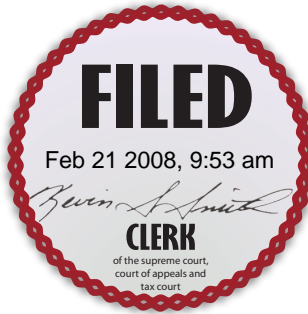


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

ANTHONY S. CHURCHWARD
Deputy Public Defender
Fort Wayne, Indiana

STEVE CARTER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JAMES W. NICHOLSON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)
)

No. 02A05-0707-CR-394

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0703-FC-71

February 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

James W. Nicholson pled guilty to burglary¹ as a Class C felony and was sentenced to six years incarceration. He appeals, raising the following issue: whether his sentence was inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 15, 2007, Officer Greg Woods of the Fort Wayne Police Department responded to a dispatch regarding an alarm at a residence. When he arrived at the residence, Officer Woods heard a noise coming from the garage. After waiting for back-up officers to arrive, Officer Woods observed Nicholson walking out of the garage, carrying a large, red bag and another man carrying an air compressor. Nicholson and the other man were then placed under arrest.

The State charged Nicholson with burglary as a Class C felony. On May 22, 2007, Nicholson pled guilty to this charge pursuant to a plea agreement, which left sentencing to the discretion of the trial court, with a maximum executed sentence of six years. *Appellant's App.* at 13. At the sentencing hearing, the trial court found Nicholson's criminal record, which included eleven felony convictions, and failed efforts at rehabilitation as aggravating circumstances. It also found his guilty plea, acceptance of responsibility, and cooperation with the police as mitigating circumstances. After finding that the aggravating factors outweighed the mitigating factors, the trial court sentenced Nicholson to six years. He now appeals.

¹ See IC 35-43-2-1.

DISCUSSION AND DECISION

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). "Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate." *McMahon v. State*, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006) (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

Nicholson argues that his sentence of six years was inappropriate in light of the nature of the offense and his character. He contends that the nature of the offense did not support the enhanced sentence given because the burglary he committed "involved no actual physical harm to the owner of the premises and no damage was done that required repair."² *Appellant's Br.* at 9. Nicholson also claims that, although he had eleven prior felony convictions, none of the offenses were violent in nature, and therefore, did not support an enhanced sentence. We do not agree with Nicholson's assertions.

As to the nature of the offense, we agree with Nicholson that his crime was not a particularly egregious burglary. However, the crime did involve the invasion of someone else's property and the removal of the belongings of another. The only reason why

² Nicholson bases this contention on the fact that the victim of the crime did not request any restitution.

restitution was not sought for these belongings was because the police caught Nicholson and his partner before they could leave the premises with the victim's things.

As to Nicholson's character, his pre-sentence report contained an extensive criminal history, which included eleven felony convictions. These convictions included three breaking and entering convictions from Ohio, two theft convictions, three convictions for receiving stolen property, a conviction for possession of criminal tools, and a conviction for escape. At the time of sentencing, Nicholson also had pending charges in Ohio for receiving stolen property and failure to appear. The majority of these convictions are of the same nature as the present offenses; they are all related to illegally entering the property of others and stealing the belongings of others. The trial court found Nicholson's extensive criminal history and the fact that rehabilitation efforts in the past had failed as aggravating circumstances. Additionally, we note that he could have been sentenced to a maximum of eight years, but only received a slightly enhanced sentence of six years. We conclude that Nicholson's sentence was not inappropriate in light of the nature of the offense and his character.

Affirmed.

RILEY, J., and MAY, J., concur.