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IN THE COURT OF APPEALS OF INDIANA

JEFFREY R. DOUBLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 53A05-1103-CR-151
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Mary E. Diekhoff, Judge
Cause No. 53C05-0907-FB-571

December 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jeffrey R. Double appeals his six-year sentence for Class D felony auto theft[1] and the determination that he is an habitual offender.[2] We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to Double's conviction are that on July 12, 2009, Double and his girlfriend, Kaitlin Kinser, went to the home of Donald Liston and stole Liston's car. They eventually abandoned it in a Walmart parking lot. The State charged Double with Class B felony burglary[3] and Class D felony auto theft, and alleged he was an habitual offender.

On August 23, 2010, Double agreed to plead guilty to the Class D felony auto theft charge and habitual offender allegation, and the State would dismiss the Class B felony burglary charge and cap Double's sentence at six years. On November 23, Double attempted to withdraw his guilty plea because he claimed he had been forced by the prosecution to enter the plea.

After two hearings and review of the transcript of the plea hearing, the trial court denied Double's request to withdraw his plea. Double then accepted the prior plea agreement. On February 9, 2011, the trial court sentenced Double to three years for Class D felony auto theft, enhanced by three years because Double was a habitual offender.

DISCUSSION AND DECISION

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App.

[1] Ind. Code § 35-43-4-2.5(b).
[2] Ind. Code § 35-50-2-8.
[3] Ind. Code § 35-43-2-1.

2008) (citing Ind. Appellate Rule 7(B)). We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied.* The appellant bears the burden of demonstrating his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

When considering the nature of the offense, the advisory sentence is the starting point to determine the appropriateness of a sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 878 N.E.2d 218 (Ind. 2007). The advisory sentence for a Class D felony is one and one-half years, with a range of six months to three years. Ind. Code § 35-50-2-7. One factor we consider when determining the appropriateness of a deviation from the advisory sentence is whether there is anything more or less egregious about the offense committed by the defendant that makes it different from the "typical" offense accounted for by the legislature when it set the advisory sentence. *Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008), *trans. denied*.

Double argues he played only a minor role in the crime, and thus he should have received a shorter sentence. However, Kinser testified at Double's sentencing hearing that Double was the primary actor in the offense, and she was afraid to oppose him or run away. The court found Double's crime "subjected others to harm," and Double was a "threat to the community and a threat to others[.]" (Tr. at 116.)

When considering the character of the offender, one relevant fact is the defendant's criminal history. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The significance of a criminal history in assessing a defendant's character varies

based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id*. Double's criminal record includes three felonies, two for robbery and one for theft, and two misdemeanors. Two of Double's prior felony convictions were used to support the State's allegation he was an habitual offender, and the court noted his prior offenses were very similar to the instant case. Double had been "discharged unsuccessfully" from probation and was on parole at the time of the instant offense. (Tr. at 115.)

In addition, Double was subject to discipline during his incarceration pending the sentencing for the instant offense for fighting with another inmate and being uncooperative with corrections officers. Double had a pending charge of Class D felony auto theft in another county when he admitted the instant offense. While we do not consider an arrest record to be evidence of criminal history, "a record of arrest, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State." *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005).

Double argues his willingness[4] to plead guilty to Class D felony auto theft reflects favorably on his character. Indeed, our Indiana Supreme Court has held a benefit is due to a defendant who pleads guilty because of the benefit he has extended to the State. *Scheckel v. State*, 655 N.E.2d 506, 511 (Ind. 1995). However, it would seem Double received that benefit when the State dismissed the Class B felony burglary charge pending against him in this case. *See Fields v. State*, 852 N.E.2d 1030, 1034 (Ind. Ct.

[4] Double pled guilty, but he tried to withdraw the plea.

App. 2006) (holding Fields' guilty plea did not necessarily reflect positively on his character because the State dismissed other felony charges pending against him), *trans. denied*.

Finally, Double claims his poor upbringing, tumultuous childhood, and substance abuse problems should have been considered as a mitigating factor in sentencing him. However, the trial court is not required to accept what the defendant asserts as a mitigator, nor is it required to give a proposed mitigator the same weight as the defendant would. *Allen v. State*, 722 N.E.2d 1246, 1251 (Ind. Ct. App. 2000).

While the nature of his crime is not necessarily noteworthy, Double admitted stealing Liston's car, which is a felony. Double's criminal history, probation violation, status as a parolee, and disregard for the jail's rules while incarcerated awaiting trial reflect poorly on Double's character. Even though he took responsibility for his offense by pleading guilty, he attempted to withdraw that plea, and received a substantial benefit for his plea through the State's dismissal of the Class B felony charge. Based on the nature of the offense and Double's character, we cannot say that his six-year sentence is inappropriate.

Affirmed.

NAJAM, J., and RILEY, J., concur.