

**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAMES H. GRAY, )

Appellant-Defendant, )

vs. )

STATE OF INDIANA, )

Appellee-Plaintiff. )

No. 18A05-0705-CR-251

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APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable Marianne L. Vorhees, Judge  
Cause No. 18C01-0608-FB-18

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**November 5, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant James H. Gray appeals the six-year sentence imposed by the trial court following Gray's guilty plea to Burglary,<sup>1</sup> a class C felony. Gray argues that the sentence is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm the judgment of the trial court.

### FACTS

At some point in time, Gray and Daniel Flowers lived in the same Muncie apartment complex. Flowers called the police and his landlord on several occasions to complain about Gray, and as a result, Gray was evicted. On May 21, 2006, in retaliation for Flowers's complaints, Gray and a friend entered Flowers's apartment while he was not home with the intent to commit theft therein. While inside, they drank some of Flowers's beer, ransacked the apartment, threw the refrigerator to the ground, smashed eggs onto the floor and walls, and overturned and smashed an aquarium, killing the twenty fish that were inside. On March 19, 2007, Flowers pleaded guilty to class C felony burglary, and the plea agreement left sentencing open to the trial court's discretion. Following an April 23, 2007, sentencing hearing, the trial court sentenced Gray to a six-year executed sentence. Gray now appeals.

### DISCUSSION AND DECISION

Gray argues that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character pursuant to Appellate Rule 7(B).<sup>2</sup> In reviewing a

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<sup>1</sup> Ind. Code § 35-43-2-1.

<sup>2</sup> Gray's actual argument is that the sentence is manifestly unreasonable. We have not applied that test for over four years, however, inasmuch as Indiana Appellate Rule 7(B) was amended on January 1, 2003, and now provides that we must examine whether a defendant's sentence is inappropriate in light of the nature of

Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

We turn first to the nature of the offense. Not content to simply steal Flowers's property and ransack the apartment, Gray smashed eggs on the floor and walls, overturned the refrigerator, and knocked over the aquarium, killing all twenty fish inside. Gray's actions were vengeful, spiteful, and unnecessary, leaving Flowers feeling violated and unsafe.

As to Gray's character, we note that he has a criminal history that dates back to 1999, when he was convicted of two counts of class D felony arson at the age of seventeen. Subsequently, he was convicted of wanton endangerment, criminal mischief, and class D felony theft. He was on shock probation for the theft conviction at the time he committed the instant offense. During the pendency of this case, he pleaded guilty to nuisance stemming from public intoxication. Gray has failed to take advantage of the prior lenient treatment he has received from the criminal justice system and his behavior evinces a disregard for the rule of law and an unwillingness to treat his fellow citizens with basic dignity and care. Consequently, we do not find that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and Gray's character.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.

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the offense and character of the offender. We caution counsel to conduct a more thorough legal research process in the future.