

Case Summary and Issue

Michael Pugh pled guilty to class B felony burglary and appeals the trial court's sentence. Pugh contends that his fourteen-year sentence with four years suspended is inappropriate. We affirm.

Facts and Procedural History

Pugh had a child, X.P., with Samantha Mineweaser. Pugh, Mineweaser, and X.P. lived with Denise Beam, Mineweaser's aunt. After Pugh and Mineweaser ended their relationship six months after X.P.'s birth, Mineweaser moved to an apartment while Pugh and X.P. remained at Beam's home until X.P. was about two years old. Subsequently, Mineweaser moved to Fort Wayne with X.P., and Pugh moved out of Beam's house. X.P. would stay with Beam every other week, and Pugh would visit him. Mineweaser "ended up in the Department of Corrections" in December 2009, and X.P. has since stayed primarily with Beam. Tr. at 17-18; *see also* Appellant's App. at 71.

On May 28, 2009, Pugh entered Beam's home without permission through an unlocked door. Pugh stole jewelry and five dollars in quarters from Beam's home and then pawned the jewelry at Gold Fever for \$162. Once Beam discovered that her jewelry was missing, she called the pawn shop and retrieved her jewelry with the exception of a few unrecovered items valued at \$300.

On June 12, 2009, the State charged Pugh with class B felony burglary and class D felony theft. On January 22, 2010, Pugh pled guilty to burglary, and the trial court dismissed the theft count in addition to a pending probation violation and charges for resisting law

enforcement and false informing. The plea agreement stated that sentencing would be argued and left to the discretion of the court but that the total sentence was not to exceed fourteen years. Appellant's App. at 33.

At the sentencing hearing on January 22, 2010, the probation officer who prepared the presentence investigation report and the prosecutor recommended that Pugh be sentenced to fourteen years, with ten years executed, two years of home detention, and two years of probation. As the victim of the burglary, Beam requested leniency in Pugh's sentence. Pugh's counsel argued that the mitigating factors were Pugh's age and the victim's request for leniency, and he recommended that Pugh receive ten years with four years suspended. The trial court sentenced him to fourteen years with four years suspended. The trial court found as aggravating factors Pugh's juvenile and adult criminal history, his recent probation and parole violations, and his breach of trust with the victim, who provided care and supervision for his child. The trial court found only one mitigating factor: that by pleading guilty, Pugh saved the State the expense and time of a jury trial. The court ordered that Pugh pay restitution to Beam in the amount of \$300 and to Gold Fever in the amount of \$162.

Discussion and Decision

We have constitutional authority to "revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). However, when reviewing a sentence under Appellate Rule 7(B), we remain deferential to the trial court's decision and "refrain from merely substituting our

judgment for that of the trial court.” *Howard v. State*, 873 N.E.2d 685, 692 (Ind. Ct. App. 2007). Even though Appellate Rule 7(B) does not require that we be “extremely” deferential to a trial court’s sentencing decision, “we recognize the unique perspective a trial court brings to such determinations” and thus “exercise with great restraint our responsibility to review and revise sentences.” *Hurst v. State*, 890 N.E.2d 88, 97 (Ind. Ct. App. 2008), *trans. denied*. The defendant has the burden of persuading the Court that his sentence has met the inappropriateness standard of review. *Anglemeyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218.

When reviewing the nature of the offense, “the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Id.* at 494. Indiana Code Section 35-50-2-5 provides that “[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) years and twenty (20) years, with the advisory sentence being ten (10) years.” Here, the parties agreed that sentencing would be argued and left to the discretion of the trial court but that the total sentence was not to exceed fourteen years. *See Appellant’s App.* at 33. The court sentenced Pugh to fourteen years with four years suspended, which is four years above the advisory sentence.

Pugh contends that the burglary was non-violent¹ and that there was no significant pecuniary loss or property damage. Pugh argues that Beam’s and Gold Fever’s losses were

¹ Pugh does not cite the record to support this argument; however, it seems that the victim was not home at the time of the burglary because she reported to law enforcement when she noticed her jewelry was missing and she did not know initially that Pugh was the one who took her jewelry. *Appellant’s App.* at 80; *Tr.* at 14, 21. Also, there is no indication in the record that Pugh was armed at the time of the burglary; the record mentions only that Pugh entered the house through an unlocked door. *Appellant’s App.* at 80.

“comparatively minimal” because the combined actual losses were less than \$500. Appellant’s Br. at 7; Tr. at 57. However, Pugh concedes on appeal that the breach of trust with the victim was an aggravating factor in the offense.

Even though the nature of the offense may not seem particularly aggravating, Pugh’s character justifies the trial court’s sentence. Pugh argues that his sentence should be reduced because the victim requested leniency, he saved the State the expense of trial by pleading guilty, and he “is not so old that he is a hardened criminal inamenable to rehabilitation.”² Appellant’s Br. at 8.

We disagree. A defendant’s criminal history may be analyzed when considering the defendant’s character. *Jenkins v. State*, 909 N.E.2d 1080, 1086 (Ind. Ct. App. 2009), *trans. denied*. Pugh has had extensive contact with the criminal justice system by the age of twenty-two. Pugh has had five juvenile adjudications: (1) criminal mischief on January 23, 2001, for which Pugh was placed on probation, had four probation violations, and was ordered placed at the Indiana Boys’ School; (2) criminal mischief on March 9, 2001, for which Pugh received probation; (3) visiting a common nuisance on August 7, 2001, for which Pugh was placed on probation; (4) attempt to commit robbery resulting in bodily injury on March 25, 2003, for which Pugh, who was on parole, struck an eighty-year-old man with a broom handle and demanded money from him, and was placed at the Indiana Boys’ School;

² Pugh was twenty-one years old when he committed the burglary, and he was twenty-two at sentencing. Tr. at 53. The court stated, “If you were 18, I might think about age as being a factor as a mitigator, 18 or 19. But you’ve been in the system a long time and very much continuous.” *Id.* at 56.

(5) and battery with a deadly weapon on March 25, 2003, involving the same incident against the eighty-year-old man. Appellant's App. at 68.

In addition, as an adult Pugh has received four misdemeanor convictions: (1) resisting law enforcement on May 10, 2007, for which Pugh was sentenced to thirty-five actual days already served; (2) possession of marijuana on August 8, 2007, for which he was sentenced to one year in the Wabash County Jail with 355 days suspended to informal probation; (3) resisting law enforcement on April 3, 2008, for which he was sentenced to one year in the Miami County Jail with 275 days suspended to non-reporting probation; and (4) battery resulting in bodily injury on September 11, 2008, for which he was sentenced to one year in the Miami County Jail with 253 days suspended to probation. *Id.* at 69. He was on probation for the battery conviction when he committed the current burglary offense, and he has committed various probation violations throughout his contact with the criminal justice system. *Id.* at 68-69. Less restrictive placement has been attempted with Pugh's previous adjudications and convictions, but unfortunately he has not responded positively to shorter terms of incarceration. In sum, Pugh has failed to persuade us that his sentence is inappropriate in light of the nature of the offense and his character. Consequently, we affirm.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.