

Betty Grady appeals her sentence for theft as a class D felony.¹ Grady raises one issue, which we revise and restate as whether Grady's sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. On January 24, 2009, Grady, who has had problems with alcohol for decades, stole a 1.75 liter bottle of liquor from the Kendallville Party Store in Kendallville, Indiana. On January 26, 2009, the State charged Grady with theft as a class D felony for the incident. Grady and the State entered into a plea agreement in which the State agreed not to charge Grady with being an habitual offender in exchange for her pleading guilty to theft as a class D felony.

At the sentencing hearing, Grady argued that the trial court should take into consideration the facts that Grady pled guilty, that Grady had been seeking treatment for alcoholism for the past six weeks at the Northeastern Center, and that she is the primary caregiver for her brother who has a brain injury and needs constant attention. The trial court accorded some mitigating weight to "the fact that [Grady] did plead guilty . . . and there has been a [sic] effort I suppose in the last two months, I suppose, to try to address [Grady's] alcohol problem." Transcript at 32-33. The trial court identified Grady's criminal history, consisting of eleven previous arrests "almost all [having] to do with alcohol [and] some property offenses . . . ," as a significant aggravating circumstance. Id. at 33. The trial court then spoke to Grady and said:

The law says that this is a, there is a minimum sentence of at least six (6) months. Even if I wanted to give you the best deal I could give you you are

¹ Ind. Code § 35-43-4-2 (2004) (subsequently amended by Pub. L. No. 158-2009, § 8 (eff. July 1, 2009)).

going to serve at least six (6) months in prison and frankly that is short of what I think is appropriate.

Id. at 33-34. The trial court sentenced Grady to two years executed at the Indiana Department of Correction.

The sole issue is whether Grady'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). Grady argues that her sentence should be shortened or revised so that she may return home and serve the remainder of her sentence on probation.

Our review of the nature of the offense reveals that Grady stole a 1.75 liter bottle of liquor from the Kendallville Party Store in Kendallville, Indiana.

Our review of the character of the offender reveals that Grady cares for her brother who needs constant attention due to a sustained brain injury. Grady also has accumulated an extensive criminal record. Grady was cited for shoplifting in December of 1975. Grady pled guilty to operating while intoxicated as a class A misdemeanor in September of 1992. Grady pled guilty to a subsequent operating while intoxicated as a class D felony in April of 1994. In October of 1998, Grady pled guilty to one count of disorderly conduct as a class B misdemeanor; charges of resisting law enforcement as a class A

misdemeanor and public intoxication as a class B misdemeanor stemming from the same offense were dismissed. Grady was sentenced to 180 days suspended and 365 days probation for this offense. In December of 1998, Grady pled guilty to a charge for public intoxication as a class B misdemeanor and was sentenced to 180 days to run consecutive to her prior disorderly conduct sentence. On May 28, 1999, a Probation Violation Report was filed against Grady “for failure to report to probation, failure to maintain employment, failure to pay fees, and failure to follow through with recommended treatment.” Presentence Investigation Report at 4. On July 29, 1999, Grady was charged with public intoxication as a class B misdemeanor. A second Probation Violation Report was filed for committing this new offense. On July 7, 2000, Grady’s probation was revoked and she was sentenced to thirty days in jail to be run consecutive to the other jail terms. “This sentence was suspended on the condition that [Grady] complete 120 days of home detention, without good time credit.” Id.

On October 13, 2002, Grady was charged with possession of methamphetamine as a class D felony and possession of marijuana, hashish or hash oil as a class D felony in Cause Number 57D01-0210-FD-347 (“Cause No. FD-347”). Grady was sentenced to eighteen months on each charge in Cause No. FD-347; the sentences were suspended except for twenty days. On January 2, 2004, Grady was charged with battery as a class A misdemeanor, trespass as a class A misdemeanor, and public intoxication as a class B misdemeanor in Cause Number 57D02-0401-CM-11 (“Cause No. CM-11”). On January 6, 2004, a Probation Violation Report regarding her probation from Cause No. FD-347 was filed “for failure to pay fees, failure to attend appointments, committing a new

offense and positive drug screens.” Id. at 4. Grady’s probation from Cause No. FD-347 was modified on July 27, 2004, and Grady was ordered to serve one year of her suspended sentence with no credit. Grady was also sentenced to 82 days in jail for the offenses in Cause No. CM-11 which were run consecutive to the sentence in Cause No. FD-347.

On October 30, 2006, Grady was charged with battery resulting in bodily injury as a class D felony, resisting law enforcement as a class A misdemeanor, possession of paraphernalia as a class A misdemeanor, and public intoxication as a class B misdemeanor in Cause Number 92D01-0610-FD-686 (“Cause No. FD-686”). Grady was sentenced to eighteen months suspended on the battery and possession of paraphernalia offenses, and the sentences were run concurrently. On February 23, 2007, Grady was sentenced to 90 days for operating a vehicle with a B.A.C. of .15 grams or more as a class A misdemeanor which was run consecutively to the sentence in Cause No. FD-686. Also, with regard to Cause No. FD-686, the Presentence Investigation Report reveals that:

08-29-2007 Community Service files a request for an Order to Appear. 09-12-2007 [Grady] fails to appear and a hearing was reset. 10-17-2007 [Grady] fails to appear and a warrant was issued. 10-22-2007 Whitley Superior Court Alcohol and Drug Program Director files a Non-Compliance Form. 04-07-2007 Whitley Superior Court Alcohol and Drug Program Director files a Non-Compliance Form. 4-23-2008 [Grady] fails to appear and a warrant was issued. 06-23-2008 Unsuccessful termination filed by the Whitley Superior Court Alcohol and Drug Program Director. 02-02-2009 [Grady] is in contempt for failure to abide by the previous orders and is returned to counseling.

Id. at 4-5. Finally, on April 24, 2007, Grady was again charged with theft as a class D felony. This case was “dismissed with the condition that the cash escrow bond be applied to restitution.” Id. at 5. Grady had, in the two months leading up to the sentencing hearing, sought treatment for her alcoholism.

Given Grady’s extensive criminal history and after due consideration of the trial court’s decision, we cannot say that the two year 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., Long v. State, 867 N.E.2d 606, 617 (Ind. Ct. App. 2007) (holding that the defendant’s enhanced sentence was not inappropriate in light of the nature and offense and the character of the offender where the trial court found that the defendant had an extensive criminal history of similar crimes), reh’g denied.

For the foregoing reasons, we affirm Grady’s sentence for theft as a class D felony.

Affirmed.

CRONE, J., and MAY, J., concur.