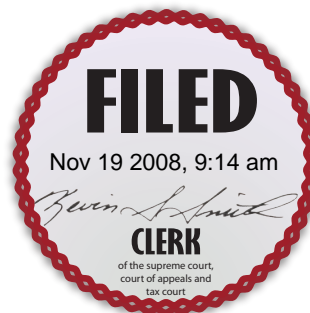


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRANDON L. PHILLIPS,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 02A03-0804-CR-209

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Robert J. Schmoll, Judge  
Cause No. 02D04-0706-FB-94

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**November 19, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Brandon L. Phillips appeals the ten-year sentence imposed by the trial court following Phillips's guilty plea to Burglary,<sup>1</sup> a class B felony, arguing that the sentence is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm.

### FACTS

On June 8, 2007, Phillips and three other individuals went to an apartment community, kicked in the door of an apartment, entered the apartment, and took the victim's property, including a flat screen television, safe, and clothing, without the victim's permission. On June 14, 2007, the State charged Phillips with class B felony burglary and class D felony receiving stolen property. On November 2, 2007, Phillips pleaded guilty to burglary in exchange for the State's agreement to dismiss the receiving stolen property charge. The plea agreement provided a cap of six years on the executed portion of Phillips's sentence but otherwise left sentencing to the trial court's discretion. Appellant's App. p. 35.

Phillips failed to appear for the sentencing hearing on December 5, 2007, and a warrant was subsequently issued for his arrest. On April 2, 2008, the warrant was served, and he was brought before the trial court for a sentencing hearing on April 3, 2008. Following the hearing the trial court found Phillips's lack of remorse, criminal history, and the fact that he was on probation when he committed the instant offense to be aggravating factors. It found Phillips's guilty plea and partial cooperation with the State

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<sup>1</sup> Ind. Code § 35-43-2-1.

to be mitigators. Concluding that the aggravators and mitigators were in equipoise, the trial court sentenced Phillips to an advisory ten-year term, four years suspended, two years of probation, for a total executed sentence of six years. Phillips now appeals.

### DISCUSSION AND DECISION

Phillips argues that the advisory ten-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The sentencing range for a class B felony is six to twenty years imprisonment, with an advisory sentence of ten years. Ind. Code § 35-50-2-5. The advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006).

Turning first to the nature of the offense, we observe that Phillips, working in tandem with three other cohorts, traveled to an apartment community, kicked in the door of an apartment, and stole the victim’s personal property, including a flat screen television and a safe. We agree that the nature and circumstances of this crime are not particularly heinous and that it is a “typical” residential burglary, should such a thing exist. These facts, however, are reflected in the trial court’s imposition of the advisory

sentence, and we see no reason to depart from that judgment based on the nature of the offense.<sup>2</sup>

As for Phillips's character, we observe that as a juvenile, Phillips had an informal adjustment for possession of alcohol by a minor. As an adult, nineteen-year-old Phillips has been convicted for class A misdemeanor resisting law enforcement and class A misdemeanor public intoxication. Phillips was on probation for those crimes at the time he committed the instant offense. Again, while it is true that Phillips is far from the worst offender, he had managed to amass two convictions and a probation violation by the age of nineteen, which is not insignificant and supports the imposition of the advisory sentence.

Furthermore, although Phillips pleaded guilty to burglary, he absconded following his guilty plea and was not found until four months after his originally-scheduled sentencing date. Thus, his cooperation was minimal and does not aid his inappropriateness argument.

In sum, we agree that Phillips is not the worst of offenders and that his crime was not the worst of offenses. But the trial court did not sentence him as such. To the contrary, it stuck with the starting point provided by the Legislature—the advisory sentence of ten years—and suspended four years of that sentence, with two of those years

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<sup>2</sup> Phillips describes the nature of the offense using a number of “facts” that are not supported by the evidence in the record. Appellant's Br. p. 6-7.

to be served on probation. We do not find that the ten-year sentence, with six years executed, is inappropriate in light of the nature of the offense and Phillips's character.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.