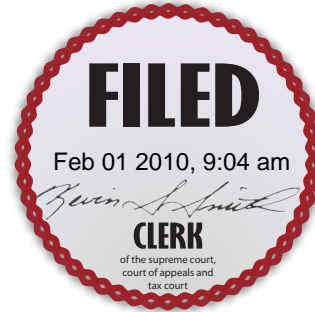


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

COY BRINDLE,)
)
Appellant- Defendant,)
)
vs.) No. 05A04-0909-CR-510
)
STATE OF INDIANA,)
)
Appellee- Plaintiff,)

APPEAL FROM THE BLACKFORD CIRCUIT COURT
The Honorable Dean A. Young, Judge
Cause No. 05C01-0810-FC-55

February 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Coy Brindle appeals the six-year sentence imposed following his guilty plea to robbery, a Class C felony. For our review, Brindle raises a single issue, whether his sentence is inappropriate in light of the nature of his offense and his character. Concluding Brindle's sentence is not inappropriate, we affirm.

Facts and Procedural History

On October 23, 2008, Brindle and two girls noticed an elderly couple leaving a medical facility carrying a large bag of prescription medications. Brindle and the girls followed the elderly couple to the couple's home. As the elderly man got out of his car holding a plastic box containing prescription medications, Brindle ran up to him, grabbed the box and fled down the road, eventually reuniting with the two girls and driving off.

On October 24, 2008, the State charged Brindle with robbery, a Class C felony. Sometime after being charged, Brindle voluntarily admitted himself to an in-patient substance abuse treatment program. On March 27, 2009, Brindle entered into a plea agreement whereby he would plead guilty to the charge in return for a four-year cap on the executed portion of his sentence. The plea agreement otherwise left sentencing to the discretion of the trial court. In addition, the State agreed it would not object to any subsequent motions by Brindle to modify his sentence. The trial court held a sentencing hearing on June 29, 2009, at which it accepted Brindle's guilty plea and heard testimony from Brindle. At the sentencing hearing, Brindle admitted he had been arrested three days prior to the hearing.¹ Brindle also admitted he had been smoking marijuana and drinking alcohol – despite the fact he was only twenty years old – on the day he was

¹ The record does not include any details of the arrest other than those provided by Brindle.

arrested. These events occurred less than one week after Brindle was released from the in-patient substance abuse treatment program. The trial court sentenced Brindle to six years with four years executed with the Department of Correction and two years suspended to probation. The trial court also indicated Brindle could request sentence modification after three years, and it would look favorably upon the request if Brindle had “behaved well ... and taken advantage of programs available with respect to his substance and mental health issues.” Appellant’s Appendix at 104. Brindle now appeals.

Discussion and Decision

I. Standard of Review

Brindle’s sentence is two years above the advisory sentence for a Class C felony. See Ind. Code § 35-50-2-6. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence if, after due consideration of the trial court’s decision, we find that the sentence “is inappropriate in light of the nature of the offense and the character of the offender.” When making this decision, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 196 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) (“[I]nappropriateness review should not be limited ... to a simple rundown of the aggravating and mitigating circumstances found by the trial court.”). However, the defendant bears the burden to “persuade the appellate court that his ... sentence has met this inappropriateness standard of review.” Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

II. Inappropriateness of Sentence

A. Nature of the Offense

Brindle robbed an elderly couple of a large amount of medication. In addition to the statutorily recognized aggravating circumstance of the couple's age, see Ind. Code § 35-38-1-7.1(a)(3), some older adults rely on medication to combat potentially life-threatening diseases and medical conditions; Brindle did not know what medication he was stealing or what potential effect the loss of medication might have on the couple. Thus, Brindle showed a complete disregard for the potentially deadly consequences of his actions. In addition, Brindle conceived of and planned the crime. He noticed the couple carrying the large bag of medication and, perceiving an opportunity to get high, followed the couple to their home and robbed them. Based on these facts, Brindle's offense is more egregious than a typical robbery. As a result, we cannot say his sentence is inappropriate in light of the nature of his offense.

B. Character of the Offender

Brindle reported during the pre-sentence investigation that he has abused alcohol, marijuana, cocaine, opiates, and methadone on a regular basis since he was sixteen. Brindle also reported he briefly used heroin around the time of the present offense. In 2007, Brindle was charged with operating a vehicle while intoxicated ("OWI"). Brindle entered into a conviction deferral agreement that included a requirement that he attend a court-ordered alcohol and drug abuse program. However, Brindle failed to comply with the trial court's order and the OWI charge was reinstated. Brindle committed the present offense while awaiting trial on the OWI charge.

Brindle asks us to consider his substance abuse problem in analyzing his character. After posting bond for his release on the present charge, Brindle voluntarily admitted himself to a six-month substance abuse treatment program. Although Brindle successfully completed the six-month term, he abused alcohol and marijuana less than one week after leaving the program and only three days before his sentencing hearing. Thus, Brindle has demonstrated an apparent inability or unwillingness to combat his substance abuse problem or to avoid criminal behavior.

Brindle also asks us to consider his mental health issues in analyzing his character. Initially we point out the record contains no evidence of diagnosed mental health problems other than addiction. Brindle's father speculated Brindle suffers from bipolar disorder or some sort of chemical imbalance. However, Brindle has made only meager attempts to address any potential mental health problems. One reason for this, according to his father, is that Brindle has been unable to stem his drug use long enough to allow for effective diagnostic testing. In addition, Brindle has not demonstrated that his alleged mental illness limits his ability to function or to understand the difference between right and wrong.

We do note that Brindle accepted responsibility for his actions by pleading guilty pursuant to a plea agreement that provided little benefit to him. Brindle also expressed his remorse both during the pre-sentence investigation and during the sentencing hearing. However, any positive effect of Brindle's expressed remorse must be tempered by the fact he committed additional crimes just three days before his sentencing hearing. Based on the above discussion, we cannot say Brindle's sentence is inappropriate in light of his

character. This is especially true given the trial court's offer to entertain a request for sentence modification if Brindle behaves well and takes steps to address his substance abuse problems during the first three years of his incarceration.

Brindle bears the burden of establishing his sentence is inappropriate in light of the nature of his offense and his character, and he has failed to do so. Brindle has expressed his desire to free himself from drug and alcohol addiction but has demonstrated an unwillingness or inability to do so up to this point. We encourage Brindle to use his period of incarceration as an opportunity to finally combat his addictions and turn his life in a positive direction.

Conclusion

Brindle's six-year sentence is not inappropriate in light of the nature of his offense and his character. Therefore, we affirm the sentence.

Affirmed.

BAKER, C.J. and BAILEY, J., concur.