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**IN THE  
COURT OF APPEALS OF INDIANA**

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JERRY L. WOODSON, III,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 40A01-0708-CR-346

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APPEAL FROM THE JENNINGS CIRCUIT COURT  
The Honorable Jon W. Webster, Judge  
Cause No. 40C01-0610-FB-255

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**December 19, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Jerry L. Woodson, III, appeals his sentence for Burglary,<sup>1</sup> a class C felony. As the sole issue on appeal, Woodson challenges the appropriateness of his sentence in light of the nature of the offense and the character of the offender.

We affirm.

Late at night on October 9, 2006, Woodson and an accomplice broke into the Watts Electric storage facility in Jennings County. The men entered the building with their faces covered and with the intent to steal copper wiring. They triggered an alarm that alerted two employees who were on-site surveilling the premises as the result of other recent burglaries. Woodson was moving copper coils and stacking them by a door when the police arrived. He and his accomplice fled. When an employee told them to stop, they refused until they heard the sound of a shell entering the chamber of a shotgun. Woodson admitted to the burglary in a police statement.

Soon thereafter, Woodson was charged with burglary as a class B felony and attempted theft as a class D felony. On February 7, 2007, Woodson pleaded guilty, pursuant to a plea agreement, to the lesser-included offense of burglary as a class C felony. In exchange, the State dismissed the attempted theft charge. Sentencing and restitution were left to the discretion of the trial court.

At the conclusion of the sentencing hearing on April 26, 2007, the court sentenced Woodson to seven years in prison with two years suspended to probation. Pursuant to Woodson's request, the court ordered him to receive substance abuse treatment at

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<sup>1</sup> Ind. Code Ann. § 35-43-2-1 (West 2004).

Richmond State Hospital after incarceration and indicated that the period of probation would be reduced if Woodson completed the program successfully. In pronouncing the sentence, the court found the following aggravating factors:

[Woodson] has no high school diploma or GED certificate; [he] has no gainful employment; [he] had two (2) prior misdemeanor convictions; one (1) prior felony conviction and one (1) successful probation revocation; this crime was committed while [Woodson] was on probation in Jackson County for Burglary; and [Woodson] failed to voluntarily take steps to treat his substance abuse as an adult.

*Appendix* at 16. The court considered Woodson's guilty plea and his relatively young age of twenty-three as mitigating. The court then concluded that the aggravating factors outweighed the mitigating factors, justifying the imposition of a sentence in excess of the advisory sentence of four years.<sup>2</sup> Woodson now appeals, challenging his sentence as inappropriate.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. An appellant has the burden of persuading us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

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<sup>2</sup> Ind. Code Ann. § 35-50-2-6(a) (West, PREMISE through 2007 1<sup>st</sup> Regular Sess.) provides in relevant part: "A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years."

By his own admission, Woodson broke into a business with an accomplice to steal copper wiring because he needed money to support his drug habit. Moreover, at the time he committed the instant offense, Woodson was on probation for committing burglary in another county. Woodson argues that the offense was mitigated because he was not armed and did not fight with the officers or employees when discovered. As the State observes, however, had such circumstances existed, Woodson would have been charged with additional and/or greater offenses.

Moreover, we cannot agree with Woodson's assessment of his character. Contrary to Woodson's assertion on appeal, his criminal history is not "somewhat limited." *Appellant's Brief* at 5. At the relatively young age of twenty-three, he has become well acquainted with the criminal justice system. He was convicted of class C misdemeanor illegal consumption at the age of nineteen, class C misdemeanor public intoxication and illegal consumption at the age of twenty, and class C felony burglary at the age of twenty-one. With respect to his prior burglary conviction, Woodson received a four-year sentence with all but sixty days suspended to probation. Woodson, however, did not respond well to probation due to his continued drug use, as he failed to report and failed to complete community service. Then, within months of being given a second chance with probation, he committed the instant burglary. Under the circumstances, we find Woodson's criminal history to be a substantial aggravator.

Our analysis of Woodson's character is not altered by his many apparent excuses for his criminal behavior. The record reveals that Woodson was expelled in the eighth grade and never attended high school. Further, he claimed at the sentencing hearing that

he attempted to obtain a GED at the age of sixteen but could not complete the program because of transportation problems. We fail to see how these circumstances explain or mitigate his continued criminal behavior or reflect favorably on his character. Finally, while it is evident that Woodson has a serious substance abuse problem, it is also clear that he has done nothing as an adult to address this problem, which has apparently been at the root of his criminal conduct. His eleventh-hour request for drug treatment at Richmond State Hospital does not display, as Woodson suggests, his “depth of character and his sincere desire for personal growth.” *Id.* at 6.

Woodson has been granted much leniency in the past and yet has been undeterred from criminal conduct. Thus, after due consideration of the nature of Woodson’s crime and his character, we cannot say that his sentence is inappropriate.

Judgment affirmed.

SHARPBACK, J., and RILEY, J., concur.