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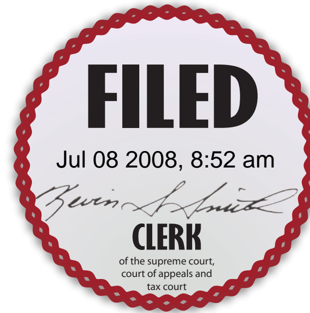

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IN THE COURT OF APPEALS OF INDIANA

ROBERT KALAUOKAAEA, Appellant-Defendant, vs. STATE OF INDIANA, Appellee-Plaintiff.	)	No. 89A01-0712-CR-558

APPEAL FROM THE WAYNE SUPERIOR COURT NO. 1
The Honorable Thomas Snow, Judge
Cause No. 89D01-0705-FC-22

July 8, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Defendant-Appellant, Robert Kalauokaaea (Kalauokaaea), appeals his sentence for burglary, as a Class C felony, Ind. Code § 35-43-2-1, and theft, as a Class D felony, I.C. § 35-43-4-2(a).

We affirm.

ISSUE

Kalauokaaea raises one issue on appeal, which we restate as: Whether his sentence is inappropriate in light of the nature of his offenses and his character.

FACTS AND PROCEDURAL HISTORY

On May 24, 2007, Kalauokaaea and his friend Robert Blackburn (Blackburn) decided to go to his former place of employment, Lillian's Used Furniture Store in Richmond, Indiana, and steal a metal tin containing money. Using a wrench, the two broke the glass door and entered the furniture store. Kalauokaaea picked up a candy tin of loose change, and the two left shortly afterwards. A witness called 911, and Officer David Glover of the Richmond Police Department responded to the dispatch call. He apprehended Blackburn and Kalauokaaea walking away from the store and subsequently arrested them.

On May 25, 2007, the State filed an Information charging Kalauokaaea with Count I, burglary, as a Class C felony, I.C. § 35-43-2-1, and Count II, theft, as a Class D felony, I.C. § 35-53-4-2. On October 1, 2007, a jury trial commenced. The next day, the jury found Kalauokaaea guilty as charged. On November 14, 2007, the trial court sentenced

Kalauokaaea was sentenced to eight years for burglary and two years for theft, with the sentences to be served concurrently.

Kalauokaaea now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Before we address the merits of the appeal, we note that Kalauokaaea's attorney included a copy of the presentence investigation report on white paper in the Appellant's Appendix. In *Hamed v. State*, 852 N.E.2d 619, 621 (Ind. Ct. App. 2006), we explained:

> Ind. Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Ind. Administrative Rule 9(G)(1)(b)(viii) states that "[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." The inclusion of the presentence investigation report printed on white paper in his appellant's appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part:
>
> > Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:
> >
> > > (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential."
> > >
> > > (2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked "Not For Public Access" or "Confidential" and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

We ask that counsel follow this procedure in the future.

Turning to the merits, Kalauokaaea contends that his sentence is inappropriate. Indiana Appellate Rule 7(B) permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *See* Ind. Appellate Rule 7(B); *see also Childress v. State*, 848 N.E.2d 1073, 1079 (Ind. 2006). The burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress*, 848 N.E.2d at 1080. Kalauokaaea has failed to carry this burden.

Regarding the nature of the offense, we observe that Kalauokaaea contemplated and caused serious damage to the premises when he broke the glass doors with a wrench to gain entry. Additionally, he did not act alone but persuaded another person to assist him. Furthermore, he was a former employee of the furniture storeowner, a relationship he took advantage of in choosing a place to break into. On the other hand, Kalauokaaea broke into the store during the night, after store hours, when nobody else was present. He stole a tin with loose change that was returned to the owner the same night. In other words, Kalauokaaea's crime was not particularly heinous.

Kalauokaaea's character is a different story. We acknowledge Kalauokaaea's claims regarding his unfortunate personal history. He contends that, as an adolescent, his father exposed him to alcohol, and his mother allowed him to take methamphetamines. However, even if we accept as true all of Kalauokaaea's claims regarding his difficult past, the overriding consideration here, as emphasized by the trial court, is his extensive, relevant criminal history and failed rehabilitation efforts. His presentence investigation report reveals

that he was charged eight times in California as a juvenile; at least three of those charges resulted in true findings under California Penal Code § 459, dealing with burglary. As an adult, he was convicted in California for receiving stolen property, a felony, in 1997. In 1998, he was convicted in Indiana of disorderly conduct, a Class B misdemeanor. In 1999, was sentenced to time already served (28 days) and probation for two counts of breaking and entering, destruction of property greater than $250, and larceny from a building in Massachusetts. Less than a month later, he violated his probation and was placed on electronic monitoring. Weeks later, he violated his probation again by committing resisting arrest, disorderly conduct, and disturbing the peace in Massachusetts. After being released from jail in Massachusetts, Kalauokaaea returned to Indiana and was convicted of four counts of robbery as Class B felonies in 2000. He was sentenced to fifteen years in the Indiana Department of Correction. He was apparently released early, because in January 2007, he was convicted of resisting law enforcement, a Class A misdemeanor. Three months later, he committed the instant offenses.

Despite this string of second chances and opportunities for rehabilitation—for example, Kalauokaaea could have been sentenced to a total of eighty years for the four Class B felony robbery convictions—he continues to commit crimes. Kalauokaaea admits that he has not taken his previous opportunities at rehabilitation seriously. During his sentencing hearing, he stated, "I never really took it serious. It was always for a reason, for a time cut while I was in jail or because my parole officers said so. Just because I had to. I never really

took it serious." (Transcript p. 257). Nothing about Kalauokaaea's character leads us to conclude that his sentence is inappropriate.

Finally, we address Kalauokaaea's argument that he received the maximum sentence, that maximum sentences are reserved for the worst offenders, and that he is not the worst offender. Our supreme court has held that the maximum possible sentences are generally most appropriate for the worst offenders. *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002). Here, Kalauokaaea did receive the maximum sentence of eight years on the Class C felony burglary count. *See* I.C. § 35-50-2-6. However, he only received two out of the maximum three years on the Class D felony theft conviction. *See* I.C. § 35-50-2-7. Also, the trial court ordered that he serve the two sentences concurrently. As such, while he faced a sentence of eleven years, he was ordered to serve eight years incarceration. In other words, he did not receive the maximum sentence. We conclude, as did the trial court, that the maximum sentence, in regards to the burglary count, is not inappropriate in light of his extensive, relevant criminal history.

CONCLUSION

Based on the foregoing, we conclude that Kalauokaaea's sentence is not inappropriate.

Affirmed.

BAKER, C.J., and ROBB, J., concur.