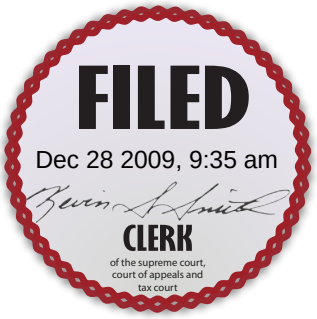

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IN THE
COURT OF APPEALS OF INDIANA

GARY PAYTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 41A01-0908-CR-411
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable K. Mark Loyd, Judge
The Honorable Richard Tandy, Magistrate Judge
Cause No. 41D03-0806-FB-11

December 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Gary Payton appeals his sentence for burglary as a Class C felony. We affirm.

Issue

Payton raises one issue, which we restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

Facts

On April 8, 2008, Payton was released from jail at approximately 4:30 p.m. According to Payton, he started a conversation with a man outside of the jail. The man invited him to go to a party that evening, and Payton did so. After the party, according to Payton, they broke into the residence of Natalie Fredenburg, where they took her keys, vehicle, purse, cell phone, and credit cards.

The State charged Payton with burglary as a Class B felony, burglary as a Class C felony, residential entry as a Class D felony, auto theft as a Class D felony, and theft as a Class D felony. Payton agreed to plead guilty to burglary as a Class C felony, and the State agreed to dismiss the remaining charges and a disorderly conduct charge under a different cause number. At the guilty plea hearing, Payton admitted to "assist[ing] someone in breaking into and entering the dwelling of Natalie Fredenburg." Tr. p. 4.

At the sentencing hearing, the trial court noted that Payton had just been released from jail when he committed the instant offense, that Payton had a criminal history of property crimes, and that Payton was on probation at the time of the instant offense. The trial court sentenced Payton to five years in the Department of Correction.

Analysis

The issue is whether Payton's five-year sentence is inappropriate in light of the nature of the offense and the character of the offender. 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." When considering whether a sentence is inappropriate, we need not be "extremely" deferential to a trial court's sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

According to Payton, his crime spree was triggered by the death of his father, his crime was not egregious, and his criminal history is minor. Payton argues that we should reduce his sentence to an advisory four-year sentence with two years executed, one year of work release, and one year of home detention.

Our review of the nature of the offense reveals that, within hours after he was released from jail, Payton assisted someone in breaking into and entering a stranger's residence during the middle of the night. Payton pled guilty to burglary as a Class C felony, and the State dismissed several other charges, including burglary as a Class B felony, residential entry as a Class D felony, auto theft as a Class D felony, theft as a Class D felony, and a disorderly conduct charge under a different cause number.

Our review of the character of the offender reveals that Payton has committed several property crimes within a short period of time. He was convicted of conversion in 2008 and sentenced to 365 days in jail suspended to probation. He violated his probation and was sentenced to serve 254 days of his previously suspended sentence. He was also convicted of auto theft in 2008. He received alternate misdemeanor sentencing and was sentenced to ten days in jail and 345 days suspended to probation. Again, he violated his probation. He was still on probation at the time of this offense.

Despite opportunities to correct his behavior, Payton has failed to respond to prior lenient treatment. Rather, Payton's crimes have escalated. As the State notes, although the death of his father was tragic, "it does not justify his continued victimization of others and defiance of the courts." Appellee's Br. p. 7-8. We conclude that the trial court's five-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

Payton's five-year sentence is not inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Affirmed.

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