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IN THE
COURT OF APPEALS OF INDIANA

JODI LYNN GILLMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A01-0612-CR-570
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-0603-FB-6

August 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Jodi Lynn Gillman appeals her sentence for two counts of Theft,[1] class D felonies. Gillman presents the following restated issue for review: Was the imposition of consecutive sentences inappropriate in light of the nature of the offenses and her character?[2]

We affirm.

On March 5, 2006, Gillman visited her friend Adris Bischoff at Bischoff's home, along with several other neighbors. During the visit, Gillman commented on Bischoff's flashy diamond rings, which made Bischoff uncomfortable. Bischoff later went into her bedroom and removed the rings, placing them in a jewelry box on her dresser. At some point that evening, Gillman went into Bischoff's bedroom and took the two diamond rings out of the jewelry box. She also removed two other rings (a gold wedding band and another ring with a fake diamond) from the jewelry box and tossed them under the dresser. Bischoff discovered the rings were missing when she went to bed that night. The following afternoon, Gillman sold the diamond engagement rings to a jeweler for $1000, despite the fact that she knew the rings had great sentimental value to her friend.

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[1] Ind. Code Ann. § 35-43-4-2 (West 2004).

[2] Gillman actually sets out the issue as whether the imposition of consecutive sentences is manifestly unreasonable. We, however, no longer review sentences for manifest unreasonableness. Effective January 1, 2003, our Supreme Court amended Ind. Appellate Rule 7(B) to provide: "The Court may revise a sentence authorized by statute 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." (Emphasis supplied.) In addition to directing us to old case law regarding the manifestly unreasonable standard, she also improperly relies on a former version of Ind. Code Ann. § 35-38-1-7.1 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007) (statute pertaining to consideration in imposing sentence), which was substantially amended effective April 25, 2005 in response to *Blakely v. Washington*, 542 U.S. 296 (2004).

Thereafter, on the evening of March 7, Gillman went to a local casino where she lost nearly $1000 in a few short hours.

Detective Kendle Davis spoke with Gillman, on March 9, regarding the theft of the rings. Gillman denied any knowledge of the theft and indicated that Bischoff had most likely misplaced them. Gillman further stated that the rings might have simply been dropped on the floor and kicked under a piece of furniture.

The following day, Gillman's roommate, Connie Esposito,[3] contacted Detective Davis and asked him to come to their home to speak with her and Gillman. Together they informed the detective that Gillman suffers from multiple personality disorder and that one of her personalities named Kim told Gillman that Kate (another alleged personality) stole the rings and then sold them to a jewelry store. Gillman advised that she had since contacted the jewelry store and found the rings, which she planned to buy back for $1400. Upon speaking with the owner of the jewelry store, however, the detective learned that the diamonds had already been removed and cut down by the time Gillman called on March 10. Thus, Gillman had requested that the same type of diamonds be placed back in the rings for her repurchase.

Detective Davis subsequently learned of another reported theft of rings from one of Gillman's neighbors. On Sunday, March 12, Rosa Dodson noticed that the three diamond rings she always wore to church were missing, and the last time she had seen them was the previous Sunday when she removed them after church. Dodson advised the

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[3] Esposito was also present at Bischoff's house on the night of the theft.

detective that Gillman and Esposito had a key to her house in order to check on Dodson's husband who was in poor health. Detective Davis then spoke with Gillman, who alleged that "she had talked with one of her personalities named Ann who stated to her that one of her personalities named Kim said that she had seen [Gillman's] personality Kate take [Dodson's] rings." *Appendix* at 11. Gillman further advised that she did not know what her personality Kate had done with the rings, which were likely stolen on March 7. Finally, Gillman informed him that she had since eliminated her bad personality, Kate, by shutting herself in her bedroom for several hours.[4]

On March 14, 2006, the State charged Gillman with one count of class B felony burglary and two counts of class D felony theft. Gillman and the State subsequently entered into a plea agreement in August 2006. Pursuant to the plea agreement, Gillman pleaded guilty to the two counts of theft and the State dismissed the burglary count. Sentencing was left to the discretion of the trial court. Following a sentencing hearing, Gillman was sentenced on each count to 1095 days (3 years) in prison with 915 days (2 years and 185 days) suspended to probation. The sentences were ordered to run consecutively. Gillman now appeals her sentence. Additional information will be provided below as necessary.

On appeal, Gillman does not challenge the maximum sentences imposed for each of her theft convictions. Rather, she directly challenges only the consecutive nature of

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[4] Gillman testified at the sentencing hearing that she believed Kate came forward to protect her from the trauma of a rape that occurred about a month before the thefts. Gillman further indicated that she has suffered from various forms of mental illness since early childhood, which arose as a result of sexual and physical abuse.

the sentences and also indirectly takes issue with the executed portion of the aggregate sentence. Gillman argues that her aggregate executed sentence of 360 days is inappropriate, as the trial court "should have suspended more of the sentence and the sentences should have been concurrent." *Appellant's Brief* at 5. Though never actually applying the proper standard, Gillman emphasizes in support of her inappropriateness argument her lack of criminal history, history of mental illness, remorsefulness, and guilty plea.[5]

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. App. R. 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. An appellant has the burden of persuading us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

In the instant case, we find the nature of the offenses aggravating. Most notably, Gillman committed her crimes on separate days and against two different people, both of whom she considered close friends. This alone supports the imposition of consecutive

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[5] To the extent Gillman addresses mitigating circumstances not raised below, we find her arguments waived. *Simms v. State*, 791 N.E.2d 225, 233 (Ind. Ct. App. 2003) ("[i]f the defendant fails to advance a mitigating circumstance at sentencing, this court will presume that the circumstance is not significant and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal").

sentences. *See Serino v. State*, 798 N.E.2d 852, 857 (Ind. 2003) ("when the perpetrator commits the same offense against two victims, enhanced and consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person"); *see also Estes v. State*, 827 N.E.2d 27, 29 (Ind. 2005) ("Estes committed the offenses against two victims, so at least one consecutive sentence is appropriate"). Further, Gillman took and then disposed of valuable property (worth a total of nearly $7000) that she knew held great sentimental value to her friends. Gillman would have us believe that it was one of her alleged multiple personalities that stole the rings, but the trial court did not find her claim credible. In light of the evidence presented and, most notably, Gillman's self-serving and dubious testimony, we do not disagree with the trial court's assessment in this regard.[6]

We now turn to the nature of the offender. Clearly, at age forty, Gillman's lack of criminal history is a substantial mitigating circumstance and bodes well for her ability to respond affirmatively to probation or short-term imprisonment, which is exactly what she received as a result of her substantially suspended sentence. Further, while Gillman certainly has a history of mental health issues, she has failed to sufficiently establish a

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[6] Gillman, in fact, acknowledged that it took her awhile to find a doctor that believed her diagnosis, as several doctors opined that she suffered from borderline personality disorder rather than dissociative identity disorder (i.e., multiple personalities). Further, the only medical record admitted at the sentencing hearing was an inpatient discharge summary from 1999 in which the doctor noted:

> The patient has a history of having multiple personalities, but I have encountered only one. It can either be pleasant or grumpy [and] irritable. The patient does have poor judgment and impulse control. She tends to frequently blame problems on to [sic] other people and use the defense mechanisms of projective identification and splitting.

Appendix at 147.

nexus between her current mental condition and the crimes she committed.[7] Her claim that incarceration will lead to an aggravation of her mental illness due to inadequate treatment and access to prescribed medicines is similarly supported only by her own self-serving testimony. Therefore, we cannot agree that her limited period of incarceration will lead to an undue hardship.

Finally, with respect to Gillman's character, we agree with the trial court that Gillman's remorse and guilty plea are not entitled to substantial weight. It is well established that a defendant who pleads guilty deserves to have some mitigating weight extended to the guilty plea in return. *See Cotto v. State*, 829 N.E.2d 520 (Ind. 2005). The extent to which a guilty plea is mitigating, however, will vary from case to case. *See Hope v. State*, 834 N.E.2d 713 (Ind. Ct. App. 2005). As has been frequently observed, "a plea is not necessarily a significant mitigating factor." *Cotto v. State*, 829 N.E.2d at 525; *see also Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead

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[7] Our Supreme Court has explained:

> The American Psychiatric Association's definitions of mental illness, contained in the Diagnostic and Statistical Manual of Mental Disorders (presently "DSM-IV-TR") have continued to expand to the point that a recent study declared that about half of Americans become mentally ill and half do not. This suggests the need for a high level of discernment when assessing a claim that mental illness warrants mitigating weight. In *Weeks v. State*, we laid out several factors to consider in weighing the mitigating force of a mental health issue. Those factors include the extent of the inability to control behavior, the overall limit on function, the duration of the illness, and the nexus between the illness and the crime.

Covington v. State, 842 N.E.2d 345, 349 (Ind. 2006) (footnote and citation omitted). Gillman does not specifically address these factors on appeal.

guilty is merely a pragmatic one"), *trans. denied*. Here, Gillman received a substantial benefit in return for her guilty plea, as the class B felony burglary charge was dismissed. Therefore, while the guilty plea constituted a mitigating circumstance, it was not entitled to substantial weight. Further, the trial court appeared to have largely disregarded Gillman's statement of remorse as lacking sincerity, and we accept its determination of credibility in this regard. *See Gibson v. State*, 856 N.E.2d 142, 148 (Ind. Ct. App. 2006) ("[r]emorse, or lack thereof, by a defendant often is something that is better gauged by a trial judge who views and hears a defendant's apology and demeanor first hand and determines the defendant's credibility"); *see also Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002) ("[w]ithout evidence of some impermissible consideration by the court, we accept its determination of credibility").

In light of our considerations above, we conclude that the imposition of consecutive sentences was not inappropriate. Moreover, we cannot agree with Gillman that the executed portion of her aggregate sentence, 360 out of 2190 days in prison, is inappropriate in light of the nature of the offenses and her character.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.