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IN THE
COURT OF APPEALS OF INDIANA

RAYMOND J. FLACK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A05-0607-CR-360
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Jr., Judge
Cause Nos. 34D01-0404-FD-112, 34D01-0404-FD-113

November 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Raymond J. Flack was convicted after a jury trial of two counts of theft[1] each as a Class D felony and one count of corrupt business influence[2] as a Class C felony. He appeals raising three issues, which we restate as:

I. Whether sufficient evidence was presented to support his convictions;

II. Whether Flack's second trial violated protections against double jeopardy; and

III. Whether Flack was sentenced properly.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 5, 2003, a flood occurred in a housing development in Kokomo, Indiana. Several of the homes in this development experienced extensive water damage and needed to be repaired. Three of the homeowners, the Spalls, the Stokesberrys, and the Mosses, entered into agreements with Flack to clean and repair their homes in exchange for the amount of money reflected in each homeowner's insurance adjuster's estimate.

Three days after the flood, an insurance adjuster provided the Spalls with an appraisal of the damages to their home. A few days later, Flack told the Spalls that he would repair their home and gave them an estimate for the repairs that corresponded with the adjuster's estimate. Flack stated that he would complete the work on the Spalls' home by Labor Day. On August 29, 2003, the Spalls endorsed the insurance check in the amount of $60,500.00 and gave it to Flack. A crew of four to six men, supervised by Flack's brother, began

[1] *See* IC 35-43-4-2(a).

[2] *See* IC 35-45-6-2(3).

demolition, removal of damaged items, and general cleanup of the home. The crew did not bring their own tools; instead, they used tools belonging to the homeowners. In late October, Flack had not completed the work on the Spalls' home, including installation of the kitchen cabinets and woodwork and repairs to the garage. No further work was done on the Spalls' home by Flack. After they were no longer able to contact Flack, the Spalls had to pay for the kitchen cabinets and remaining lumber supplies, as well as hire a new contractor to finish the work on their home.

The Stokesberrys' home sustained damage to the main level due to the flood, and they met with Flack within a week of the flood. Flack gave them a brochure, which indicated that his company provided the following services: forensic architectural investigations; emergency property repair and disaster management; remodeling and reconstruction; consulting and litigation support; and roofing and siding replacement and repair. *Ex*. 31. The brochure also detailed the company's expertise in water damage and mold elimination. *Id*. Two company names appeared on the brochure, Restoration Services of America, Inc. and Enviro Tech. *Id*. Flack offered to repair the Stokesberrys' home for the amount of the insurance estimate they had received. The Stokesberrys received the first payment by the insurance company in the amount of $35,000.00 and endorsed the check and gave it to Flack. Flack assured the Stokesberrys that he would deposit the check and provide them with an accounting of how the money was being spent, which he never did. A crew began demolition and removal of damaged items. Despite Flack's promise to complete the work within sixty days, this was not done. The Stokesberrys received a second check from the insurance company in the amount of $26,090.64 during September and expressed

reservations about giving Flack the check because of the limited work that had been completed. *Tr*. at 282, 337. Eventually, the Stokesberrys agreed to give the second insurance check to Flack after his assurances that the job would be completed. They never saw Flack back on the project again. After Christmas, the Stokesberrys and the Spalls went to a storage facility that Flack had rented to store the homeowners' belongings and shared in the cost of unpaid rent to reclaim the property. The Stokesberrys had to hire another contractor to finish the work on their home and had to pay an additional approximately $38,000.00 of their own money to complete their home.

After the flood, the Mosses spoke with Flack regarding his company doing the repair work on their home. Flack represented that he could finish the work in three months and for the amount reflected in the insurance adjuster's estimate. Flack stated that he would begin rebuilding, as distinguished from cleanup, as soon as he received the first check. *Id*. at 480. Three crew members began cleanup of the Mosses' home about a week after the initial meeting. The Mosses became concerned because the work done on their home was of poor quality and was not progressing and expressed this concern to Flack, who stated that he could not continue the work until he received the insurance check. *Id*. at 490-91. The Mosses received the check in the amount of $68,735.28 from the insurance company on September 24, 2003, but decided to hold onto it because of their concern. This angered Flack, and after he made assurances to the Mosses that he would bring in his best crew to finish the job and agreed to place the money in a joint account controlled by both him and the Mosses, the Mosses endorsed the check and gave it to Flack. Flack opened a checking account and deposited the Mosses' check into it, but did not name the Mosses as authorized account

holders as promised. Flack's crew appeared only one more time after the Mosses gave Flack the check, and the work was not completed on the Mosses' home. The Mosses were forced to finish some of the work on their own and to hire a contractor to finish the rest.

On April 5, 2004, the State charged Flack with three counts of theft, each as a Class D felony. The trial court granted Flack permission to leave the state for the period of June 25, 2004 to July 3, 2004. After Flack failed to appear for a hearing on February 3, 2005 and a pretrial conference on April 14, 2005, a warrant was issued for his arrest. On June 28, 2005, the sheriff notified the trial court that Flack was in custody. On July 7, 2005, Flack moved for a speedy trial, and a trial date was set for August 12, 2005. On July 28, the State charged Flack with corrupt business influence as a Class C felony. On August 10, 2005, the State filed a Supplemental Witness and Exhibit List, and on August 11, Flack filed a motion to exclude the additional witnesses and exhibits. On August 12, a jury was convened and released for the day. A hearing was held outside the presence of the jury on Flack's motion to exclude. The trial court denied the motion and stated that Flack's remedy was to request a continuance. *Id*. at 110. On August 15, Flack moved to continue the jury trial in order to perform additional research, and the trial court granted the motion. The trial court was reset , and the trial court declared a mistrial.

On January 23, 2006, Flack's second jury trial commenced, and at it is conclusion, the jury found him guilty of two counts of theft, as they related to the Mosses and the Stokesberrys, and one count of corrupt business influence. At his sentencing hearing, on May 11, 2006, the trial court found the following aggravating circumstances: (1) the harm and damage suffered by the victims was significant and substantially greater than any of the

elements necessary to prove the commission of the offense; (2) Flack violated conditions of pretrial release when he went to Florida and refused to come back; (3) he smuggled contraband into the jail; and (4) his criminal history. *Id*. at 812-13. The trial court found no mitigating circumstances and sentenced Flack to three years on each theft conviction and eight years on the corrupt business influence conviction. The sentences were ordered to be served consecutively to each other and consecutively to a previously ordered ninety-day sentence for contempt. Flack now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Flack argues that insufficient evidence was presented to support his convictions for theft and corrupt business influence. Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Dickenson v. State*, 835 N.E.2d 542, 551 (Ind. Ct. App. 2005), *trans. denied*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if there is sufficient probative evidence to support the judgment of the trier of fact. *Dickenson*, 835 N.E.2d at 552; *Robinson*, 835 N.E.2d at 523.

Flack first contends that insufficient evidence was presented to support his two convictions for theft. In order to convict Flack, the State was required to prove that he knowingly or intentionally exerted unauthorized control over the property of another person, with the intent to deprive the other person of any part of its value. IC 35-43-4-2(a). Flack

specifically claims that the State failed to present sufficient evidence to prove his intent to deprive the victims of their money.

"Intent is a mental function; hence, absent a confession, it often must be proven by circumstantial evidence." *Hightower v. State*, 866 N.E.2d 356, 368 (Ind. Ct. App. 2007), *trans. denied*. It may be inferred from a defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points. *Id*. The jury is entitled to infer intent from the surrounding circumstances. *Id*.

The evidence presented at Flack's trial showed that Flack met with both the Mosses and the Stokesberrys and told them that he could repair the damage done to their homes due to the flood for the amount contained in the insurance adjuster's estimate. Both homeowners endorsed their insurance checks and gave them to Flack. In each instance, a crew of Flack's men did minimal work and work of poor quality on the homes. Flack promised each of the homeowners that the work would be finished within a few months, and after several months had elapsed, the work was still not finished, Flack had obtained the homeowners' total insurance payment, and he had stopped work on the homes. The repairs and work on the homes was never finished by Flack, and Flack never returned any of the funds to the homeowners. It was reasonable for the jury to infer from the circumstances that Flack had the intent to deprive the homeowners of their insurance checks without completing the work on their homes. Sufficient evidence was presented to support his convictions for theft.

Flack also argues that insufficient evidence was presented to support his conviction for corrupt business influence. In order to convict Flack, the State was required to prove that he was employed by or associated with an enterprise and knowingly or intentionally

conducted or otherwise participated in the activities of that enterprise through a pattern of racketeering activity. IC 35-45-6-2(3). An "enterprise" is: (1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or (2) a union, an association, or a group, whether a legal entity or merely associated in fact. IC 35-45-6-1. "Pattern of racketeering activity" is defined as "engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents." *Id*. "Racketeering activity" includes committing theft. *See id*.

A pattern of racketeering activity requires at least two predicate acts, which must be related and pose a threat of continued criminal activity. *Waldon v. State*, 829 N.E.2d 168, 177 (Ind. Ct. App. 2005), *trans. denied*. The United States Supreme Court has described the continuity requirement as "both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition." *H.J. Inc. v. Nw. Bell Telephone Co.*, 492 U.S. 229, 241, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989). To establish closed-ended continuity, a party must prove a series of related predicate acts over a substantial period of time. *Waldon*, 829 N.E.2d at 177. Predicate acts, which extend over a few weeks or months and threaten no future criminal conduct do not satisfy this requirement. *Id*. When an action is brought before continuity can be established in this way, open-ended continuity must be shown. *Id*. It is established by showing a threat of continuity. *Id*.

Flack contends that the State failed to prove that he engaged in a pattern of racketeering activity because insufficient evidence was presented to show criminal activity projected into the future. He claims that his activities only lasted approximately four months, which is not a substantial period of time. He also argues that his activities could not be characterized as criminal activity projected into the future because his employment originated from a natural disaster that was out of his control.

We disagree with Flack's contentions. The flood occurred on July 5, 2003, causing damage to the victims' homes. Shortly thereafter, Flack came to the neighborhood and made promises to the homeowners that he would repair the damage to their homes. Flack provided a brochure to the Stokesberrys, which showed that he was associated with Restorations Services of America, Inc. and Enviro Tech. Because Flack had the brochures printed and ready to hand out to the homeowners within a week after the flood, the jury could infer that Flack's enterprise was ongoing. Flack also told the Mosses that he had been doing home repairs and mold decontamination for years. He promised to repair the damage done to the homes by the flood and promised to do these repairs for the amount contained in the insurance adjuster's estimate. Flack sent a small crew of men to do minimal cleanup work at the homes and encouraged the homeowners to order kitchen cabinets and appliances, which he paid for with bad checks. When the homeowners received their insurance checks, Flack had them sign over the checks in their entirety. Shortly after receiving all of the homeowners' checks, Flack ceased work on their homes and never returned. The homeowners were then forced to pay the various venders for cabinets and supplies that Flack had purchased with bad checks. This entire scheme by Flack spanned several months.

Additionally, Flack told the Mosses that he was going to move to Florida to start a new business to do home repair similar to his business in Indiana. The jury could have inferred that Flack's conduct would continue in the future. We conclude that sufficient evidence was presented to prove that Flack's acts posed a threat of continued criminal activity and to support his conviction for corrupt business influence.

II. Double Jeopardy

Flack argues that both the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Article 1, Section 14 of the Indiana Constitution barred his retrial. The Fifth Amendment provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." Article 1, Section 14 of the Indiana Constitution provides: "No person shall be put in jeopardy twice for the same offense." These constitutional directives against double jeopardy are codified in IC 35-41-4-3, which states in pertinent part:

> (a) A prosecution is barred if there was a former prosecution of the defendant based upon the same facts and for commission of the same offense and if:
>
> . . . .
>
> (2) the former prosecution was terminated after the jury was impaneled and sworn or, in a trial by the court without a jury, after the first witness was sworn, unless (i) the defendant consented to the termination or waived, by motion to dismiss or otherwise, his right to object to the termination . . . .
>
> (b) If the prosecuting authority brought about any of the circumstances in subdivisions (a)(2)(i) through (a)(2)(vi) of this section, with intent to cause termination of the trial, another prosecution is barred.

Therefore, the protection against double jeopardy will not prevent a retrial of the offense, if: (1) a defendant waives his right to raise double jeopardy claims; (2) a defendant consents to the termination of proceedings after jeopardy has attached; or (3) the termination is required by "manifest necessity." *State v. Erlewein*, 755 N.E.2d 700, 704 (Ind. Ct. App. 2001). Additionally, a defendant waives his right to raise a claim of double jeopardy by failing to make a timely objection to the trial court's declaration of a mistrial. *Id.* If a defendant moves for or consents to a mistrial, the defendant forfeits the right to raise a double jeopardy claim in subsequent proceedings unless the motion for mistrial was necessitated by governmental conduct "'intended to goad the defendant into moving for a mistrial.'" *Id*. (quoting *Willoughby v. State*, 660 N.E.2d 570, 575 (Ind. 1996)).

Here, on August 10, 2005, the State filed a Supplemental Witness and Exhibit List, and Flack filed a motion to exclude these witnesses and exhibits on August 11. On August 12, a jury was impaneled for Flack's trial, and outside the presence of the jury, a hearing was conducted on Flack's motion to exclude. The trial court denied Flack's motion and found that the new witnesses and exhibits did not create a new theory, but only "flesh[ed] out the case." *Tr*. at 107. The trial court also acknowledged that the prosecutor's office had an open file policy, which allowed Flack access to all of the information in the State's file. *Id*. at 108. The trial court allowed Flack the weekend to determine whether he wished to continue with the trial or to ask for a continuance. On August 15, Flack requested a continuance, and the trial court reset the jury trial and declared a mistrial. Flack did not object to the trial court's declaration of a mistrial.

We therefore conclude that the protection against double jeopardy contained in the United States Constitution and the Indiana Constitution did not prevent Flack from being retried because he consented to the termination of the original trial by requesting a continuance and because he did not object to the declaration of a mistrial by the trial court. *See Whitehead v. State*, 444 N.E.2d 1253, 1254 (Ind. Ct. App. 1983) (further prosecution of defendant did not violate double jeopardy when defendant moved for mistrial, did not withdraw motion, and failed to object when motion was granted). Additionally, Flack has forfeited his right to raise double jeopardy concerns because the mistrial was not necessitated by governmental conduct intended to goad Flack into moving for a mistrial. The trial court determined that the new evidence sought to be admitted by the State was not surprise, but was merely to "flesh out a case." *Tr*. at 107. The State also had an open file policy, and there was no evidence that the State had purposefully withheld evidence from Flack. Further, prior to the first trial, Flack had been unavailable to his defense attorney for over a year, having failed to appear for several hearings after being granted permission to leave Indiana to go to Florida. Flack also failed to hire a new attorney after his original attorney withdrew until approximately forty-five days before the original trial began. We therefore conclude that the trial court's declaration of a mistrial did not render Flack's second trial a violation of protection against double jeopardy.

III. Sentencing

Sentencing decisions are within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)). An abuse of

discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences drawn therefrom. *Id*. We can only review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id*. at 491.

Flack argues that the trial court erred when it sentenced him using aggravators that violated *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).[3] The trial court found the following aggravating circumstances: (1) "the harm and damage suffered by the victims . . . was significant and substantially greater than any of the elements necessary to prove the commission of the offense"; (2) "that [Flack] violated conditions of pretrial release when he went to Florida and refused to come back"; (3) that Flack was involved in smuggling contraband into the jail and had been less than an model prisoner while incarcerated in the Howard County Jail; and (4) Flack's substantial criminal history. The trial court found no mitigating circumstances and sentenced Flack to three years on each theft conviction and eight years on the corrupt business influence conviction with the sentences to run consecutively for a total of fourteen years.

Under *Blakely*, a trial court may enhance a sentence based only upon those facts that are established in the following ways: (1) as a fact of prior conviction; (2) by a jury beyond a reasonable doubt; (3) when admitted by a defendant; and (4) in the course of a guilty plea

[3] Flack also argues that the trial court abused its discretion when it failed to "consider the mitigating factors [he] put forth at sentencing and they were not highly disputable in nature, weight, or significance." *Appellant's Br*. at 16. "A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record." *Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005), *trans. denied* (2006); *see also* Ind. Appellate Rule 46(A)(8). We conclude that Flack has waived this argument for failure to develop a cogent argument as he does not argue why the trial court erred in failing to find such mitigating circumstances as significant.

where the defendant had waived *Apprendi* rights and stipulated to certain facts or consented to judicial factfinding. *Trusley v. State*, 829 N.E.2d 923, 925 (Ind. 2005). Sentences enhanced by aggravators whose language is not specifically found by a jury or admitted by the defendant, are not necessarily impermissible so long as the aggravator in question was (1) supported by facts otherwise admitted or found by a jury and (2) meant as a concise description of what the underlying facts demonstrate and therefore relies upon a legal determination otherwise reserved as a power of the judge. *Morgan v. State*, 829 N.E.2d 12, 18 (Ind. 2005).

Concerning the harm and damage to the victims, "Sixth Amendment rights are not implicated when the language of an aggravator is meant to describe the factual circumstances, not to serve as a fact itself." *Id*. at 17. "*Blakely* 'left in tact [sic] the trial judge's authority to determine whether facts alleged and found are sufficiently substantial and compelling to warrant imposing an exceptional sentence. . . . [T]hat decision is a legal judgment which, unlike factual determinations, can still be made by the trial court.'" *Id*. (quoting *State v. Hughes*, 110 P.3d 192, 202 (Wash. 2005), *abrogated on other grounds*). Aggravating circumstances in such instances are not found by a separate inquiry by the trial court, but rather by reference to facts already admitted by the defendant or found by a jury. *Id*. We therefore conclude that this aggravator was properly considered by the trial court.

As for the second aggravator, that Flack violated conditions of pretrial release, the following exchange occurred at the sentencing:

Q: OK. There's been an indication I believe, in at least two of the letters sent to the court indicated a feeling that you would flee from the jurisdiction because you left the State of Indiana without permission originally, do you remember those letters?

A: Those were the letters I didn't receive.

Q: OK. With respect to that sentiment do you understand that sentiment and you're aware that your bond was revoked as a result of those events and not showing up for hearing?

A: Yes.

Tr. at 767. We therefore conclude that this exchange demonstrated that Flack admitted that he had violated the conditions of his pretrial release by leaving the State of Indiana and not showing up for subsequent court hearings. This was therefore a proper aggravator used to enhance Flack's sentence.

As for the aggravator that Flack had smuggled contraband into the jail while he was incarcerated, there was no evidence that Flack had admitted this or that the jury had found it to be established beyond a reasonable doubt. Thus, it was not an aggravating circumstance found under *Blakely*, and the trial court erred in using it to enhance Flack's sentence.

The next aggravator used by the trial court was Flack's criminal history. Flack had an extensive criminal history, which included six misdemeanor convictions and one felony conviction. His misdemeanor convictions included convictions for writing worthless checks and theft,[4] and his felony conviction was for forgery. A defendant's criminal history is a proper consideration for enhancing his sentence under *Blakely*. *Trusley*, 829 N.E.2d at 925.

The trial court did not err in using Flack's substantial criminal history as an aggravating circumstance.

Flack also contends that the trial court assigned too much weight to his criminal history. "The weight of a defendant's criminal history is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability." *Thomas-Collins v. State*, 868 N.E.2d 557, 560 (Ind. Ct. App. 2007) (citing *Duncan v. State*, 857 N.E.2d 955, 959 (Ind. 2006)). Flack's criminal history consisted of six misdemeanors and one felony conviction, which were for various crimes including writing worthless checks, theft, and forgery. Although these convictions occurred at least ten years prior to the present offenses, they are similar to the present offenses in that they entail dishonesty and misappropriating money. Further, Flack's offenses had been getting increasingly serious. Therefore, we conclude that the trial court did not abuse its discretion in its weighing of Flack's criminal history.

"Where the use of some aggravators violates *Blakely* and others do not, we will remand for resentencing unless we can say with confidence that the trial court would have imposed the same sentence if it considered only the proper aggravators." *Robertson v. State*, 871 N.E.2d 280, 287 (Ind. 2007). Because only one of the aggravating circumstances that the trial court used violated *Blakely*, three valid aggravators still existed which the trial court

[4] Although many of Flack's convictions had adjudication withheld by the Florida trial court, Florida Statute § 921.0011 states that conviction means "a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld." Therefore, even the cases where adjudication was withheld are convictions.

could have used to enhance his sentence. We conclude that the trial court would have imposed the same sentence based on the remaining permissible aggravating circumstances.

Flack also contends that his fourteen-year sentence was inappropriate in light of the nature of the offense and his character. Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

As to the nature of the offense, Flack approached all of the homeowners after their homes had been damaged by the flood when they were vulnerable and in need of someone to repair their homes. He made promises to them that he could do the work for the amount in each of the homeowners' insurance adjuster's estimate, and that the work could be completed within a few months. After only doing a minimal amount of cleanup and repair on the homes and after receiving the insurance checks from the homeowners, Flack ceased working on the homes, and never returned to finish the repairs. This left the homeowners without the use of their homes for an even longer period of time and necessitated them to find other contractors to finish the work on their homes at further expense to them. Additionally, the homeowners were also responsible for paying for lumber supplies and cabinets that Flack had ordered and paid for with bad checks. Because of Flack's crimes, each of the homeowners lost thousands of dollars and was further delayed in moving back into their homes and returning to normalcy after their homes were damaged by the flood.

As to the character of the offender, as previously stated, Flack had an extensive criminal history, which consisted of several misdemeanor convictions for writing worthless checks and a conviction for theft. Flack also had a felony conviction for forgery. These are all crimes that involve dishonesty and relate to the current crimes. Additionally, at the time of Flack's sentencing, he had two pending cases, one for fraud on a financial institution and one for two counts of check deception. Further, when Flack was released prior to his trial, he requested permission to leave Indiana and travel to Florida to assist his family in a move there. He did not return for over a year, and failed to appear at several court hearings. In light of the above evidence, we do not believe that Flack's sentence of fourteen years for two D felony theft convictions and one C felony corrupt business influence conviction was inappropriate.

Affirmed.

ROBB, J., and BARNES, J., concur.