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IN THE
COURT OF APPEALS OF INDIANA

DILLON L. PHILLIPS	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 59A01-1012-CR-684
	)	
STATE OF INDIANA	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ORANGE CIRCUIT COURT
The Honorable Larry R. Blanton, Judge
Cause No. 59C01-1004-FB-42

August 12, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Dillon L. Phillips (Phillips), appeals his sentence following a guilty plea to three Counts of burglary, Class B felonies, Ind. Code § 35-43-2-1; three Counts of theft, Class D felonies, I.C. § 35-43-4-2(a); and one Count of criminal mischief, a Class D felony, I.C. §§ 35-43-1-2(a)(1); -(B)(i).

We reverse.

ISSUES

Phillips raises two issues on appeal, which we restate as:

(1) Whether the trial court properly sentenced him; and

(2) Whether Phillips waived a double jeopardy claim when he pled guilty to all crimes with which he was charged.

FACTS AND PROCEDURAL HISTORY

On March 5, 2010, Dillon and his friends, Justin Van Brunt (Van Brunt) and Johnny Gulasa (Gulasa), burglarized a farm house in Orange County, Indiana, stealing guns, a Wii, jewelry, and prescription pills. The three men sold some of the guns at a Salem gun show. On March 20, Phillips spent the night with Van Brunt and Gulasa. At that time, they planned the burglary of another home to steal items that they could sell. The following evening, the three men drove over to the targeted house. Phillips kicked in the side door and all three entered the house, wearing gloves. Phillips took items from the residence and carried them to the car. He kicked holes in the drywall and turned over a china cabinet. After the three men finished stealing items and vandalizing the home, they hid the stolen items in an abandoned

barn. Three days later, on March 23, 2010, Philips and the two others broke into a state police detective's home where they stole the detective's guns, a bullet-proof vest, and the keys to the detective's police car. The three men took the guns to Gulasa's house.

On April 30, 2010, after the trial court granted the State's waiver of juvenile jurisdiction, the State filed an Information charging Phillips with three Counts of burglary, Class B felonies, I.C. § 35-43-2-1; three Counts of theft, Class D felonies, I.C. § 35-43-4-2(a); and one Count of criminal mischief, a Class D felony, I.C. §§ 35-43-1-2(a)(1); -(B)(i). On August 30, 2010, Phillips pled guilty to all Counts and the trial court entered a judgment of conviction. On December 1, 2010, the trial court sentenced Phillips as follows:

> Count 1 [burglary]: 10 years to the Department of Correction [DOC], with 6 years executed, 4 years suspended, to run consecutive to Counts 3 and 5, run concurrent with Counts 2, 4, 6, 7. [Phillips] to be given credit for time served of 253 actual days;
> Count 2 [theft]: 3 years [DOC], all executed to run concurrent to Counts 1, 3, 4, 5, 6, 7;
> Count 3 [burglary]: 10 years [DOC], 8 years executed, 2 years suspended to run consecutive to Counts 1 and 5, run concurrent with Counts 2, 4, 6, 7;
> Count 4 [theft]: 3 years [DOC], all executed, to run concurrent with Counts 1, 2, 3, 5, 6, 7;
> Count 5 [burglary]: 10 years [DOC], 6 years executed, 4 years suspended, to run consecutive to Counts 1 and 3, to run concurrent with Counts 2, 4, 6, 7;
> Count 6 [theft]: 3 years [DOC], all executed, to run concurrent with Counts 1, 2, 3, 4, 5, 7;
> Count 7 [criminal mischief]: 3 years [DOC], all executed, to run concurrent with Counts 1, 2, 3, 4, 5, 6.

(Appellant's App. p. 26). In sum, the trial court imposed an aggregate sentence of thirty years, with twenty years executed and ten years suspended to probation.

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

DISCUSSION AND DECISION

I. *Sentence*

Phillips contends that the trial court abused its discretion when it imposed an aggregate sentence of thirty years. It should be noted that Phillips received the advisory sentence on the burglary convictions and received the maximum sentence on the theft and criminal mischief convictions. *See* I.C. §§ 35-50-2-4; -5.

As long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *aff'd on reh'g,* 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id*. Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id*. On appeal, it is the defendant's burden to persuade us that the sentence imposed by the trial court is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

With respect to the nature of the crime, we note that Phillips planned and committed three burglaries. He organized the burglaries with two friends, wearing gloves when entering the residences. He vandalized the homes of three separate victims, intentionally kicking

holes in the drywall, and ransacking the victims' belongings.

Turning to his character, Phillips mentions that he was seventeen years old at the time of the crimes, had no criminal history, and was an honor roll student and was college bound having been accepted for admission at both Purdue University and the University of Indianapolis. Nevertheless, as pointed out by the trial court:

> From all the records, all the evidence, all the testimony from your mother, from your father and everyone who has presented any evidence for you [] they have told me what a good person you were, what a bright individual, what a bright future, what a handful of golden coins you had. Threw them away. You traded your future for mess of potage, for a bowl of soup, you gave away everything that you had to look forward to in your life.

(Transcript p. 98).

The record reflects that Phillips has no prior criminal history and he was the youngest of the three participants to the burglaries. While he did commit three burglaries, these burglaries happened in a short time span, *i.e.*, a mere eighteen days. During the investigations, he cooperated with the police and confessed to the burglaries. He took responsibility for his actions and entered into an open plea agreement without receiving any benefits from the State by dismissing certain Counts or stipulating to a maximum sentence. His offenses were property offenses, with no injuries to persons. And as acknowledged by the trial court, he expressed remorse and sorrow.

Based on this evidence, we conclude that Phillips' sentence is inappropriate. Considering his young age and clean record, he should be given a chance at rehabilitation to redeem himself and straighten out his life. As such, we reduce his sentence by running all

Counts concurrent to each other for an aggregate sentence of ten years, of which six years will be executed and four years will be served on probation.

II. *Double Jeopardy*

In a one-paragraph two-sentence statement, Phillips argues that his convictions for burglary and theft violate the prohibition against double jeopardy. However, it should be noted that Phillips was convicted following a plea of guilty. In *Mapp v. State*, 770 N.E.2d 1132, 1135 (Ind. 2002), our supreme court held that when a defendant enters a plea agreement he waives the right to attack his plea based on double jeopardy. Therefore, we affirm the trial court.

CONCLUSION

Based on the foregoing, we conclude that the trial court's sentence is inappropriate in light of Phillips' character but Phillips waived his double jeopardy claim after pleading guilty.

Reversed.

NAJAM, J., and MAY, J., concur.