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IN THE COURT OF APPEALS OF INDIANA

IRA BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0910-CR-1007
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0811-FB-268645

May 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Ira Brown appeals his conviction for robbery, as a Class B felony, and the sentence imposed following a jury trial. Brown raises the following two issues for our review:

1. Whether the State presented sufficient evidence to support his conviction.

2. Whether his sentence is inappropriate in light of the nature of the offense and his character.

We conclude that the evidence was sufficient to support Brown's conviction and that his sentence is not inappropriate and, thus, we affirm.

FACTS AND PROCEDURAL HISTORY

Around 8:00 a.m. on October 20, 2008, Rosemund Comley, then eighteen years old, injected one-sixteenth ounce of heroin. The rush lasted about ten minutes, and that afternoon she drove her father's maroon Toyota Camry to the Washington Square Mall in Indianapolis. After shopping at the mall, Comley parked in front of a nearby Dick's Sporting Goods around 6:00 p.m. It was still light outside.

While Comley was parked, two men entered the back seat of her vehicle. Comley saw them in her rearview mirror and turned around, getting "a good look at both of them," but she did not recognize them. Transcript at 83. The man seated directly behind her (later identified as Brown) was a "husky" African-American with "fro type hair . . . , a little bit of facial hair, black hoodie, [and] black sweat[pants]." Id. at 58. Comley guessed that Brown was in his early twenties.

Brown requested that he and his companion be driven to Emerson Avenue. When Comley declined the request, Brown pulled a gun out, pointed it at her, and commanded her to get out of the car, which Comley did. Brown then moved into the driver's seat and drove off at a high rate of speed. The vehicle contained various personal items of Comley's.

Comley called 9-1-1 from the parking lot, then called her parents from the manager's office of Dick's Sporting Goods. Police arrived shortly thereafter. Comley was able to give an officer a "detailed" description of Brown and his colleague. Id. at 190. That officer later testified that Comley was "coherent" and not "under the influence of drugs." Id.

On October 23, police found Comley's father's vehicle about one mile from Emerson Avenue. The vehicle had been severely damaged, including having been shot several times. On the rearview mirror, police lifted a fingerprint that matched Brown's. As such, about two weeks later a detective included Brown's photograph in a photo array that he showed to Comley. Comley identified Brown's photograph from that photo array as one of the two men from the October 20 incident. Comley later admitted that she had injected heroin the morning of the day she was shown the photo array. However, the detective stated that during the course of his forty-five minute meeting with Comley he had no reason to believe she was under the influence of drugs or alcohol, and Comley had given him a description of the suspects that was consistent with her October 20th description.

On November 24, 2008, the State charged Brown with carjacking, as a Class B felony, and robbery, as a Class B felony. The jury found Brown guilty as charged, but the trial court entered its judgment of conviction against Brown only on the robbery verdict. After a sentencing hearing on September 23, 2009, the court sentenced Brown to twelve years with four years suspended to probation. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Sufficiency of the Evidence

Brown first argues that the State failed to present sufficient evidence that he committed robbery.[1] When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. To support a conviction for robbery, as a Class B felony, the State had to demonstrate beyond a reasonable doubt that Brown, while armed with a deadly weapon, did knowingly take from the person or presence of Comley an automobile by putting Comley in fear or by using or threatening to use force on Comley. See Ind. Code § 35-42-5-1.

[1] Because we affirm Brown's conviction for robbery, we need not consider his additional argument that the State presented insufficient evidence to support his conviction for carjacking. Again, the trial court did not enter a judgment of conviction on the carjacking verdict due to double jeopardy concerns.

Brown's sole argument on this issue is that Comley's testimony was unreliable due to her heroin use. Brown also suggests that Comley's testimony was inconsistent in parts. But the jury had those facts before it. We will not reweigh that evidence. See Jones, 783 N.E.2d at 1139. Thus, we affirm Brown's conviction for robbery, as a Class B felony.

Issue Two: Appellate Rule 7(B)

Brown next argues that his sentence is inappropriate in light of the nature of the offense and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration omitted). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration omitted).

Here, the trial court sentenced Brown to twelve years, with four years suspended to probation, on a Class B felony conviction. The sentencing range for Class B felonies

is between six and twenty years, with an advisory sentence of ten years. I.C. § 35-50-2-5. In imposing its sentence, the court found Brown's age of seventeen years to be a mitigator and his extensive juvenile history to be an aggravator. The court also found that the aggravator outweighed the mitigator.

Brown's sentence is not inappropriate in light of the nature of the offense. Brown robbed a young woman of her father's vehicle at gunpoint. Brown then drove that vehicle to an unknown location, and when it was found several days later it was heavily damaged. We cannot say that a twelve-year sentence with four years suspended is inappropriate in light of that offense.

Neither is Brown's sentence inappropriate in light of his character. Although only sixteen at the time of the instant offense, Brown had a substantial juvenile history. Not including the current robbery, Brown had true findings of criminal recklessness, as a Class D felony when committed by an adult; intimidation, another Class D felony; auto theft, as a Class D felony; and criminal mischief, as a Class B misdemeanor. Further, Brown committed the instant offense while on suspended commitment from the Indiana Department of Correction for his prior auto theft adjudication. Brown also has prior probation violations. As such, we cannot say that his sentence is inappropriate in light of his character.

Affirmed.

VAIDIK, J., and BROWN, J., concur.