MEMORANDUM DECISION

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.

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IN THE
COURT OF APPEALS OF INDIANA

Tyler Scott Allen Seelig,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff

October 13, 2022

Court of Appeals Case No. 22A-CR-785

Appeal from the Huntington Superior Court

The Honorable Jennifer E. Newton, Judge

Trial Court Cause No. 35D01-2105-F6-152

May, Judge.

[1] Tyler Scott Allen Seelig appeals his conviction of and sentence for Level 6 felony residential entry.[1] Seelig raises two issues for our review:

> 1. whether the State presented sufficient evidence to support his conviction; and
>
> 2. whether his sentence is inappropriate based on the nature of his crime and his character.

We affirm.

Facts and Procedural History

[2] In the evening of July 10, 2020, Christopher Herring and his wife, Amy Bolding, were at a bar in Huntington, Indiana. There, they met a man with "scraggly hair" wearing a "[c]amouflage hat, sunglasses, [and a white] T-shirt." (Tr. Vol. II at 196.) The man was later identified as Seelig. Around 1:00 a.m. on July 11, 2020, Herring and Bolding left the bar, intending to walk to their home, which was not far away. Seelig was also leaving the bar and, instead of walking, Herring and Bolding rode in Seelig's vehicle, which Herring described as "a little Tracker, Geo Tracker, maybe like a Jeep setup[.]" (*Id.* at 198.) Seelig dropped off Herring and Bolding at their house. Herring and Bolding's daughters, ages nine and sixteen, had already gone to bed. The doors to the home were locked and Herring "tried on two of the windows but they were

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[1] Ind. Code § 35-43-2-1.5.

locked[.]" (*Id*. at 201.) Because they could not get into the house and did not want to wake up their daughters, Herring and Bolding spent the night in a tent in their backyard.

[3] Around 4:00 a.m., Herring's sixteen-year-old daughter L.H. woke up and tried to check her phone, but it was not where she had left it. She "started looking around" and could not find the phone. (*Id*. at 114.) She turned on the light in the room, and "noticed someone was on the floor." (*Id*.) She screamed and the person "took off running" and "threw [L.H.'s] phone." (*Id*.) L.H.'s sister, J.H., also woke up and grabbed a nearby TV to throw at the person. After the person ran out of the room, L.H. locked the door and called her boyfriend and her parents, but none of them answered their phones. She then called her grandmother, Tina Anders, who answered the phone and arrived at L.H.'s house about ten minutes later. Upon her arrival, Anders noticed both exterior doors and the kitchen window were open. Anders then called the police.

[4] L.H., J.H., and Anders went to Anders's car to wait for police to arrive. As they were entering the vehicle, L.H. "noticed a guy running" with "his shirt off." (*Id*. at 123.) L.H. reported he "was running like he was like lost, and it was, like, very early in the morning so it was just odd." (*Id*.) The man then "disappeared behind the bushes." (*Id*.)

[5] When police arrived at the house, they performed a security sweep of the house to make sure no one was there. L.H. noticed at that time that one of J.H.'s bedroom windows was open. L.H. indicated the window was shut when she

went to bed. Outside, officers found a white t-shirt and sunglasses sitting underneath Herring's truck. A few days after the incident, Herring found a camouflage hat under L.H.'s bed and gave it to police. Police tested the items for DNA and the tests determined there was "very strong support" that Seelig's DNA was on the hat, sunglasses, and t-shirt. (Ex. Vol. II at 40.)

[6] On May 6, 2021, the State charged Seelig with Level 6 felony residential entry. The trial court held a jury trial on March 3 and 4, 2022. The jury returned a guilty verdict, and the trial court entered a conviction based thereon. On March 15, 2022, the trial court held a sentencing hearing. The trial court noted Seelig's criminal history and the young age of one of the victims as reasons for Seelig's sentence. The trial court sentenced Seelig to eighteen months incarcerated.

Discussion and Decision

1. Sufficiency of the Evidence

[7] Seelig argues the State failed to present sufficient evidence he committed residential entry. We apply a well-settled standard of review when evaluating challenges to the sufficiency of the evidence to support a conviction:

> When reviewing the sufficiency of the evidence, we neither reweigh evidence nor assess the credibility of the witnesses. Rather, we look to the evidence most favorable to the judgment, and the reasonable inferences therefrom, and determine whether substantial evidence of probative value supports each element of the crime. If a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt, then we must affirm.

Vasquez v. State, 174 N.E.3d 623, 628 (Ind. Ct. App. 2021) (internal citations omitted), *trans. denied*.

[1] To prove Seelig committed Level 6 felony residential entry, the State had to present evidence he knowingly or intentionally broke into and entered Herring's home. *See* Ind. Code § 35-43-2-1.5 (elements of Level 6 felony residential entry). Seelig contends the State did not present evidence he "broke and entered the house at any point in time." (Br. of Appellant at 15.) In order to establish that a "breaking" occurred, "the State need only introduce evidence from which a trier of fact could reasonably infer that the slightest force was used to gain unauthorized entry." *Young v. State*, 846 N.E.2d 1060, 1063 (Ind. Ct. App. 2006). "The opening of an unlocked door is sufficient." *Id*. The "element of 'breaking' may be proved entirely by circumstantial evidence." *McKinney v. State*, 653 N.E.2d 115, 117 (Ind. Ct. App. 1995).

[2] Seelig first argues the evidence does not prove he was the person in Herring's home. In support, he asserts L.H.'s testimony regarding his appearance did not match his physical description. He directs us to L.H.'s testimony that she did not know if the person in her room was a woman or a man and the person was "stocky" with "short hair." (Tr. Vol. II at 117.) L.H. also testified the person she saw in her bedroom "[h]ad some meat on him, he was muscular" and he was "between 6' and 6'2"." (*Id*. at 142.) Seelig testified he is 5'7" and did not have short hair at the time of the crime. Seelig notes the State did not present evidence that Seelig's DNA or fingerprints were on L.H.'s phone or that Seelig's DNA or fingerprints were on the floor where L.H. saw him. Therefore,

Seelig argues, the State did not prove he broke into Herring's house because the State did not present evidence he was ever in Herring's house.

[3] Seelig's arguments ignore other relevant facts. Herring found a camouflage hat underneath L.H.'s bed that police later determined had Seelig's DNA on it. L.H. testified she saw a shirtless man running from her bedroom, and a t-shirt and sunglasses containing Seelig's DNA were found under Herring's truck outside the house. The State presented a picture taken within a month of the crime in which Seelig had short hair, which matches L.H.'s testimony about the person in her room. Seelig's arguments seeking additional evidence of his presence in Herring's home and his arguments regarding discrepancies between his appearance and L.H.'s description of the person she saw are invitations for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Vasquez*, 174 N.E.3d at 628 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

[4] Seelig also asserts the State did not present sufficient evidence that he broke into or entered Herring's home. However, his argument there was not a "breaking" that occurred at Herring's home ignores the testimony that doors Herring found locked when he and Boland attempted to enter the house were unlocked when Anders arrived. Further, L.H. testified J.H.'s bedroom window was shut when she went to bed and it was open after she saw a man in her bedroom. Seelig's argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Vasquez*, 174 N.E.3d at 628 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

We conclude the State presented sufficient evidence to prove Seelig committed Level 6 felony residential entry. *See Wadsworth v. State*, 750 N.E.2d 774, 777 (Ind. 2001) (holding circumstantial evidence sufficient to prove a breaking), *reh'g denied*; *and see Meehan v. State*, 7 N.E.3d 255, 259 (Ind. 2014) (glove with defendant's DNA found at the scene was probative evidence from which a jury could make a reasonable inference defendant committed burglary).

2. Inappropriate Sentence

[5] Seelig also contends his one-and-one-half-year sentence is inappropriate based the nature of the crime and his character. Our standard of review regarding such claims is well-settled:

> Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted).

[6] When considering the nature of the offense, we first look to the advisory sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). The sentencing range for a Level 6 felony is

between six months and two-and-one-half years with an advisory sentence of one year. Ind. Code § 35-50-2-7(b). Seelig's eighteen-month sentence is slightly more than the advisory, but not the maximum sentence.

[7] Seelig argues the nature of his crime was "not particularly egregious" because "he did not physically cause any damage to the property nor did he steal or vandalize the property while in the home." (Br. of Appellant at 19.) It is true the State did not present evidence Seelig physically damaged the property or commited any additional felonies while in Herring's residence. However, Seelig entered a house in the middle of the night without permission and when he knew children were in the home alone. Seelig found his way to L.H.'s bedroom, took her cell phone, and laid on the floor near enough to L.H.'s bed for his hat to become hidden under her bed. Although he ran out of the room and threw down L.H.'s phone when she screamed, we will not ignore his attempt to steal the phone. Herring testified that, since the crime, J.H. "won't sleep by herself. She's got to have the dog with her all the time. TV on, maybe a light. If I can get her to sleep in her room, I have to sleep in a chair." (Tr. Vol. II at 216.) Herring indicated L.H. had, at one point, moved out of the house but had moved back because she "can't be by herself. She's scared." (*Id.*) We cannot say Seelig's sentence is inappropriate based on the nature of the crime.

[8] We next turn to Seelig's character. "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). An offender's continued criminal

behavior after judicial intervention reveals a disregard for the law that reflects poorly on his character. *Kayser v. State*, 131 N.E.3d 717, 724 (Ind. Ct. App. 2019). Seelig acknowledges he has a "moderate" criminal history. (Br. of Appellant at 20.) However, he contends he should not have received a sentence above the advisory sentence because "he just started employment in industrial maintenance, was enrolled in school for industrial maintenance, and had a fiancé [and a] young son." (*Id.*)

[9] Seelig's criminal history includes five juvenile adjudications, six prior misdemeanor convictions, and one felony conviction. Seelig's criminal history includes convictions of battery, resisting law enforcement, and public intoxication. His probation has been revoked eight times as an adult and at the time of this crime he had five days left on his most recent term of probation. Also at the time of his crime, he was out on bond for another crime. Based thereon, we cannot say a sentence above the advisory sentence is inappropriate based on Seelig's continued interaction with the criminal justice system and his disregard for the law. *See Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018) (Robinson's criminal history outweighed any mitigators and therefore his sentence above the advisory was not inappropriate).

Conclusion

[10] The State presented sufficient evidence to prove Seelig committed Level 6 felony residential entry. Additionally, Seelig's sentence is not inappropriate

based on the nature of his crime or his character. Accordingly, we affirm the trial court's judgment.

[11] Affirmed.

Crone, J., and Weissmann, J., concur.