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**IN THE
COURT OF APPEALS OF INDIANA**

AUGUST TROTTER,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0612-CR-1133
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben Hill, Judge
Cause No. 49F18-0605-FD-77146

August 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

August Trotter was convicted of Theft as a Class D felony¹ and adjudicated an habitual offender. On appeal, Trotter contends that the evidence is insufficient to support his conviction for theft and his three-year sentence for theft is inappropriate.

We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 3:30 a.m. on the morning of April 29, 2006, James Burdine, a security officer at the Express Parking Garage in Indianapolis observed Trotter on the fifth floor of the garage. It appeared to Burdine that Trotter was in the process of throwing something over the wall of the garage. Trotter was standing near the garage wall. Behind him were several items on the floor, including a brief case, day planner, and backpack. The items belonged to Adam and Molly Chambers and had been removed from their car that was parked on the fifth floor of the garage. Burdine stopped Trotter and conducted a search which produced a knife, a screwdriver, pliers, gloves, and a backpack containing feminine undergarments and hygiene products. Burdine summoned police. On the second floor of the garage which had a protruding glass awning, police found a day planner belonging to Molly Chambers.

Following a bench trial, Trotter was convicted of theft and adjudicated an habitual offender. The trial court sentenced him to three years executed on the theft conviction enhanced by two years for the habitual offender determination.

DISCUSSION

¹ Ind. Code § 35-43-4-2.

Trotter first contends that the evidence is not sufficient to sustain his theft conviction. Our standard of review in sufficiency cases is well established. In considering such a claim, we consider only the probative evidence and reasonable inferences supporting the judgment, without weighing the evidence or judging witness credibility, and determine therefrom whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Miller v. State*, 770 N.E.2d 763, 774 (Ind.2002). If there is substantial evidence of probative value supporting the verdict, we will affirm. *Dishmon v. State*, 770 N.E.2d 855, 858 (Ind.Ct.App.2002), *trans. denied*. A theft conviction may be sustained by circumstantial evidence. *Williams v. State*, 714 N.E.2d 671, 673 (Ind. Ct. App. 1999).

The relevant portion of the statute upon which the charge in this case is based reads as follows:

A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of its value or any part of its value or use commits theft, a class D felony.

Ind.Code § 35-43-4-2(a).

Here, Trotter was found in possession of a backpack belonging to the Chambers and near several other items of theirs — all of which had been in their car parked near where Trotter was found. The security officer had made numerous security checks of the floor before the one during which he saw Trotter and the items and did not see the items on any of the previous checks. The security officer saw Trotter drop something over the side wall of the garage and a day planner belonging to the Chambers was found on the second floor of the garage under where Trotter was standing. Finally, Trotter was found in possession of tools which could be used to gain access to cars. The evidence and the reasonable inferences

therefrom is sufficient to support Trotters theft conviction.

Trotter also contends that his three year enhanced sentence for theft is inappropriate. This Court may revise a sentence authorized by statute if it finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. App. R. 7(B).

Here, the trial court found that Trotter's criminal history was an aggravating factor justifying the enhanced sentence that it imposed. Trotter's criminal history as disclosed by the pre-sentence report shows that Trotter has twenty-seven prior convictions including seven prior convictions for property offenses. Given Trotter's extensive criminal history, the trial court was well within its discretion in sentencing Trotter to an enhanced sentence, and Trotter has failed to show that the sentence was inappropriate.

Affirmed.

ROBB, J., and BARNES, J., concur.