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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL BOYD,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A02-0803-CR-260

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0708-FA-165486

October 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Michael Boyd appeals his sentence for Robbery,¹ as a class B felony, which was enhanced upon his adjudication as a habitual offender. Boyd claims that the thirty-year sentence imposed by the trial court is inappropriate in light of his character and the nature of the offense.

We affirm.

After midnight on August 9, 2007, Boyd entered a Safeway store at Shelby and Raymond Streets in Indianapolis. A female cashier of the store observed Boyd place a bottle of Mad Dog 20/20 wine in his pants pocket. She called an assistant manager, Paul Poteet, to the front of the store to assist. Soon thereafter, Poteet also observed bottles of wine in Boyd's pockets. Poteet placed a baseball bat on the counter at the third register, as he continued to watch Boyd.

Boyd eventually walked to the front of the store with beer in his hands. He stopped at the first register, which was not open, and placed the beer on the counter. He then began to walk toward the exit of the store. Poteet approached Boyd and said, "All I want is the bottles back. That's it". *Transcript* at 50. Boyd continued walking, so Poteet stepped in front of him and repeated his request. Boyd responded by striking him in the face, breaking Poteet's cheek bone. Poteet fell to the floor and immediately asked a customer for a cell phone to call police. Boyd then stepped toward Poteet and said, "Do you want another one?" *Id.* at 53. Poteet "dashed to get behind the register", and Boyd left. *Id.*

Following a bench trial, Boyd was convicted of robbery, as a class B felony.² Boyd

¹ Ind. Code Ann. § 35-42-5-1 (West, PREMISE through 2007 1st Regular Sess.).

² He was also found guilty of battery and theft, but the trial court merged these with the robbery conviction.

subsequently admitted that he was a habitual offender. At the sentencing hearing on February 21, 2008, the trial court sentenced Boyd to the advisory term of ten years, which the court enhanced by twenty years based upon the habitual offender adjudication. In sum, Boyd received a total executed sentence of thirty years in prison. Boyd now appeals his sentence as inappropriate.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be “extremely” deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Thus, “we exercise with great restraint our responsibility to review and revise sentences.” *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Moreover, we observe that Boyd bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

With respect to the nature of the offenses, Boyd asserts that he simply punched a store employee once while shoplifting two bottles of wine. He then argues that these facts are not the “worst or most heinous that would justify a twenty-year enhancement to the advisory sentence of ten years”. *Appellant's Brief* at 9. We agree that this was not a particularly egregious robbery. This fact was reflected in the trial court's decision to impose the advisory

sentence, enhanced by only twenty years.³ To be sure, Boyd’s sentence is nowhere near the maximum fifty years he could have received.

Turning to his character, Boyd acknowledges his lengthy criminal history. By his own account, Boyd has been arrested nineteen times between 1992 and 2007, thirteen of these arrests have resulted in convictions, and of his convictions, eight were for misdemeanor offenses and five were felonies (two drug-related offenses, one robbery, and two thefts). Although his “fifteen-year criminal history is studded with repeated encounters with the Indiana justice system,” Boyd asks that we revise his sentence because he claims many of the offenses were substance-related and only one of his felony convictions involved the threat of force. *Appellant’s Brief* at 8.

The sheer number of Boyd’s prior offenses and probation violations is aggravating, indicating a marked indifference to the law. In fact, Boyd had only been out of prison for two weeks when he committed the instant robbery. Moreover, contrary to Boyd’s apparent assertion on appeal, it is clear that the gravity and nature of many of his prior offenses directly relate to the present offense. In light of Boyd’s poor character, as reflected by his extensive criminal history, we find the advisory sentence and moderate enhancement imposed by the trial court appropriate.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur

³ It was within the trial court’s discretion to impose a habitual offender enhancement of between ten and thirty years in this case. Ind. Code Ann. § 35-50-2-8(h) (West, PREMISE through 2007 1st Regular Sess.).