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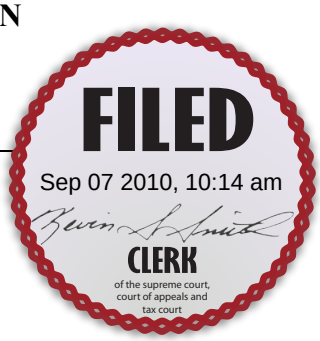

IN THE COURT OF APPEALS OF INDIANA

HANEEF S. JACKSON-BEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1001-CR-36
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0810-FB-85

September 7, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Haneef Jackson-Bey ("Jackson-Bey") pleaded guilty in Lake Superior Court to Class B felony burglary. The trial court sentenced Jackson-Bey to the advisory sentence of ten years in the Department of Correction. Jackson-Bey appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On October 2, 2008, Jackson-Bey served as a lookout while others broke into a neighbor's home and stole a 51-inch television, DVDs, and other items. Later that same day, Jackson-Bey's sister returned him to the victim's home, where he confessed to taking the victim's property. Jackson-Bey then retrieved many of the stolen items and returned them to the victim.

On October 4, 2008, the State charged Jackson-Bey with Class B felony burglary and Class D felony receiving stolen property. On September 22, 2009, Jackson-Bey pleaded guilty to the burglary charge without the benefit of a plea agreement, and the court entered judgment of conviction. On December 17, 2009, Jackson-Bey was ordered to serve a ten-year sentence in the Department of Correction. Jackson-Bey now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Jackson-Bey argues that his ten-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. Alvies v. State, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007)). This appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that a court "may 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." Anglemyer, 868 N.E.2d at 491. However, "we must and should exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." 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. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007).

Jackson-Bey committed Class B felony burglary, for which the sentence range is six to twenty years, with an advisory sentence of ten years. Ind. Code § 35-50-2-5 (2004 & Supp. 2009). The trial court sentenced Jackson-Bey to the ten-year advisory sentence.

"[T]he advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Anglemyer, 868 N.E.2d at 494. Nevertheless, Jackson-Bey argues that the advisory sentence is inappropriate in light of the nonviolent nature of the offense, his limited criminal history, and his expression of remorse.

While Jackson-Bey's offense was a Class B felony, the nature of the offense was not particularly heinous. On the other hand, breaking into another person's home is a serious, criminal act, the gravity of which is reflected in its classification as a Class B felony. Although none of the home's occupants were present during the burglary, the burglary of a home is inherently dangerous due to the likelihood that residents will be present.

Considering the character of the offender, we note that Jackson-Bey expressed remorse and took responsibility for his actions by pleading guilty. We further note and appreciate his sister's sense of responsibility on his behalf when she took him to the place of his crime and to its victim for an apology and to return much of what was stolen. However, Jackson-Bey, who is twenty years old, has already been convicted of misdemeanor disorderly conduct as an adult, for which he was released on bond when he committed the instant offense. As a juvenile, Jackson-Bey had eight documented contacts with law enforcement in Illinois, including one juvenile adjudication for battery. Although the dispositions of Jackson-Bey's juvenile contacts with law enforcement are

not available in the record before us, the pre-sentence investigation report does list the following alleged offenses: battery, criminal trespass, reckless conduct, possession of marijuana, and a firearms offense. Jackson-Bey also violated probation as a juvenile. The pre-sentence investigation report also indicates that Jackson-Bey has been a member of the Vice Lords street gang and was expelled from two different high schools for gang-related activity.

When it imposed the advisory sentence, the trial court found that the aggravating and mitigating factors were of equal weight. While we or another trial court might have given greater weight to Jackson-Bey's expression of remorse, shown by his voluntary admission of the crime and his assistance in the recovery of many of the stolen items prior to the State's involvement, we do not review the trial court's weighing of proper aggravators and mitigators under Anglemyer. 868 N.E.2d at 491. Under the facts and circumstances before us, and giving proper deference to the trial court's sentencing discretion, we cannot conclude that Jackson-Bey's advisory, ten-year sentence is inappropriate.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.