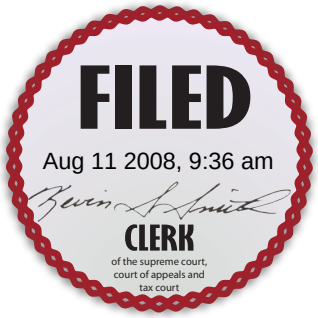

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IN THE
COURT OF APPEALS OF INDIANA

DANIEL W. ZERBE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 90A02-0712-CR-1153
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable Bruce C. Bade, Judge Pro Tempore
Cause No. 90C01-0604-FD-40

August 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Daniel Zerbe appeals his sentence following his guilty plea to Theft, as a Class D felony. He presents a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 9, 2006, a surveillance camera at a Wal-Mart store in Bluffton recorded the theft of three computers by Zerbe, Zerbe's juvenile son, and Zerbe's pregnant girlfriend, Wilma Schwartz. Wal-Mart employees did not know about the thefts until later that evening, after they watched the surveillance tape. A few days later, on April 12, a Wal-Mart assistant manager, Bentley Boots, observed Zerbe's son and Schwartz leaving the store with items for which they had not paid. Boots followed the pair out to the parking lot, where Zerbe and two children were waiting in a vehicle. Boots asked Schwartz to see a receipt for the items they had taken from the store, but she could not produce one. Schwartz and Zerbe's son returned the items they had taken that day, and Boots recorded Zerbe's name and license plate number.

Police ultimately arrested Zerbe, read him his Miranda rights, and questioned him regarding the thefts on April 9 and 12. Zerbe admitted having stolen one computer from Wal-Mart on April 9, and he stated that his son had stolen two other computers that day. And Zerbe stated that he knew that his son had stolen merchandise from Wal-Mart on April 12. Police subsequently recovered several items of stolen property from Zerbe's home.

The State charged Zerbe with theft, as a Class D felony. Zerbe ultimately pleaded guilty as charged, without a written agreement. At sentencing, the trial court identified Zerbe's criminal history as an aggravator and imposed the maximum sentence of three years. This appeal ensued.

DISCUSSION AND DECISION

Zerbe contends that his sentence is inappropriate in light of the nature of the offense and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Under Appellate Rule 7(B), we assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration in original).

Zerbe maintains that the nature of the offense does not warrant the three-year sentence. In particular, he points out that the stolen computer was recovered and that he cooperated with police during the investigation. But Zerbe ignores the fact that immediately after he stole the computer on April 9, he waited in the parking lot while his thirteen-year-old son stole two other computers. And Zerbe did not return the stolen

computer of his own volition. Regardless of the nature of the offense, however, we hold that Zerbe's character warrants the three-year sentence.

Zerbe's criminal history consists of the following offenses committed in Tennessee and Texas: possession of a schedule IV drug in 1998 (misdemeanor); violation of a protective order in 2004 (misdemeanor); and evading arrest or detention with a vehicle in 2004 (felony). Zerbe testified that the evading arrest offense was reduced to a misdemeanor. But more significant than Zerbe's criminal history is the evidence that he knew his thirteen-year-old son had been stealing. In fact, after Zerbe stole the computer on April 9, he stood by while his son stole two more computers. And police found stolen items worth almost $3000 in Zerbe's house in the course of their investigation. Those items included car stereos, amplifiers, DVD players, surround sound systems, and clothing. As the trial court stated, it appears as though Zerbe was the head of a criminal enterprise with his family.

Zerbe's character is also shown to be poor by the fact that he reported having quit his job because of a problem his employer had with direct-depositing some of his paychecks. Instead of working out the problem with his employer, Zerbe quit, despite his need to support his girlfriend and four children. His questionable work ethic, along with his unwillingness and/or inability to stop his son from stealing reflects badly on Zerbe.

Still, Zerbe contends that his guilty plea shows that he cooperated with police. But we agree with the State that given the evidence against Zerbe, as well as his initial denials of guilt, his decision to plead guilty was "more likely the result of pragmatism than acceptance of responsibility and remorse." See Davies v. State, 758 N.E.2d 981, 987

(Ind. Ct. App. 2001), trans. denied. Finally, because Zerbe is participating in the work release program, his claim of undue hardship on his family is unpersuasive. In sum, Zerbe has not demonstrated that his sentence is inappropriate in light of the nature of the offense or his character.

Affirmed.

DARDEN, J., and BROWN, J., concur.