habitual offender enhancement. Thus, the only way Parks’s thirty-year sentence could possibly violate a statutory maximum would be if the trial court acted impermissibly in using the same factor(s) to both enhance the sentence on the underlying offense and to establish habitual offender status. Such is not the case. In *Hollin v. State*, 877 N.E.2d 462 (Ind. 2007), our supreme court addressed this argument, emphasizing that it “has long held that it is permissible for the trial court to consider the same

prior offenses for both enhancement of the instant offense and to establish habitual offender status.” *Id.* at 465; *see also Jones v. State*, 600 N.E.2d 544, 548 (Ind. 1992), *superseded by statute* (holding it permissible under presumptive sentencing scheme for trial court to consider same prior offenses for both enhancement of instant offense and establishment of habitual offender status). To the extent Parks argues that her “sentence was being enhanced twice for having a criminal history,” Appellant’s Br. at 10, we note that her criminal history consists of numerous offenses in addition to the two prior unrelated felonies and includes probation and parole violations.

Finally, to the extent Parks relies on *Breaston v. State*, 907 N.E.2d 992 (Ind. 2009), as support for her argument that the two fifteen-year terms should not have been imposed consecutively, we note that *Breaston* involved the question of whether two habitual offender enhancements can be imposed consecutive to *each other*, not whether one habitual offender enhancement can be imposed consecutive to the sentence on the underlying offense. *Id.* at 994. As such, *Breaston* is inapplicable here. In sum, the trial court acted within its discretion in imposing an aggregate thirty-year sentence.

## ***II. Appropriateness of Sentence***

Parks also challenges the appropriateness of her sentence pursuant to Indiana Appellate Rule 7(B). We “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). Our review focuses on the aggregate sentence rather than on the number of counts, the

length of sentence on any individual count, or whether the sentence runs concurrently or consecutively. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We do not look to see whether the defendant's sentence is appropriate or if another sentence might be *more* appropriate; rather, the test is whether the sentence is "inappropriate." *Fonner v. State*, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007). A defendant bears the burden of persuading this Court that her sentence meets the inappropriateness standard. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218; *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

We first address the nature of Parks's offense. Although she characterizes the instant burglary as merely entering the Martinezes' residence in search of a beer and helping herself to some jewelry as well, we conclude that the offense was more than mere afterthought or impulse theft. She broke and entered into the Martinezes' residence while the family slept. She not only stole beer and jewelry, but also unsuccessfully attempted to steal Martinez's paycheck and was thwarted only by his sudden return home during the break-in. The presence of the family and eventually Martinez escalated the stakes, posing a potentially confrontational situation. To the extent Parks relies on *Hollin* for support of her Appellate Rule 7(B) challenge, we note that, unlike Parks, Hollin burgled an empty home and had a criminal record that consisted largely of juvenile adjudications. 877 N.E.2d at 465.<sup>1</sup>

In contrast, Parks's criminal history and probation and parole failures do not reflect

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<sup>1</sup> In *Hollin*, the court revised Hollin's aggregate sentence from forty years to twenty years pursuant to Indiana Appellate Rule 7(B), because no one was home during the burglary and Hollin's criminal record consisted almost entirely of juvenile adjudications. 877 N.E.2d at 465.

well on her character. Her record extends from the time she was a juvenile to the present and includes numerous adult convictions. She has amassed an adult record that includes four felony convictions, most of which are property-related crimes stemming from her substance abuse, and three misdemeanor convictions, one of which was battery. Simply put, she is a frequent flyer in the system and has a pattern of stealing to support her drug habit, for which she has not sought treatment. Moreover, prior efforts at leniency have proven unavailing, as Parks has one prior probation violation, one prior parole violation, and was on probation when she committed the instant offense. As such, we find that Parks has failed to meet her burden of establishing that her sentence is inappropriate. Accordingly, we affirm.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.