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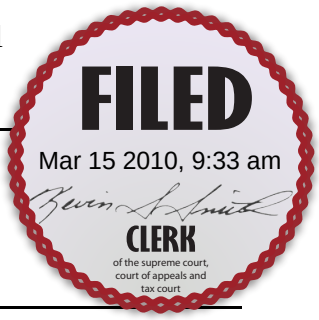

IN THE COURT OF APPEALS OF INDIANA

ROBERT J. DROHER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 75A05-0912-CR-704
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STARKE CIRCUIT COURT
The Honorable Kim Hall, Judge
Cause No. 75C01-0804-FB-6

March 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Robert J. Droher appeals the fourteen-year sentence imposed by the trial court after Droher was convicted of Robbery,[1] a class B felony. Droher argues that the trial court considered two improper aggravators and that the sentence is inappropriate in light of the nature of the offense and his character. Finding no error and finding that the sentence is not inappropriate, we affirm.

FACTS

At approximately 8:30 p.m. on February 11, 2008, Droher entered a gas station in Starke County and went into the restroom, where he remained for approximately five minutes. After he emerged, he went to purchase a candy bar. He handed the cashier, Karen Shotton, a five-dollar bill. When Shotton attempted to give Droher his change, he pulled out a gun and ordered her not to close the cash register drawer. Shotton emptied the cash register and gave the money to Droher, pleading with him not to harm her. Droher took approximately $159 and fled the scene in his vehicle. Following the incident, Shotton required medical attention because she was in a panic and became very light-headed. Subsequently, sixty-two-year-old Shotton experienced mental anguish, loss of sleep, and extreme nervousness.

On April 2, 2008, the State charged Droher with class B felony robbery. On July 8, 2009, a jury found Droher guilty as charged. At Droher's July 31, 2009, sentencing hearing, the trial court found his criminal history and the mental anguish caused to

[1] Ind. Code § 35-42-5-1.

Shotton as aggravating factors. The trial court found no mitigators, and imposed a fully executed fourteen-year sentence. Droher now appeals.

DISCUSSION AND DECISION

I. Aggravating Factors

Droher first argues that the two aggravators found by the trial court are erroneous. We review sentencing decision for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (2007). A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91.

Droher's criminal history includes multiple juvenile adjudications, and, as an adult, five misdemeanor convictions, including two for resisting law enforcement. Although a misdemeanor conviction, alone, would not necessarily constitute a proper aggravator, here, the fact that Droher has amassed five such convictions—two of which are for resisting law enforcement—means that this aggravator is proper as a matter of law and supported by the record. Droher's arguments related to his criminal history amount to a contention that the trial court afforded too much weight to this aggravator, which is no longer an argument we consider on appeal. Therefore, we decline to find that the trial court erred with respect to this aggravator.

The trial court described the second aggravator as follows: "[Droher] caused the victim, who was sixty-two (62) years old, mental anguish, loss of sleep, and extreme

nervousness. Inasmuch as she works with the public, daily, in the same business where the Robbery took place, the fear of a similar act will likely continue for the victim." Appellant's App. p. 29-30. The State alleged that Droher committed class B felony robbery by knowingly or intentionally taking property from the gas station by putting Shotton in fear while armed with a deadly weapon. I.C. § 35-42-5-1; Appellant's App. p. 6. Droher argues that this aggravator essentially amounts to the fact that he placed Shotton in fear, which is an element of the offense. See McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007) (holding that a material element of the underlying crime may not be used as an aggravator).

We cannot agree with Droher's analysis of this aggravator. The trial court was not focusing on the fear in which Shotton was placed during the commission of the robbery. Instead, the trial court considered the impact that the robbery has had on her life, causing her to lose sleep, experience mental anguish, and continuing to affect her ability to perform her job without fear. The General Assembly has explicitly stated that "[t]he harm . . . suffered by the victim of an offense" is a proper aggravator if it is "significant . . . and greater than the elements necessary to prove the commission of the offense." Ind. Code § 35-38-1-7.1. We do not find that the trial court abused its discretion by finding the harm suffered by Shotton fit those criteria and qualified as an aggravator.

II. Appropriateness

Droher next contends that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a 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). Droher's fourteen-year sentence is greater than the ten-year advisory term for a class B felony but six years less than the maximum term of twenty years imprisonment. I.C. § 35-50-2-5.

As for the nature of Droher's offense, he robbed a gas station at gunpoint, placing the sixty-two-year-old cashier in fear and causing her subsequent mental anguish and loss of sleep. As for Droher's character, he has amassed a significant criminal history at the young age of twenty-one. As a juvenile, Droher was adjudicated a delinquent for acts that would have been class A misdemeanor criminal mischief and class D felony possession of a controlled substance. He also violated the terms of his probation multiple times as a juvenile. As an adult, Droher has been convicted of two counts of class C misdemeanor illegal possession of alcohol, class B misdemeanor reckless driving, and two counts of class A misdemeanor resisting law enforcement. At the time the presentence investigation report was filed, there was a pending allegation of probation violation.

Droher's contacts with the judicial system began when he was fourteen years old and have essentially continued unabated since that time. He shows no indication of a willingness or desire to abide by the rule of law or respect his fellow citizens, and his offenses have increased in frequency and severity since he reached the age of majority. When asked by an acquaintance why he committed the instant robbery, Droher "shrugged his shoulders and said he was bored." Tr. p. 210. Droher has been given numerous opportunities to change his behavior and has refused to do so, expressing disdain for the rule of law. Under these circumstances, we do not find the fourteen-year sentence imposed by the trial court to be inappropriate in light of the nature of the offense and his character.

The judgment of the trial court is affirmed.

BAILEY, J., and ROBB, J., concur.