

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.

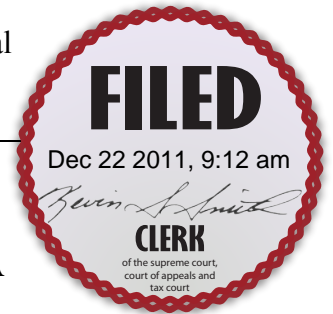
ATTORNEY FOR APPELLANT:

P. JEFFREY SCHLESINGER
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GARY R. ROM
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

ROY N. VIVERETTE, JR.,

Appellant,

vs.

STATE OF INDIANA,

Appellee.

)
)
)
)
)
)
)
)
)
)
)

No. 45A03-1105-CR-223

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas Stefaniak, Jr., Judge
Cause No. 45G04-1012-FB-125

December 22, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Roy Viverette, Jr. (“Viverette”) pleaded guilty in Lake Superior Court to three counts of Class B felony burglary and was ordered to serve an aggregate ten-year sentence with eight years executed in the Department of Correction and two years to be served in Lake County Community Corrections programming. Viverette appeals his sentence and argues that the trial court abused its discretion when it considered the value of a coin collection stolen during the commission of one of the three burglaries as an aggravating circumstance.

We affirm.

Facts and Procedural History

On August 18, 2010, a petition was filed alleging that seventeen-year-old Viverette was a delinquent child for acts that would constitute criminal offenses if committed by an adult. At the State’s request, the juvenile court ordered juvenile jurisdiction over the cause waived to Lake Superior Court.

Thereafter, on December 13, 2010, seventeen-year old Viverette was charged with committing three Class B felony burglaries. During each burglary, Viverette and his accomplices broke into residences, stole items from the homes, and later sold them. These items included electronics, firearms, and a coin collection. On March 23, 2011, Viverette entered into a plea agreement with the State. The plea agreement provided that the sentences on each burglary count would be capped at ten years, and would run concurrent to each other.

A sentencing hearing was held on April 27, 2011. At the hearing, the State submitted “a copy of an assessment” for the stolen coin collection indicating that its value

was over \$550,000. Tr. p. 20. The “antique coins” were collected by the victim and the victim’s father over many years. Tr. p. 21. The State then argued that Viverette should receive the maximum sentence allowed under the plea agreement, in part, because of the monetary and sentimental value of the coin collection. Tr. p. 39. When the trial court asked Viverette why he committed the burglaries, Viverette replied, “I saw people having good things” like expensive Air Jordan tennis shoes. Tr. p. 47.

The trial court then considered as an aggravating circumstance that “prior attempts in the juvenile justice system to act in the best interest of the child have been unsuccessful.” Tr. p. 62. Specifically, Viverette’s prior juvenile history included adjudications for battery, theft, and burglary. The court also considered Viverette’s two adult misdemeanor convictions for intimidation and criminal trespass as aggravating. And in imposing sentence on the third count of burglary, the trial court considered the large monetary and sentimental value of the stolen coin collection as an aggravating circumstance. Tr. pp. 63-64. The trial court also considered two mitigating circumstances: Viverette’s guilty plea and that he was a juvenile when the offenses were committed. The trial court then ordered Viverette to serve ten years on each count to be served concurrent to each other. The court ordered eight years to be served in the Department of Correction and the remaining two years to be served in Lake County Community Corrections programming. Viverette now appeals.

Discussion and Decision

Viverette was ordered to serve concurrent terms of ten years for his Class B felony burglary convictions. See Ind. Code § 35-50-2-5 (providing that the sentencing range for

a Class B felony is six to twenty years, with ten years being the advisory term). Viverette argues that the trial court abused its discretion when it considered the value of the coin collection as an aggravating circumstance because Viverette had no knowledge of the collection's value.

Sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. Id. An abuse of discretion will be found where the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. Id. A trial court may abuse its discretion by issuing an inadequate sentencing statement, finding aggravating or mitigating factors that are not supported by the record, omitting factors that are clearly supported by the record and advanced for consideration, or by finding factors that are improper as a matter of law. Id. at 490–91.

Initially, we observe that the trial court considered the value of the coin collection as an aggravating circumstance **only** when imposing sentence on the third count of burglary. We may logically assume that if the trial court had not been constrained by the ten-year cap in the plea agreement, it would have imposed a sentence greater than ten years on the third burglary conviction. Moreover, because Viverette received concurrent terms of ten years for each burglary conviction, if we were to conclude that the trial court abused its discretion in considering the coin collection's value, there would be no

practical effect of reducing Viverette's sentence for his burglary conviction based on the coin collection.

Viverette also failed to object to evidence admitted of the coin collection's value and did not challenge the State's argument that such fact was aggravating. Viverette's argument concerning his lack of knowledge of the coin collection's value has been raised for the first time on appeal.

Indiana Code section 35-38-1-7.1 provides that the trial court may consider that the "harm, injury, loss, or damage suffered by the victim of an offense was . . . significant[] and [] greater than the elements necessary to prove the commission of the offense." The statute does not require the defendant's knowledge that the loss or damage was significant or substantial. And we may reasonably conclude that it is within common knowledge that a coin collection's value may be significant both monetarily and sentimentally.

For all of these reasons, we conclude that the trial court did not abuse its discretion when it considered the monetary and sentimental value of the coin collection as an aggravating circumstance when it imposed sentence for the third burglary conviction. We therefore affirm Viverette's aggregate ten-year sentence.¹

¹ In the conclusion section of his Appellant's Brief, Viverette argues that his sentence was "not appropriate based upon the nature of the offense and his character." Appellant's Br. at 8. Because Viverette does not engage in any independent argument concerning the appropriateness of his sentence, the issue is waived. See Allen v. State, 875 N.E.2d 783, 788 n.8 (Ind. Ct. App. 2007). Were we to consider the issue on its merits, we would conclude that Viverette's aggregate ten-year sentence for his three Class B felony convictions is appropriate.

Affirmed.

FRIEDLANDER, J., and RILEY, J., concur.