



Daniel Robinson pleaded guilty to Burglary<sup>1</sup> as a class B felony and was subsequently sentenced to sixteen years, with fifteen years executed at the Department of Correction and one year suspended to probation. On appeal, Robinson argues that his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

On July 9, 2005, Robinson, with the intent to commit the felony of theft, broke and entered the home of William C. Moyer and his wife, Janice, located in downtown New Albany, Indiana. The Moyers were out of town at the time of the burglary. Later that day, the Moyers' daughter discovered that her parents' home had been burglarized and reported the matter to the New Albany police. A window had been broken out of the front door and the door had been forced open. Moyer reported that jewelry and other valuables worth approximately \$10,000 had been stolen from the home.

Inside the home, police discovered two reddish-brown stains that appeared to be blood. Swabs of both stains were taken and submitted to the Indiana State Police Laboratory for DNA testing. On June 6, 2008, the DNA profile created from the swabs taken at the Moyer residence was found to be consistent with Robinson's DNA profile, which was obtained upon Robinson's arrest nearly three years after the burglary at the Moyer residence.

On June 13, 2008, the State charged Robinson with Count I, burglary as a class B felony, and Count II, theft as a class D felony. On March 12, 2009, Robinson pleaded guilty

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<sup>1</sup> Ind. Code Ann. § 35-43-2-1 (West, PREMISE through Public Laws approved and effective through 4/20/2009).

to Count I pursuant to a written plea agreement that left sentencing entirely to the discretion of the trial court. The trial court held a sentencing hearing on April 9, 2009. In deciding what sentence to impose, the trial court thoroughly and carefully explained its evaluation of the aggravating and mitigating circumstances. As aggravating, the trial court cited the significant loss to the victims, and Robinson's history of criminal behavior. With regard to Robinson's criminal history, the trial court noted that it was paying "particular attention" to the fact that Robinson committed two felony offenses after he committed the instant offense. *Transcript* at 52. The court further noted that Robinson had been convicted of misdemeanor criminal mischief and operating a vehicle while under the influence of a schedule I or II substance and that Robinson was on probation at the time he committed the current offense. As mitigating, the court cited that the instant offense was the result of circumstances unlikely to recur and Robinson's character and attitude, but explained that it gave such circumstances minimal weight. The court also considered the hardship on Robinson's dependents. Ultimately, the court concluded that the aggravators outweighed the mitigators. The court explained that it believed the maximum sentence was not supported by the circumstances, but in light of Robinson's criminal history, executed time exceeding the advisory sentence was warranted.<sup>2</sup> The trial court therefore sentenced Robinson to sixteen years imprisonment, with one year suspended to probation.

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<sup>2</sup> Ind. Code Ann. § 35-50-2-5 (West, PREMISE through Public Laws approved and effective through 4/20/2009) ("[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years).

Robinson now appeals, challenging his sentence as inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that Robinson bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

With regard to the nature of the offense, we recognize that no physical harm came to the victims of the crime. The loss suffered by the victim of Robinson's actions, however, was significant. The Moyers lost approximately \$10,000 worth of items. The items were never returned, and many of the items were "irreplaceable," having great personal value to the Moyers. *Transcript* at 22. The loss suffered by the victims demonstrates that the nature of this offense was more serious than many home burglaries.

As for the Robinson's character, his criminal history is quite telling. As accurately noted by the trial court, Robinson was on probation at the time he committed the instant offense for a 2003 felony theft conviction. Further, Robinson has been convicted of operating under the influence of a schedule I or II substance in 2008 and criminal mischief in 2007. Robinson's criminal history also includes crimes committed subsequent to the instant offense. Robinson's criminal history reflects negatively on his character. *See Felder v. State*,

870 N.E.2d 554 (Ind. Ct. App. 2007) (noting that a substantial criminal history reflects negatively on a defendant's character as it shows that he has not been deterred from criminal conduct).

We further recognize that Robinson blames his crime on substance abuse, specifically, his abuse of Xanax. Substance abuse, however, may be considered as an aggravating factor warranting an enhanced sentence, especially when, as is the case here, the defendant is aware of his problem and has not taken steps to address it. *See Bryant v. State*, 802 N.E.2d 486 (Ind. Ct. App. 2004), *trans. denied*. Robinson committed the instant offense in 2005, and yet, in 2007, was convicted of operating a vehicle while under the influence of a schedule I or II substance. Robinson's continued substance abuse, and his failure to address it, does not reflect positively on his character.

At the sentencing hearing, Robinson made a statement in allocution, apologizing to the victims and his family for his actions. The trial court acknowledged Robinson's statement of allocution, but recognized that spending time in jail will undoubtedly change a person. We agree with the trial court's assessment in this regard and find that Robinson's claim to be a changed person reflects positively on his character to a minimal degree.

As for hardship on his family, Robinson has not demonstrated how the hardship on his dependents would be greater than that usually suffered by a child whose parent is incarcerated. *See Roney v. State*, 872 N.E.2d 192 (Ind. Ct. App. 2007), *trans. denied*. Moreover, Robinson chose to endanger the well-being of his dependents by continuing to

engage in criminal behavior. Robinson's expression of devotion to his family during his statement to the trial court is unpersuasive in light of his continued criminal conduct.

Having reviewed the record, we find no reason to second guess the trial court's judgment with regard to sentencing. We therefore conclude that Robinson's sixteen-year sentence for class B felony burglary is appropriate in light of both the nature of the offense and the character of the offender.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.