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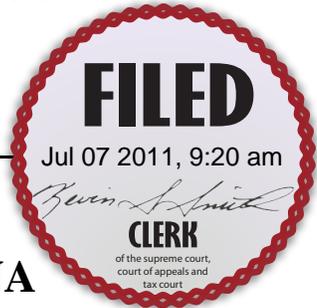
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**IN THE
COURT OF APPEALS OF INDIANA**

VERNON D. HALL,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 57A04-1012-CR-797

APPEAL FROM THE NOBLE CIRCUIT COURT
The Honorable G. David Laur, Judge
Cause No. 57C01-0912-FB-58

July 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Vernon Hall drove Anthony Hoover to the home of Rebecca Taylor so that Hoover could steal a CD player from her car. After acquiring the CD player, Hoover took a Blu-ray player, approximately \$200 in change, and prescription drugs from Taylor's home. Hall was charged with several crimes, including class B felony burglary, to which he pled guilty. The trial court sentenced Hall to ten years in prison with the final two years suspended to probation. Hall argues that his sentence is inappropriate based on the nature of the offense and his character. He has failed to meet his burden of showing that the sentence is inappropriate, and therefore we affirm.

Facts and Procedural History

On December 26, 2009, Hall drove Hoover to the home of Rebecca Taylor, Hoover's aunt. Hall knew that Hoover planned to steal Taylor's CD player from her vehicle. Hoover also went inside the home and stole around \$200 in change, a Blu-ray player, and some prescription drugs. The State charged Hall with class B felony burglary, class B felony manufacturing methamphetamine, class C felony possession of methamphetamine, class D felony possession of a controlled substance, and class B misdemeanor visiting a common nuisance. In exchange for the dismissal of the remaining charges, Hall pled guilty to the burglary. Sentencing was left to the trial court's discretion. The trial court gave Hall a sentence of ten years with two years suspended to probation. Hoover pled guilty to two class B felonies and was given six-year concurrent sentences for his convictions.

Discussion and Decision

Hall challenges his sentence. In *Anglemyer*, our supreme court presented a four-part analysis for reviewing sentences on appeal. 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 482 (“*Anglemyer II*”). First, the sentencing court must provide a statement with “reasonably detailed reasons or circumstances” for the sentence. *Id.* at 491. Second, those reasons given, or others omitted and arguably supported by the record, are reviewable only for abuse of discretion. *Id.* Third, the weight given to those reasons found, or those that should have been found, is not reviewable for abuse. *Id.* Finally, review by appellate courts of the merits of a sentence may be sought on the grounds outlined in Indiana Appellate Rule 7(B). *Id.*

The trial court’s sentencing statement reads as follows:

Mr. Hall... your record isn’t the worst I see... but what I don’t like about [it] is that things seem to be getting worse, not better. You go from [m]isdemeanors . . . and probation to . . . getting felonies. The Battery, a repeat offense,^[1] along with a probation violation again [is] . . . not good . . . that’s not the way you ought to be moving, you ought to be moving in the other direction. So I want to get you hopefully started in the other direction. I’ve decided that the advisory sentence is appropriate and so I’m going to impose a ten-year sentence. I’m going to give . . . [you] eight[y]-eight days credit. I’m going to . . . suspend two of those years to transition you out. I’m going to recommend you be placed at . . . a facility with a drug program, vocational training, GED, and a program called . . . Thinking for Change, because [your] thinking needs a change.

Tr. at 68-69.

Hall does not contend that the reasons the court gave in support of its sentence are

¹ Both Hall and the State reference the second battery charge in their briefs. The presentence investigation report indicates that the charge was amended to disorderly conduct.

incorrect, and he does not argue that those reasons are not supported by the record. Under *Anglemyer*, he cannot argue that the weight given to those particular reasons in support of his sentence are incorrect. *Anglemyer*, 868 N.E.2d at 491. To the extent that Hall appears to be advancing mitigation arguments he did not make at his sentencing hearing, “[g]enerally, if the defendant fails to advance a mitigating circumstance at sentencing, this court will presume that the factor is not significant, and the defendant is precluded from advancing it for the first time on appeal.”² *Creekmore v. State*, 853 N.E.2d 523, 530 (Ind. Ct. App. 2006), *clarified on denial of reh’g on other grounds* 858 N.E.2d 230, *trans denied*. Therefore, Hall’s last possible basis for redress is Appellate Rule 7(B).

We may revise a sentence authorized by statute if, after due consideration of the trial court’s sentencing decision, we find that the sentence imposed is inappropriate in light of the nature of the offense and the defendant’s character. Ind. Appellate Rule 7(B). However, an appellate court does not merely substitute its judgment for that of the trial court. *Book v. State*, 880 N.E.2d 1240, 1252 (Ind. Ct. App. 2008), *trans. denied*. The question under Appellate Rule 7(B) “is not whether another sentence is *more* appropriate, [but] whether the sentence imposed is inappropriate.” *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008).

“Although [Appellate Rule 7(B)] does not require the reviewing court to be extremely deferential to a trial court’s sentencing decision, the reviewing court still gives due consideration to that decision.” *Richardson v. State*, 906 N.E.2d 241, 247 (Ind. Ct. App.

² Hall did not raise undue hardship or his cooperation with police as mitigating circumstances at the sentencing hearing.

2009). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

“The advisory sentence is the starting point our legislature has selected as an appropriate sentence for the crime committed.” *Richardson*, 906 N.E.2d at 247. A person who commits a class B felony shall be imprisoned for a fixed term of between and six and twenty years, with the advisory sentence being ten years. Ind. Code § 35-50-2-5. Hall believes that he deserved less than the advisory sentence. Regarding the nature of the offence, he argues that his role in the crime was minor, that the Taylor family was not home at the time of the incident, and that Taylor suffered no permanent loss.

Nothing about the nature of the offense indicates that Hall’s sentence is not appropriate. Indiana does not distinguish between principals and those who simply aid in the commission of crimes. *McNeill v. State*, 936 N.E.2d 358, 360 (Ind. Ct. App. 2010). Although Hall did not enter the home, he also did nothing to prevent the crime from occurring and transported Hoover to and from Taylor’s home. Furthermore, the fact that the Taylor family was not home at the time of the offense does not lend support to Hall’s character. Their absence merely made the crime easier to get away with; it was not a gesture of goodwill extended by Hall. Finally, the reasons that Taylor suffered no permanent loss had little to do with Hall. Hall’s door was not damaged because it was left unlocked and she had her things returned to her because the police quickly apprehended Hall and Hoover.

As proof of his character, Hall points out that he pled guilty and had no prior felony convictions. Regarding his guilty plea, our supreme court has held that “some mitigating”

weight should be given to defendants when they plead guilty. *Anglemyer II*, 875 N.E.2d at 220. However, when the guilty plea is “more likely the result of pragmatism than acceptance of responsibility and remorse,” the amount of weight given differs. *Flickner v. State*, 908 N.E.2d 270, 273-74 (Ind. Ct. App. 2009). In return for Hall pleading guilty, the State dropped three other felony counts against him. When a “defendant receives a benefit from a plea agreement, trial courts often conclude that the defendant is not entitled to any additional benefit for pleading guilty.” *Webb v. State*, 941 N.E.2d 1082, 1089 (Ind. Ct. App. 2011), *trans. denied*. To the extent that Hall argues that the charges were dropped because they were not likely to be proved, his argument is mere speculation.

As for Hall’s argument that his lack of prior felony convictions supports his character, the lack of *felony* convictions does not tell a complete story. He has one class A misdemeanor conviction for battery, another class A misdemeanor conviction for operating while intoxicated, and he was convicted of class B misdemeanor disorderly conduct. He failed to comply with the terms of his probation for two of his convictions and was on probation at the time of this offense. These facts do not reflect favorably on his character, and as the trial court noted, his actions appear to be increasing in severity.

Finally, Hall complains that his sentence is longer than Hoover’s. It is unclear how Hoover’s sentence in any way relates to Hall’s character. In any event, this Court has already held that a defendant’s sentence was not inappropriate in light of his character and the nature of the offense, even though, as an accomplice, he received a harsher sentence than a principal. *Herron v. State*, 808 N.E.2d 172, 179 (Ind. Ct. App. 2004). Appellate Rule 7(B)

“provides no categorical benefit to an actor by virtue of his having been charged as an accomplice. *Each* actor is assessed on the facts available.” *Id.* Hall has not persuaded us that his sentence is inappropriate. Accordingly, we affirm.

Affirmed.

NAJAM, J., and ROBB, C.J., concur.