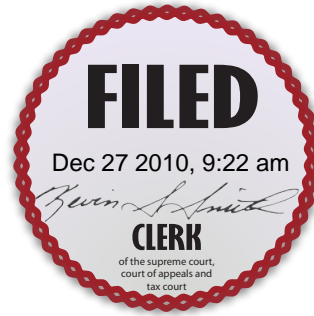


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**MICHAEL W. REED**  
Reed & Earhart Attorneys at Law, P.C.  
Warsaw, Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**JOBY D. JERRELLS**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

VIRGIL J. SMITH, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 43A03-1004-CR-245  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

---

APPEAL FROM THE KOSCIUSKO SUPERIOR COURT NO. 1  
The Honorable Duane G. Huffer, Judge  
Cause No. 43D01-0909-FB-155

---

**December 27, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Virgil J. Smith (Smith), appeals the sentence imposed after he pled guilty to robbery, a Class B felony, Ind. Code § 35-42-5-1.

We affirm.

## ISSUE

Smith raises one issue on appeal, which we restate as follows: Whether his sentence is inappropriate in light of his character and the nature of the offense.

## FACTS AND PROCEDURAL HISTORY

On June 17, 2009, twenty-three-year-old Smith entered the Lake City Bank branch in Silver Lake, Indiana, carrying what appeared to be a handgun and took approximately \$8,000.00 from a bank teller. On September 4, 2009, the State filed an information charging Smith with robbery as a Class B felony. On April 12, 2010, Smith pled guilty to robbery as a Class B felony. A pre-sentence investigation report revealed Smith has an extensive seven-year legal history that includes convictions for burglary as a Class C felony, robbery as a Class B felony and possession of a narcotic drug as a Class D felony.

At the April 22, 2010, sentencing hearing, the trial court pointed out that Smith had been “in trouble with the law each and every year . . . since 2003. . . . It started as a juvenile and you wouldn’t accept the rehabilitation offered underneath the juvenile system and then you keep going each year and each year the crimes are becoming more severe. . . .” (Transcript p. 26). On April 22, 2010, the trial court sentenced Smith to ten years, with the sentence to run consecutively with sentences in unrelated convictions in Cause Numbers

85C01-0908-FC-116 and 85C01-0909-FB-128. The court explained that “this crime was done here and to make it concurrent to another robbery would demean that which happened to the victims of the crime in Silver Lake, and that you should serve 10 years for the crime you committed here.” (Tr. p. 28).

Smith now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Smith argues that the trial court erred in sentencing him. Specifically, he contends the trial court’s imposition of consecutive sentences resulted in a sentence that is inappropriate in light of his character and the nature of the offense.

Indiana 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). When considering whether a sentence is inappropriate, we give due consideration to the trial court’s decision. *Allen v. State*, 925 N.E.2d 469, 481 (Ind. Ct. App. 2010), *trans. denied*.

With respect to the nature of the offense, we note that with prior convictions for Class B felony burglary and robbery, Smith entered a bank with what appeared to be a handgun and took approximately \$8,000.00 from a bank teller. Smith’s prior convictions show a disregard for the law as well as an escalation in the severity of his crimes. *See Ruiz v. State*, 818 N.E.2d 927, 929 (Ind. 2004) (holding that the significance of prior criminal history varies

based on the gravity, nature, and number of prior offenses as they relate to the current offense).

With respect to the character of the offender, we note that for the past seven years, Smith has had legal problems every year. As the trial court noted, Smith's legal problems began when he was a juvenile and have become more severe every year. His prior contacts with the law have not caused him to reform himself.

We further note that the trial court specifically stated that it was imposing consecutive sentences because to order concurrent sentences would demean what happened to the victims at the Silver Lake bank. In this regard, the Indiana Supreme Court has stated consecutive sentences reflect the significance of multiple victims. Pittman v. State, 885 N.E.2d 1246, 1259 (Ind. 2008). Specifically, when a defendant commits an act against more than one victim, consecutive sentences “vindicate the fact that there were separate harms and separate acts against more than one person.” Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003). The trial court's imposition of consecutive sentences did not result in an inappropriate sentence.

#### CONCLUSION

Based upon the foregoing, we conclude that Smith's sentence was not inappropriate in light of his character and the nature of the offense.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.