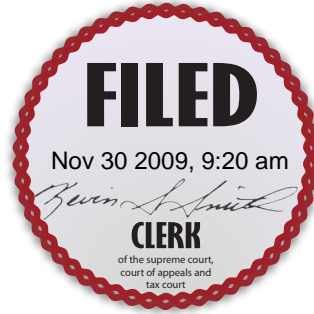


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOHNNY BAKER,)

Appellant-Defendant,)

vs.)

No. 49A02-0904-CR-367

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel Cruz, Judge Pro Tem
Cause No. 49F24-0812-FD-284084

November 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Johnny Baker appeals the sentence imposed following his plea of guilty to theft, a Class D felony.¹ He asserts the sentence is inappropriate in light of his character and the nature of his offense. We affirm.

FACTS AND PROCEDURAL HISTORY

On December 12, 2008, Baker stole a tote bag from CVS. He was arrested, and the tote bag was returned to CVS. Baker was charged with Class D felony theft, and he agreed to plead guilty to the offense if the State would not seek an habitual offender enhancement. A Class D felony carries a penalty of six months to three years in prison, with an advisory sentence of one-and-one half years. Ind. Code § 35-50-2-7. The trial court imposed the advisory sentence.

DISCUSSION AND DECISION

Baker asserts his sentence is inappropriate in light of his character and the nature of the offense. It is not.

“Sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). The merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218 (Ind. 2007). That rule provides we may revise a sentence “authorized by statute if, after due consideration of the trial court’s decision, the court finds that the sentence is inappropriate in light of the nature of the

¹ Ind. Code § 35-43-4-2.

offense and the character of the offender.” App. R. 7(B). The appellant has the burden to show the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). In reviewing the sentence, we look to any factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied* 878 N.E.2d 217 (Ind. 2007).

Baker’s crime was a relatively minor theft. CVS did not suffer a loss because the bag was returned on Baker’s arrest. Nevertheless, because of Baker’s character we cannot find his sentence inappropriate. Baker has an extensive criminal history including nineteen convictions. Three are felonies, and two are Class D felonies entered as Class A misdemeanors. Nearly half are property crimes similar to this offense. The State has attempted to rehabilitate Baker through incarceration and probation, which has been revoked four times. Baker expressed remorse and indicated he has changed his life, but his criminal history and recidivism demonstrate the sentence is appropriate.

We conclude that in light of Baker’s character and the nature of his offense, his sentence is not inappropriate. Accordingly, we affirm.

Affirmed.

CRONE, J., and BROWN, J., concur.