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IN THE
COURT OF APPEALS OF INDIANA

MATTHEW TURNER, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0802-CR-83
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0705-FD-437

July 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Matthew Turner Jr. appeals the appropriateness of the sentence he received following his conviction of Theft,[1] a class D felony, which was entered upon his guilty plea.

We affirm.

Turner admitted at the guilty plea hearing that on May 18, 2007, he took seven bottles of vodka and three bottles of cognac from a Kroger store without paying for them. As a result, he was charged with theft as a class D felony. On the date his trial was to commence, Turner pleaded guilty to the charge, with sentencing apparently left to the trial court's discretion.[2] Following a sentencing hearing and upon considering a written presentence investigation report[3] submitted to the court, the trial court sentenced Turner to the maximum three years. Turner contends that sentence is inappropriate.

We have the constitutional authority to revise a sentence if, after considering the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; 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*. Turner bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

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1 Ind. Code Ann. § 35-43-4-2(a) (West, PREMISE through 2007 1st Regular Sess.).

2 We say "apparently" because the terms of the plea agreement are not contained in the *Appellant's Appendix* or the transcript of the sentencing hearing.

3 We note that the presentence investigation report submitted with this appeal is copied on white paper. We remind Turner that Ind. Appellate Rule 9(J) requires that documents and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1), which includes presentence investigation reports, must be filed in accordance with Ind. Trial Rule 5(G). That rule provides that such documents must be tendered on light green paper or have a light green coversheet and be marked "Not for Public Access" or "Confidential". Ind. Trial Rule 5(G)(1).

Turner contends his sentence is inappropriate in light of both his character and the nature of his offense. We note that his argument on this point also contains passing claims that the trial court erred in failing to find legitimate mitigating circumstances (i.e., "Appellant's documented and uncontroverted alcohol and substance abuse situation did not receive any mitigating circumstance [sic]", *Appellant's Brief* at 5) and that it failed to assign sufficient weight to mitigators it did find (i.e., "Appellant's entry of a guilty plea and admission of criminal responsibility did not receive any weight at sentencing", *id*). We observe, also in passing, that the former claim is factually incorrect (i.e., "I do find as mitigating circumstances … your substance abuse problem which is extensive", *Transcript* at 8), and the latter is no longer reviewable. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g on other grounds*, 875 N.E.2d 218 ("[b]ecause the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence … a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors").

We turn now to an assessment of the appropriateness of Turner's sentence. Beginning with Turner's character, we note that he pleaded guilty to this offense, which is a valid mitigating factor. As has been frequently observed, however, a guilty plea is not *necessarily* a significant mitigating factor. *Cotto v. State*, 829 N.E.2d 520 (Ind. 2005). In this particular case, we cannot fully assess how the plea reflects on Turner's character because we do not know the details of the plea agreement. *See, e.g., Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him

is such that the decision to plead guilty is merely a pragmatic one"), *trans. denied*. We do note, however, that Turner did not enter his plea until the day of trial. On such information, we cannot say the guilty plea speaks highly of Turner's character. We next consider Turner's criminal history, which is considerable. The trial court summarized it thus:

> In 1984, you were found delinquent for Criminal Trespass, placed on probation, released seven months later. In March of '85 you were adjudicated as a delinquent for Burglary, what would've been a Class C Felony had it been committed by an adult. Committed to Boys School and released to parole in June of 1985. In November of '85 you were charged with shoplifting and ordered to complete community service. You then graduated into the adult felony and misdemeanor system where you have accumulated 27 misdemeanor convictions, five felony convictions. Your probation's been revoked twice. Misdemeanor sentences have been modified. You have had your parole revoked once. … You're on bond for this offense and November 2nd of 2007, you are convicted of Criminal Conversion and given an executed jail sentence.

Transcript at 7-8. The court also noted that Turner completed drug education programs while in the custody of the Department of Correction, but apparently to no effect, as he reported using marijuana and crack cocaine on a daily basis until he was incarcerated for the instant offense. Finally, the record reflects that in the past eight years, Turner, who is currently forty years old and in good physical health, has been employed for only a three-month period in 2004.

The circumstances of the crime are unremarkable and viewed in isolation do not warrant a sentence in excess of the advisory sentence, much less the maximum allowable sentence. We do not, however, view the circumstances of the crime in isolation from the other component of the sentencing equation, i.e., Turner's character. As detailed above, Turner is a career criminal who has demonstrated no inclination to address his significant drug habit and to undertake the steps necessary to begin leading a lawful, productive life.

Clearly, he poses a significant risk of re-offending. Accordingly, we cannot say the three-year sentence imposed by the trial court is inappropriate.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur