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IN THE
COURT OF APPEALS OF INDIANA

GEORGE LEACHMAN, Appellant-Defendant, vs. STATE OF INDIANA, Appellee-Plaintiff.	)	No. 49A05-0706-CR-355

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Nancy L. Broyles, Judge
Cause No. 49G05-0704-FC-58957

December 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

George Leachman appeals his sentence following his convictions for two counts of Auto Theft, as Class C felonies, pursuant to a guilty plea. Leachman raises a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 10, 2007, Leachman stole from a commercial lot a truck belonging to Scott Willoughby and then used the truck to steal a trailer, belonging to Mark Levy, that was holding an S-22 Bobcat. Leachman drove the truck and trailer off the commercial lot and into the night. Around 3:30 a.m., police initiated a traffic stop because the trailer's taillights were not illuminated. Upon investigation, the officer learned that the truck, trailer, and Bobcat were stolen, and he arrested Leachman.

The State charged Leachman with two counts of Auto Theft, as Class C felonies,[1] and one count of Theft, as a Class D felony. On April 12, 2007, the trial court held an initial hearing. But on May 11, 2007, the parties filed a plea agreement, and the court held a combined guilty plea and sentencing hearing. Pursuant to the plea, Leachman pleaded guilty to the auto theft counts, and the State moved to dismiss the theft count. The trial court accepted the guilty plea, dismissed the theft count, and entered a judgment of conviction on two counts of auto theft, as Class C felonies. The court then sentenced Leachman as follows:

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[1] The auto theft counts were elevated to Class C felonies because Leachman has a prior conviction for the same offense.

> In mitigation I'll find that [Leachman] has not only accepted responsibility but did it in a rather expedient manner. In aggravation I find his criminal history[:] a false informing on January the 14th of '02; a theft on August the 20th of '20; a burglary on September the 17th of '02; and I note that he was given some Community Corrections time and certainly at least had write-ups for violations. I can't say for sure that he was terminated but did have the write-ups. A burglary on January the 3rd of '03 and a violation of Community Corrections there. I find that aggravation does outweigh mitigation to support sentences above the presumptive [sic] so in each class C felony, the sentences are concurrent [with] each other, but I sentence him to six years, five years executed on each, one suspended and he does have credit for 46 days. One year probation, standard costs and conditions of probation. Special conditions[:] restitution to Scott Willoughby in the amount of $1,320 and substance abuse evaluation and treatment, random urinalysis. Court costs of $159; stay of any fines.

Transcript at 25-26. Leachman now appeals.

DISCUSSION AND DECISION

Leachman contends that the trial court abused its discretion when it imposed a sentence greater than the advisory sentence. Specifically, he argues that his aggregate five-year sentence is inappropriate in light of the nature of the offenses and his character. We cannot agree.

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Under Appellate Rule 7(B), we assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856

N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Anglemyer, 868 N.E.2d at 494 (quoting Childress, 848 N.E.2d at 1080) (alteration in original).

Leachman's sentence is not inappropriate in light of his character. Although Leachman was only twenty-six years old at the time of sentencing, the trial court noted his history of one misdemeanor and six felony convictions since 2002. And the Presentence Investigation report ("PSI") references that Leachman has at least two instances of prior Community Corrections violations and that he committed the instant offenses while serving a sentence for a prior auto theft.[2] The trial court noted that Leachman has "not only accepted responsibly but did it in a rather expedient manner." Transcript at 25. And Leachman argues that the offenses were "the product of his significant and untreated substance abuse problem." Appellant's Brief at 8. But there is no evidence that Leachman ever sought treatment for a drug problem. Thus, his admission in that regard does not necessarily reflect positively on his character. In sum, despite Leachman's acceptance of his responsibility, we cannot say that the five-year aggregate sentence is inappropriate in light of Leachman's character.

Nor is Leachman's sentence inappropriate in light of the offenses. Leachman stole a truck, which he then used to steal a trailer loaded with an S-22 Bobcat. In the course of the theft, Leachman damaged the trailer, which required more than $1,000 in repairs and resulted in the restitution order. Leachman then drove truck and trailer into the night,

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[2] Under a May 2006 conviction for auto theft, as a class D felony, the PSI notes that Leachman "was servicing this sentence at the time of the Instant Offense and now [h]as escape status." PSI at 5.

without lights illuminating the trailer. Although Leachman's was not the most egregious of crimes, we cannot say that his five-year aggregate sentence is inappropriate in light of the offense.

Affirmed.

BAILEY, J., and CRONE, J., concur.