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IN THE
COURT OF APPEALS OF INDIANA

CLYDE EDWARD PRYOR	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-0912-CR-748
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0907-FD-679

August 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Clyde E. Pryor appeals his conviction of and sentence for Class D felony attempted residential entry.[1] He claims the evidence was insufficient to support his conviction, his habitual offender sentence enhancement[2] was an abuse of discretion, and his sentence is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 11:15 a.m. on July 12, 2009, off-duty police officer John Cox was walking his dog in his apartment complex. He spotted a suspicious vehicle and, after speaking with the apartment manager and the South Bend Police Department, determined it did not belong to a resident of the apartment complex. About ten minutes later, Officer Cox heard three or four loud bangs from the area where the suspicious vehicle was parked. Officer Cox saw Pryor leaning with his back against an apartment door, kicking it with his foot, and looking around after each kick.

Officer Cox approached Pryor and ordered him to the ground, handcuffed him, and read him his *Miranda* rights. Pryor said he was at the apartment complex to pick up a friend but did not know where the friend lived. He refused to tell Officer Cox the friend's name. Officer Cox returned later to the apartment Pryor was attempting to enter. Both occupants said they did not know Pryor.

Pryor was convicted of Class D felony attempted residential entry and found to be an habitual offender. He was sentenced to three years for the attempted residential entry, with

[1] Ind. Code §§ 35-41-5-1 and 35-43-2-1.5.
[2] Ind. Code § 35-50-2-8.

an enhancement of four and a half years for being an habitual offender.

DISCUSSION AND DECISION

1. Sufficiency of the Evidence

Pryor argues the State did not present sufficient evidence he committed Class D felony attempted residential entry. Our standard of review with regard to sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Jones v. State*, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Id*. If there is substantial evidence of probative value to support the conviction, we will affirm. *Id*.

To support his conviction, the State had to prove beyond a reasonable doubt Pryor acted with the culpability required and engaged in a substantial step toward the breaking and entering of the dwelling of another person. Ind. Code §§ 35-41-5-1 and 35-43-2-1.5. The State presented evidence that Pryor was kicking the door with his back to it, not knocking on the door as he claimed, and he was looking around after every kick as if to make sure no one had seen him. An occupant of the apartment testified she saw damage to the door, but she could not tell whether the damage was from Pryor's kicks or some other source.

Pryor argues his actions were not a substantial step toward breaking and entering the dwelling of another. He notes he did not have any "tools, bags, or weapons," (Appellant's Br. at 6), and was kicking near the bottom of the door, and not near the lock. "In order to

establish that a breaking has occurred, the State need only introduce evidence from which the trier of fact could reasonably infer that the slightest force was used to gain unauthorized entry." *Young v. State*, 846 N.E.2d 1060, 1063 (Ind. Ct. App. 2006). The element of breaking may be proved entirely by circumstantial evidence. *McKinney v. State*, 653 N.E.2d 115, 117 (Ind. Ct. App. 1995). The evidence Pryor was kicking the door, was looking around after every kick, and was not known to the occupants of the apartment would permit a reasonable trier of fact to infer Prior was trying to break into the apartment.

Pryor also notes the only evidence presented was Cox's testimony; however, it is well-settled that the testimony of a single witness is sufficient to sustain a conviction. *Stewart v. State*, 866 N.E.2d 858, 862 (Ind. Ct. App. 2007). Pryor's arguments are simply invitations for us to reweigh the evidence and judge the credibility of the witnesses at trial, which we cannot do. *Jones*, 783 N.E.2d at 1139. The evidence was sufficient and we affirm the trial court's decision.

2. Sentencing

A. Habitual Offender

Pryor argues he should not have received the maximum sentence enhancement for being an habitual offender. Ind. Code § 35-50-2-8(h) reads:

> The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

The sentence enhancement based on a finding a person is an habitual offender is left to the

trial court's sound discretion. *Johnston v. State*, 578 N.E.2d 656, 659 (Ind. 1991). "Aside from setting the parameters regarding the length of a habitual offender enhancement, the relevant statutes contain no guidelines or formulas for courts to apply or follow when determining the length of the habitual offender enhancement." *Montgomery v. State*, 878 N.E.2d 262 (Ind. Ct. App. 2007) (citations omitted).

The advisory sentence for Class D felony attempted residential entry is one and one-half years. Ind. Code § 35-50-2-7(a). Pryor's sentence enhancement was four and one-half years, and conforms to the statute. *See* Ind. Code § 35-50-2-8 ("additional fixed term that is not . . . more than three (3) times the advisory sentence"). Pryor's criminal history spans over twenty-five years and three states. He has been convicted of fraud, theft, multiple aggravated burglaries, and possession of cocaine. The trial court opined, "And it just appears to me, Mr. Pryor, that anytime that you are out of custody, will be the next time you commit a crime. I wish I didn't have to say that, but I believe it to be true." (Tr. at 234.) We find no abuse of discretion by the trial court. *See, e.g.*, *Montgomery*, 878 N.E.2d at 268 (court did not abuse discretion in imposing maximum habitual offender enhancement in light of defendant's criminal history).

B. Appropriateness of Sentence

Pryor claims he is not "the worst of the worst" (Appellant's Br. at 7), and therefore, he should not have received the maximum sentence and enhancement for his crime. He cites *Buchanan v. State*, 767 N.E.2d 967, 974 (Ind. 2009), in support of his assertion. But the "worst of the worst" standard is not:

> a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Id.

We may revise a sentence if it is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We give deference to the trial court, recognizing its special expertise in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied*. The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Pryor states his offense was "relatively innocuous – attempting to break into an apartment where it was apparent that no one is home," (Appellant's Br. at 7), and thus he should not have received the maximum sentence for that crime. However, the absence of physical injuries or violence does not require us to reduce his sentence. *See, e.g.*, *White v. State*, 433 N.E.2d 761, 763 (Ind. 1982) (absence of physical injury or violence during a crime does not warrant reduction in sentence). Pryor claims his sentence is inappropriate based on his character, but offers no argument regarding the positive aspects of such except that all of his crimes have been non-violent. Therefore, based on the nature of his offenses and his character, we do not find his sentence inappropriate.

Because there was sufficient evidence to sustain Pryor's conviction, the trial court did not abuse its discretion when determining his sentence enhancement for being an habitual offender, and his sentence is appropriate, we affirm.

Affirmed.

BAILEY, J., and BARNES, J., concur.