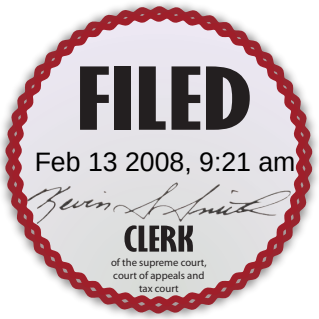

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IN THE
COURT OF APPEALS OF INDIANA

EDDIE M. PEREZ,	)	
	)	
Appellant-Defendant ,	)	
	)	
vs.	)	No. 48A02-0708-CR-709
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause Nos. 48D03-0509-FB-445

February 13, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Eddie Perez ("Perez") pleaded guilty in Madison Superior Court to two counts of Class B felony burglary and four counts of Class D felony theft. After failing to comply with the requirements of the drug court, Perez was ordered to serve an aggregate sentence of twenty-three years. Perez appeals and argues that the trial court abused its discretion in failing to consider Perez's guilty plea as a mitigating factor and by considering improper aggravators, and that the sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On August 2, 2005, Perez committed two burglaries and two thefts.[1] Later in October and November of 2005, on four separate occasions, Perez stole money from physicians' offices while he was employed by a cleaning service.[2] The State subsequently charged Perez with two Class B felony burglaries and two Class D felony thefts under cause FB-445 and four Class D felony thefts under Cause FD-555.

On February 2, 2006, Perez entered into a plea agreement that would dispose of both causes. Perez agreed to plead guilty and participate in drug court. Upon successful completion of the program, all charges would be dropped. However, if he failed to complete the program, then Perez would be sentenced accordingly. Perez pleaded guilty and the trial court "entered a judgment of conviction" but withheld sentencing.

On February 21, 2006, Perez formally entered the drug court program. On July 20, 2006, the drug court notified the trial court that Perez left the program and work

[1] Madison Superior Court Cause Number 48D03-0509-FB-445 ("FB-445")

[2] Madison Superior Court Cause Number 48D03-0512-FD-555 ("FD-555")

release on June 26, 2006. On April 9, 2007, the trial court held a sentencing hearing. The trial court proceeded to sentence Perez on FB-445, to twenty years for Class B felony burglary, three years for Class D felony theft, eight years for Class B felony burglary, and three years for Class D felony theft, with those sentences to be served concurrently to each other. On FD-555, the trial court sentenced Perez to three years for all four Class D felony thefts with concurrent sentences. The trial court ordered that the sentence for FD-555 be served consecutive to FB-445.

The trial court noted that the only mitigating factor was Perez's guilty plea. The trial court found the following aggravators: prior criminal history, violation of bond, and being in need of correctional treatment that can best be provided by commitment to a penal institution. Perez now appeals.

Discussion and Decision

A trial court's sentencing decision lies within its sound discretion and will only be reviewed for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). "An abuse of discretion occurs if 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. at 492 (citations omitted). "The trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Id. at 491. "The reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion," however the relative weight given to those reasons is not subject to appellate review. Id.

Perez asserts that the trial court abused its discretion when it relied on improper aggravators, specifically, Perez's need of correctional treatment that can best be provided by commitment to a penal institution. Since every executed sentence necessarily involves incarceration, the trial court must provide a specific and individualized statement explaining the need for incarceration in imposing an enhanced sentence. See Cotto v. State, 829 N.E.2d 520, 524 (Ind. 2005). The State concedes that the trial court did not provide such a statement. We note that concession and do not consider this aggravator in our analysis of Perez's sentence.

An enhanced sentence may be upheld even if the trial court improperly found an aggravator, if other valid aggravators exist. Kien v. State, 782 N.E.2d 398, 411 (Ind.Ct.App.2003), trans. denied. When presented with such a situation, we may remand to the trial court for resentencing or clarification, affirm the sentence if the error is harmless, or reweigh the aggravators and mitigators independently. Cotto, 829 N.E.2d at 525. We find that the remaining aggravators of Perez's criminal history and his violation of bond support the imposition of the enhanced sentence.[3]

Next, Perez argues that his sentence is inappropriate in light of the nature of the offense and character of the offender. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. "[A] defendant must persuade the appellate court that his

[3] Perez also seeks to have this court review the weight the trial court assigned to his guilty plea. We would note that the trial court properly identified the guilty plea a mitigating factor. However, the weight the trial court assigned to the guilty plea is not subject to appellate review. Anglemyer, 868 N.E.2d 491.

or her sentence has met the inappropriateness standard of review." Anglemyer, 868 N.E.2d at 494.

While Perez does not fully develop his argument for the inappropriateness of his sentence under Appellate Rule 7(B), we conclude that such an argument would be unavailing. We recognize the nature of the crime is of lesser importance in this situation because the burglaries and thefts involved did not result in any physical injuries, however, Perez's character alone supports the sentence imposed.

Perez's character does not reflect an individual who has respect for the law or the judicial system. At the age of twenty-one, Perez's prior criminal history consists of three adult misdemeanor convictions in addition to a juvenile adjudication that would have been a felony if committed by an adult. Additionally, Perez was presented with an opportunity to turn his life around through the drug court, yet spurned that second chance. Soon after entering drug court, he tested positive for illegal drugs. Tr. pp. 28-29. After being allowed to continue in the program, he continued to use illegal drugs. Tr. p. 29. When he was placed on work release, he left the program without any notification as to his whereabouts. Tr. p. 29. Under the facts and circumstances of this case, we cannot say that Perez's aggregate twenty-three year sentence was inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.