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IN THE
COURT OF APPEALS OF INDIANA

NICHOLAS R. CORBIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A04-0706-CR-319
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Ronald E. Melichar, Judge
Cause No. 79C01-0003-CF-5

October 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Nicholas R. Corbin pled guilty to burglary[1] as a Class B felony. He was sentenced to sixteen years with twelve years executed and four years suspended to probation. On appeal, Corbin claims that his sentence is inappropriate based on the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 3, 2000, Corbin broke into and entered a trailer home in Lafayette, Indiana with intent to steal certain items. Without permission, Corbin took a Sony PlayStation, five PlayStation games, six audio cassette tapes, forty CDs, and two backpacks. On March 6, 2000, the State charged Corbin with Class B felony burglary and Class D felony theft. Corbin pled guilty to Class B felony burglary, and, in exchange, the State dropped the theft charge. Pursuant to the plea agreement, the executed portion of Corbin's sentence was capped at twelve years.

During his May 17, 2001 sentencing hearing, the trial court found that Corbin was a danger to society. *Tr*. at 32. The trial court sentenced Corbin to an enhanced term of sixteen years on the aggravating circumstance of his criminal history, but suspended four of those years to probation. *Id*. On January 26, 2007, the trial court granted Corbin's motion for a belated appeal. *Appellant's App*. at 58. Corbin now appeals his sentence. Additional facts will be added as needed.

DISCUSSION AND DECISION

[1] *See* IC 35-43-2-1.

Upon appeal, Corbin claims that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character. Pursuant to Indiana Appellate Rule 7(B), this 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." Appellate Rule 7(B) authorizes independent appellate review and revision of a sentence imposed by the trial court; however, the appellant bears the burden of persuading this court that the sentence is inappropriate. *Appellant's Br*. at 7 (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

In attacking the appropriateness of his sentence, Corbin claims that his sentence is too harsh in light of his age, history of mental illness, and his criminal history. Specifically, Corbin contends that his sentence was inappropriate because he was only "twenty-one years of age with a serious history of mental illness. The crime was not particularly horrific, and [Corbin's] mental illness eliminates him from the category of the worst character." *Appellant's Br*. at 6.

Corbin's character is reflected in his criminal history. While admitting that he has a criminal history, Corbin contends that his offenses are not the sort to "invoke the sentiment that he is the worst of the worst." *Appellant's Br*. at 10. We first note that the range for a Class B felony is six to twenty years, with a presumptive sentence of ten years[2]. The plea

[2] The amended versions of IC 35-50-2-5, -6, and -7 (2005) reference the "advisory" sentence, reflecting the April 25, 2005 changes made to the Indiana sentencing statutes in response to *Blakely v. Washington*, 542 U.S. 296 (2004). Since Corbin committed the crime in question on February 3, 2000, before the effective date of the amendments, we apply the versions of the statutes then in effect and refer instead to the presumptive sentence. *See* IC 35-50-2-5, -6, and -7 (2004).

agreement cap of twelve years executed reflects the State and trial court's understanding that Corbin was not the "worst of the worst." *Id*.

In a trial court's initial weighing of criminal history, its significance "'varies based on the gravity, nature and number of prior offenses as they relate to the current offense.'" *Morgan v. State*, 829 N.E.2d 12, 15 (Ind. 2005) (quoting *Wooley v. State*, 716 N.E.2d 919, 929 n.4 (Ind. 1999)). These same factors also shed light on a defendant's character. Here, Corbin was charged with two counts of what would be possession of stolen property if committed by an adult, and was adjudicated a delinquent child in 1993. Two years later, he was charged with what would be criminal mischief and two counts of battery if committed by an adult. From 1995 to 1996, in response to Corbin's increasingly unruly behavior, the State successively moved him from the Cary Home, to the Dearborn County Secure Detention, to White's Institute, to Johnson County Detention Center, and finally to Arizona Boys Ranch Academy. In 1999, Corbin was convicted of Class D felony theft and Class A misdemeanor resisting law enforcement and was sentenced to three years incarceration, suspended on unsupervised probation. In 2000, Corbin was again charged with and convicted of Class D felony theft and sentenced to three years incarceration, suspended on unsupervised probation. These theft convictions were close in time and relation to the instant offense. Additionally, the present crime was committed while Corbin was on probation. *Tr*. at 7.

Notwithstanding this history, Corbin contends that his extensive history of mental illness and his guilty plea are redeeming factors that the trial court failed to consider in imposing his sentence. Our Supreme Court has determined that the significance of a guilty

plea as a mitigating factor may vary from case to case. *See Francis v. State*, 817 N.E.2d 235, 238 n.3 (Ind. 2004). A guilty plea is not significantly mitigating where the defendant has received a substantial benefit from it or where the evidence of guilt is such that the decision to plead guilty is merely a pragmatic one. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied* (2006). Here, in exchange for his guilty plea, the trial court dismissed a Class D felony theft count. Additionally, the probable cause affidavit revealed that Corbin's guilt would have been relatively easy to prove since he used his army identification during the sale of the stolen items and the purchaser remembered the transaction. *Appellant's App.* at 10. Corbin's decision to plead guilty was pragmatic because he received the benefit of one less felony conviction.

As to Corbin's history of mental illness, while the record is replete with evidence that Corbin has battled mental illness much of his life, there is no evidence that this condition impacted Corbin's decision to commit the instant offense. "[A] defendant's mental illness is afforded mitigating weight in circumstances that establish a nexus between the mental illness and the offense for which the defendant is being sentenced." *Evans v. State*, 855 N.E.2d 378, 387-88 (Ind. Ct. App. 2006), *trans. denied* (2007) (citing *Corralez v. State*, 815 N.E.2d 1023, 1026 (Ind. Ct. App. 2004)). Corbin has not demonstrated any such nexus, and therefore, any mental illness would not be a significant mitigating factor. Moreover, the trial court concluded, "There are literally thousands upon thousands of people who have mental health problems that do not do what you have done." *Tr*. at 32. Accordingly, Corbin's mental health problems do not impact his character in such a way as to make his sentence inappropriate.

Over the years, the State provided Corbin with counseling and probation in an effort to help him turn around his life. However, Corbin continued down a path of crime and even committed the current offense while on probation for a previous theft. In his plea agreement, Corbin agreed to a twelve-year cap on his executed sentence. The trial court sentenced Corbin to sixteen years with twelve years executed and four years suspended to probation. Corbin has failed to convince us that his sentence was inappropriate in light of the nature of the offense and his character.

Affirmed.

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