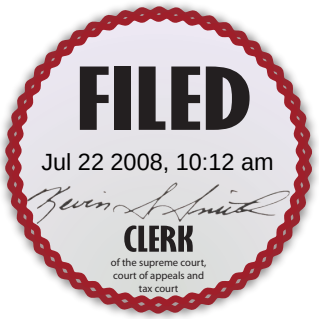
Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ROBERT D. WICKENS
Greensburg, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MATTHEW WHITMIRE
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CLINTON McCONNELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 16A04-0802-CR-75
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DECATUR CIRCUIT COURT
The Honorable John A. Westhafer, Judge
Cause No. 16C01-0612-FC-215

July 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Clinton McConnell appeals his sentence for three counts of burglary as class C felonies.[1] McConnell raises two issues, which we revise and restate as:

I. Whether the trial court abused its discretion in sentencing him; and

II. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. In February 2005, McConnell, while acting with other persons, broke into a store and stole merchandise. In August 2005, McConnell, while acting with other persons, broke into a locked garage and stole a "four by four quad all terrain vehicle." Transcript at 33. McConnell later sold and collected money for the vehicle. That same month, McConnell, again acting with other persons, broke into a barn and stole another four by four vehicle.

On December 20, 2006, the State charged McConnell with three counts of burglary as class C felonies and one count of corrupt business influence as a class C felony. On November 26, 2007, the day of the trial, McConnell pled guilty to three counts of burglary as class C felonies and, pursuant to the plea agreement, the State dismissed the remaining count of corrupt business influence as a class C felony. The plea agreement provided:

---

[1] Ind. Code § 35-43-2-1 (2004).

> *Amount of Sentence*. The court shall impose the advisory sentence of ***four (4) years*** on ***each count*** of conviction for Burglary.
>
> The court shall determine whether the sentences on each count shall be served concurrently or consecutively. The court shall also determine the amount of executed confinement or probation under the sentence. However, under this agreement the ***total resulting executed confinement shall not exceed six (6) years.***

Appellant's Appendix at 13.

At the guilty plea hearing, the trial court asked McConnell how many other break-ins he had been involved in, and McConnell replied: "eight to ten." Transcript at 40-41. At sentencing, McConnell asked the trial court to consider the following as mitigating factors: (1) he had pled guilty and accepted responsibility for the offenses; (2) his incarceration would result in undue hardship on his children; (3) he had lost a son while awaiting trial; (4) he had no prior adult criminal record; and (5) he wished to make restitution to the victims. Id. at 68. The trial court noted McConnell's extensive juvenile record and asked him whether he had thought about the hardship on his children when he was "breaking into these places and stealing these vehicles," to which McConnell responded, "Not as much as I am these days." Id. at 74. The trial court also noted that McConnell had recently been convicted and sentenced for theft as a class D felony under a different cause number. The trial court then addressed McConnell as follows:

> I think had you boys not been finally caught, this enterprise would have continued right on. I don't think anything would have stopped you short of being arrested.
>
> The Court has considered mitigating and aggravating factors. And orders that the defendant be sentenced to the advisory sentence of four years on each count. And those sentences are to run consecutively with

> each other, but concurrent to the sentence he's now serving [under a different cause number].

Id. at 76. The trial court further ordered that the first two years of each sentence be executed and the remaining two years be suspended to probation. Thus, McConnell received a total sentence of twelve years with six years executed in the Indiana Department of Correction and six years suspended to probation.

I.

The first issue is whether the trial court abused its discretion in sentencing McConnell. McConnell argues that the trial court failed to enter an adequate sentencing statement reciting aggravating and mitigating factors and likewise failed to recognize his guilty plea and the hardship of his incarceration on his children as mitigating factors. We note that McConnell's first offense was committed before the April 25, 2005 revisions of the sentencing scheme.[2] Under the old sentencing scheme, long-standing precedent required no sentencing statement when imposing the presumptive sentence, as the trial court here imposed. See Windhorst v. State, 868 N.E.2d 504, 506 (Ind. 2007) (citing Gardner v. State, 270 Ind. 627, 388 N.E.2d 513, 517 (Ind. 1979)).

McConnell's other two offenses, however, were committed after the April 25, 2005 revisions of the sentencing scheme. In clarifying these revisions, the Indiana Supreme Court has held:

---

[2] Neither McConnell nor the State mentions the timing of McConnell's offenses with respect to the revisions in Indiana's sentencing scheme.

> *[U]nder the new statutory regime Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense.* In order to facilitate its underlying goals, . . . the statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating.

Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007) (internal citation omitted) (emphasis added), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). Thus, under the new sentencing scheme, the trial court was required to enter a sentencing statement including a reasonably detailed recitation of its reasons for imposing its sentence on McConnell. "One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all." Id. Additionally, the trial court was required to identify an aggravator when imposing consecutive sentences. See Creekmore v. State, 853 N.E.2d 523, 529 (Ind. Ct. App. 2006) ("A single aggravating circumstance may support the imposition of consecutive sentences."), clarified on other grounds on denial of reh'g, 858 N.E.2d 230 (Ind. Ct. App. 2006).

Here, after McConnell urged the trial court to consider his proposed mitigators, the trial court noted that he had numerous juvenile adjudications and had also recently been convicted and sentenced for theft as a class D felony under a different cause number. After reciting that it had considered the mitigating and aggravating factors, the trial court then imposed consecutive sentences on McConnell for each count of burglary as a class C felony. Although the trial court imposed the presumptive and advisory sentences as

required by the plea agreement, the trial court did not identify an aggravator as required to impose consecutive sentences. Moreover, the trial court did not identify the aggravating and mitigating factors that it considered for our review.

We agree that the trial court's recitation is not an adequate sentencing statement, and that, therefore, the trial court abused its discretion in failing to enter such a statement in this case. However, "even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate." Mendoza v. State, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007), trans. denied; see also Windhorst, 868 N.E.2d at 507 (holding that, in the absence of a proper sentencing order, Indiana appellate courts may either remand for resentencing or exercise their authority to review the sentence pursuant to Ind. Appellate Rule 7(B)). Accordingly, we will address whether McConnell's sentence is inappropriate under Ind. Appellate Rule 7(B).

II.

The next issue is whether McConnell's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute 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." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). McConnell argues that his sentence was

inappropriate because: (1) he pled guilty and thus accepted responsibility for the offenses; and (2) incarceration would result in hardship on his children.

Our review of the nature of the offense reveals that McConnell broke into a store and stole merchandise, broke into a locked garage and stole a vehicle for which he later collected money, and broke into a barn and stole another vehicle. When the trial court asked McConnell how many other break-ins he had been involved in, McConnell responded: "eight to ten." Transcript at 40. McConnell pled guilty to the present offenses on the day of trial, and, pursuant to the plea agreement, the State dismissed the remaining charge of corrupt business practice as a class C felony.

Our review of the character of the offender reveals that McConnell has a lengthy juvenile record. He has been adjudicated a delinquent for committing acts that would be two counts of criminal mischief, theft as a class D felony, and two counts of burglary as class C felonies if committed by an adult. He has a true finding for a probation violation under the theft adjudication. The crime spree that resulted in the present convictions began when McConnell was only nineteen years old. Furthermore, as an adult, McConnell has also been convicted of theft as a class D felony under a different cause number. Finally, we note that McConnell has two dependent children and that a third child died while he was awaiting trial.

Given McConnell's criminal history and the failure of lesser measures to help him reform his conduct, we fail to see how a lesser sentence is more appropriate. See, e.g., Hall v. State, 870 N.E.2d 449, 465 (Ind. Ct. App. 2007) ("Regarding Hall's character, it is

significant that he had a lengthy history of juvenile adjudications and multiple opportunities to curb his unlawful and violent behavior."), trans. denied. After due consideration of the trial court's decision, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Clay v. State, 882 N.E.2d 773, 777 (Ind. Ct. App. 2008) (holding that defendant's sentence for burglary as a class A felony was not inappropriate).

For the foregoing reasons, we affirm McConnell's sentence for three counts of burglary as class C felonies.

Affirmed.

BAKER, C.J. and MATHIAS, J. concur