

STATEMENT OF THE CASE

Appellant-Defendant, Johnny N. Standberry (Standberry), appeals his conviction for Count I, theft, a Class D felony, Ind. Code § 35-43-4-2(a), and Count II, resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3(a)(1).

We affirm.

ISSUE

Standberry raises one issue on appeal, which we restate as follows: Whether his sentence is appropriate in light of the nature of the offense and the character of the offender.

FACTS AND PROCEDURAL HISTORY

In March of 2006, Raymond Elliott (Elliott) was the station manager of a Gas America station on North Michigan Road in Carmel, Indiana. He was in his office conducting an interview on the phone when he saw Standberry on the video surveillance system putting cigars from the store's cigar rack into his open shirt and jacket. As he observed this behavior, Elliott contacted the Hamilton County Sheriff's Office and stayed on the phone with the Sheriff's Office until Deputy Gary Brown (Deputy Brown) arrived at the store.

Standberry was still in the store when Deputy Brown arrived, so both the Deputy and Elliott confronted him together. Deputy Brown asked Standberry what was going on, and Standberry replied, "I'm sorry. It's wrong. I'll give them back to you. I'll clean the store. I'll clean the whole parking lot." (Transcript p. 25). He also offered to pay for the items to avoid going to jail and removed the cigars from his jacket. In total, the amount of cigars in his possession turned out to be worth around \$289.00.

After Standberry removed the cigars from his jacket, Deputy Brown told him that he was going to arrest him for theft, and Standberry broke away and ran through the store. Deputy Brown pursued him and eventually caught him by running him into a wall. During the ruckus, however, Standberry and Deputy Brown knocked items off of shelves and knocked the store's map rack over. After catching Standberry, Deputy Brown immediately took him to the Hamilton County Jail.

On March 28, 2006, the State filed an Information charging Standberry with Count I, theft, a Class D felony, I.C. § 35-43-4-2(a), and Count II, resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3(a)(1). On December 22, 2009, a jury trial was held. Standberry did appear for the trial, but disappeared during the trial without informing anyone where he was going or even that he was leaving. At the close of evidence, the jury found Standberry guilty on both Counts.

On March 26, 2010, the trial court sentenced him to three years for theft and one year for resisting law enforcement, with sentences to run concurrently. The trial court also ordered these sentences to run consecutively to sentences for other causes. As aggravating factors, the court noted that Standberry had an extensive criminal history, had recently violated the conditions of his probation, and had recently violated the terms of his release on bond. As mitigating factors, the trial court also noted that Standberry provided emotional support to his family and had an ill wife.

Standberry now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Under 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. *Childress v. State*, 848 N.E.2d 1073, 1079-80 (Ind. 2006). Although this court is not required to use "great restraint," we nevertheless exercise deference to a trial court's sentencing decision, both because Appellate Rule 7(B) requires that we give "due consideration" to that decision and because we recognize the unique perspective a trial court has when making decisions. *Stewart v. State*, 866 N.E.2d 858, 865-66 (Ind. Ct. App. 2007). The "principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). In addition, the defendant bears the burden of persuading this court that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

Here, the trial court imposed a three year sentence for theft, a Class D felony, and a one year sentence for resisting law enforcement, a Class A misdemeanor. Indiana Code section 35-50-2-7 authorizes a six-month to three year sentence for a Class D felony, with an advisory sentence of one and one-half years. Indiana Code section 35-50-3-2 authorizes a sentence of up to one year for a Class A misdemeanor. Thus, the trial court imposed the maximum sentence allowed under the statute for both Counts.

I. *Nature of the Offense*

Standberry argues that his sentence is inappropriate in light of the nature of his offense because the value of the cigars he tried to take did not exceed three hundred dollars. He also did not leave the store with the cigars or instigate violence against law enforcement; he merely “jerked away and attempted to run away.” (Appellant’s Brief p. 4).

We do not agree with Standberry’s characterization of his offenses. First, his theft was not what the trial court characterizes a “major theft,” but it was nevertheless a theft, and he resisted apprehension. Standberry did not initiate violence against law enforcement, but his actions had the same effect when he jerked and ran away. Both Elliott and Deputy Brown noted that Standberry’s flight disrupted several sections of the store, and Deputy Brown also had to resort to physical force in order to apprehend him. In the end, Deputy Brown was only able to subdue Standberry by pushing him against a wall.

Due to these factors, we cannot conclude that the trial court’s sentence was inappropriate for the nature of Standberry’s offenses. Standberry deliberately tried to take cigars from Gas America, and he also resisted arrest in spite of the fact that his actions might have caused either Deputy Brown or Elliott harm.

II. *Character of the Offender*

Next, Standberry argues that his character does not support his sentence because he has an invalid wife and two children for whom he provides emotional support. Even though he left his own trial without warning, he claims he did so because he wanted to be with his wife in case he was found guilty and could not see her for a long time. Standberry also has

medical issues that he claims would make such a long stay in prison particularly punitive in nature.

Standberry's health concerns are sympathetic, as are his concerns for his wife's care and his emotional support of his children. In a discussion of Standberry's character, though, it is impossible to overlook his extensive prior criminal history. The weight that courts should give prior convictions varies based on the gravity, nature, and number of prior convictions as they relate to the current offense. *Bryant v. State*, 841 N.E. 2d 1154, 1156-57 (Ind. 2006). In other words, a prior theft conviction carries more weight in a sentencing for theft than it does in a sentencing for murder. *See id.* at 1157.

Standberry's convictions over the past forty years are extensive in quantity, but his history is even more significant as it relates to the current offense. Since 1971, Standberry has been convicted thirteen times for theft-related crimes and three times for resisting law enforcement. Even if Standberry does not consider his offense in the instant case significant, his actions show a pattern of disregard for the law in regards to both theft and resisting law enforcement. He also cannot seem to get out of the courts before he must appear before them again, as is evident in the fact that he recently violated the terms of his probation and the terms of his release on bond. The trial court's comment that, "[w]e can't get one case done before you've accrued two or three more" seems especially valid in this instance. (Tr. p. 100).

The situation here is not an "outlier" that this court needs to address in order to improve sentencing statutes and guide trial courts. Instead, this court acknowledges that

there is ample support in the record for the trial court's sentencing decision. In light of Standberry's excessive criminal history, we cannot say that the trial court inappropriately measured Standberry's character. Instead, this court thinks that the trial court's sentence is appropriate in regards to the nature of Standberry's offense and his character.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly sentenced Standberry.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.