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IN THE COURT OF APPEALS OF INDIANA

LARRY A. ROWE, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 90A02-1106-CR-518
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable Kenton W. Kiracofe, Judge
Cause No. 90C01-1004-FB-3

December 28, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Larry A. Rowe, Jr., appeals the fifteen-year sentence that was imposed following his guilty plea to Burglary,[1] a class B felony. More particularly, Rowe argues that the trial court abused its discretion by failing to consider certain mitigating factors, namely, his guilty plea, his cooperation with police, and the absence of physical harm to the victim. Additionally, Rowe contends that his sentence is inappropriate under Indiana Appellate Rule 7(B) (Rule 7(B)) in light of the nature of the offense and his character and requests that this Court revise it to a term of thirteen years imprisonment, to be served concurrently with his sentence imposed in a different county. Concluding that the trial court did not abuse its discretion and determining that Rowe has failed to persuade this Court that his sentence is inappropriate, we affirm the decision of the trial court.

FACTS

A series of burglaries in Randolph, Delaware, Madison, Grant, Jay, Huntington, Wells, and Blackford Counties occurred in the spring 2010 and prompted cooperation between the police departments of the five counties. On April 5, 2010, police officers arrested Rowe, who was on probation. Rowe confessed to about twenty-three burglaries, including four separate burglaries in Jay County[2] and the burglary which gave rise to the instant charge. Specifically, Rowe confessed that on April 2, 2010, he broke into Jeffrey L. Moore's residence in Wells County, removed a gun safe and sold some of the guns

[1] Ind. Code § 35-43-2-1.

[2] Cause Number 38C01-1004-FB-10.

inside. Based on the information provided by Rowe, police officers recovered some of the guns.

On April 15, 2010, the State charged Rowe with class B felony burglary. On April 14, 2011, Rowe pleaded guilty without a plea agreement; the State agreed to refrain from making any specific recommendation regarding sentence. The trial court accepted the plea and entered a judgment of conviction.

On May 10, 2011, the trial court held a sentencing hearing, during which Rowe confessed to being "under the influence of a lot of drugs," at the time he committed the burglaries. Tr. p. 32. Rowe argued that his remorse, his substance abuse problem, the nonviolent nature of the offense, and the nonviolent nature of his criminal history were mitigating factors. Accordingly, Rowe requested a thirteen-year sentence to be served concurrently with the sentence imposed in Jay County. Rowe conceded that "even if you want to go up to 15 [years] that's fine." Id. at 35.

The trial court observed that "although he didn't threaten serious harm to the persons or property," the burglary, "by its very nature . . . does cause harm to that victim." Id. at 37. The trial court also noted Rowe's lengthy criminal history, including numerous convictions in Clark, Delaware, Hamilton, and Marion Counties, mostly for misdemeanor offenses such as driving while suspended, disorderly conduct, battery, and invasion of privacy. Of Rowe's four class D felony convictions, three were drug-related and one was receiving stolen property. At the time of sentencing, Rowe was facing

burglary charges in Blackford[3] and Huntington[4] Counties. In light of Rowe's history of substance abuse, lengthy criminal history, and recent violation of the conditions of his probation, the trial court added five years to the advisory term of ten years for a class B felony, for a total of fifteen years, and ordered it to be served consecutively to the sentences imposed from Delaware[5] and Jay Counties. Rowe now appeals.

DISCUSSION AND DECISION

I. Abuse of Discretion

Rowe maintains that the trial court abused its discretion by failing to consider certain mitigating factors, including his guilty plea, cooperation with police, and the absence of physical harm to the victim. Initially, we observe that sentencing decisions rest within the trial court's sound discretion and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (2007). A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91.

First, as to Rowe's guilty plea, it is well-established that a defendant who pleads guilty is entitled to "some" mitigating weight. Anglemyer, 875 N.E.2d 220. However,

[3] Cause Number 05C01-1004-FB-166.

[4] Cause Number 35C01-1006-FB-154.

[5] Cause Number 18C02-0802-FD-24 (probation violation).

"an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant." Id. at 220-21 (emphasis added). The significance of a guilty plea will vary from case to case. Id. at 221. For instance, a guilty plea may not be entitled to significant mitigating weight when the defendant does not accept responsibility or when he receives a substantial benefit. Id.

This Court has acknowledged that a guilty plea "does not rise to the level of significant mitigation . . . where the evidence against him is such that the decision to plead guilty is merely a pragmatic one." Edrington v. State, 909 N.E.2d 1093, 1100-01 (Ind. Ct. App. 2009), trans. denied. Here, on April 5, 2010, police officers located Rowe after Jay County Dispatch received two calls about a suspicious male that matched the description of the burglary suspect driving a blue vehicle. By merely looking into the windows of the vehicle, officers could see in plain view a large flat screen television and several firearms, all of which had been stolen that day. Rowe stated that he wanted to cooperate and that he had been stealing because he was unemployed. Appellant's App. p. 24-25.

Rowe was basically caught in the act and confessed almost immediately. Nevertheless, Rowe waited almost one year after his arrest and after considerable discovery before pleading guilty. Consequently, it is not surprising that as Rowe concedes he "did not request specifically" that the trial court consider his guilty plea as a mitigating factor, appellant's br. p. 9, inasmuch as the decision was a pragmatic one.

Therefore, Rowe has failed to show that his decision to plead guilty was a significant mitigating factor, and the trial court did not abuse its discretion by omitting reference to the plea when imposing its sentence.

Second, Rowe argues that the trial court erred in failing to find his cooperation with the police as a mitigating factor. Although Rowe provided some assistance to the officers, they recovered only a portion of what was stolen. Appellant's App. p. 15. Furthermore, even without Rowe's confession, there was sufficient information to link him to the burglary, insofar as he was charged with burglarizing other residences using the same tactics that he had used to burglarize the home in the instant case. Id. at 13-16. Additionally, Rowe left finger, shoe, and tire prints at the scene. Id. at 12-13. In light of the circumstantial evidence against Rowe, we cannot say the trial court erred by not giving this proffered mitigating factor significant weight. See Georgopolus v. State, 735 N.E.2d 1138, 1146 (Ind. 2000) (determining that in light of the circumstantial evidence linking the defendant to the crime, the defendant's sentence would not have been different even if the court had given the defendant's cooperation with police some mitigating weight).

Third, Rowe contends that the trial court "erroneously rejected as a mitigating circumstance that this offense neither caused nor threatened serious harm to persons or property." Appellant's Br. p. 10. As stated by our Supreme Court in Anglemyer regarding proffered mitigating factors, whether or not to accept them is "the trial court's call." 868 N.E.2d at 493. Here, the trial court recognized that Rowe's crime was not a

victimless one. Tr. p. 37. And we cannot say that the trial court erred by declining to give mitigating weight to Rowe's contention that this offense neither caused nor threatened serious harm.

II. Inappropriate Sentence

Rowe argues that his sentence is inappropriate in light of the nature of the offense and his character pursuant to Rule 7(B). When reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Here, Rowe was sentenced to fifteen years to be served consecutively to the sentences imposed in Jay and Delaware Counties. The advisory term for a class B felony is ten years; accordingly, Rowe was sentenced to five years above the advisory term. Ind. Code § 35-50-2-5.

As for the nature of the offense, Rowe violated a person's home, which the trial court observed "has a significant harm and impact on the victim." Tr. p. 36. This burglary was part of a crime-spree, during which Rowe admitted to committing over twenty burglaries. Although Rowe protests his sentences, arguing that he is exposed to "a possible life sentence" for nonviolent invasions "over a short period in a small geographic area," appellant's br. p. 6, it is unreasonable that Rowe should, in effect, be rewarded for committing over twenty burglaries in a short period of time. Indeed, in Hall v. State, this Court stated that "[t]he existence of multiple victims supports the imposition

of consecutive sentences in order 'to vindicate the fact that these were separate harms and separate acts against more than one person.'" 944 N.E.2d 538, 542 (Ind. Ct. App. 2011), trans. denied, (quoting Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003)). Accordingly, consecutive sentences are appropriate in the instant case because Rowe committed multiple burglaries against multiple victims in multiple counties while on probation.

As for Rowe's character, it was his own decision to take "a lot of drugs," tr. p. 32, and burglarize someone's home while on probation. Rowe had numerous chances to make reasonable and lawful decisions and repeatedly failed to do so. More particularly, Rowe had felony convictions in 2000, 2008, 2009, and 2010; his crimes were becoming more frequent and were escalating. Appellant's App. p. 133-37.

Notwithstanding the above, Rowe directs us to Frye v. State, 837 N.E.2d 1012 (Ind. 2005), to support his assertion that his sentence is inappropriate. In Frye, our Supreme Court held that the aggregate forty-year sentence – consisting of a fifteen-year sentence for the charged offenses and a twenty-five year habitual offender enhancement – was inappropriate where the defendant had entered the victim's home unarmed, while she was not there, and stole about $395 worth of items. Id. at 1014-15. Frye's previous burglary conviction that supported the habitual offender enhancement had occurred more than twenty years before the charged offenses. Id. at 1015. Accordingly, our Supreme Court revised the defendant's sentence to an aggregate twenty-five year sentence, consisting of a ten-year sentence of the charged offenses and a fifteen-year sentence of the habitual offender enhancement. Id.

Here, the fact that Rowe is not a habitual offender does not suggest that his fifteen-year sentence to be served consecutively to his sentences imposed in Jay and Delaware Counties is inappropriate. Frye received a twenty-five year sentence for his crime against one family, in part, because he was a habitual offender. By contrast, Rowe burglarized multiple families in two counties while on probation. Consequently, Rowe has failed to convince us that his sentence is inappropriate in light of the nature of the offense and his character, and we affirm the decision of the trial court.

The judgment of the trial court is affirmed.

DARDEN, J., and BAILEY, J., concur.