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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

CHRIS P. FRAZIER
Indianapolis, IN

GREGORY F. ZOELLER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CARLOS PORTILLO,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0807-CR-588

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
Cause No. 49G02-0707-FB-141923

March 31, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Carlos Portillo appeals his sentence for burglary and raises the following issue: whether his six-year executed sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 23, 2007, the State charged Portillo with four offenses: Count I, burglary¹ as a Class B felony; Count II, theft² as a Class D felony; Count III, residential entry³ as a Class D felony; and Count IV, resisting law enforcement⁴ as a Class A misdemeanor. On May 28, 2008, Portillo signed a plea agreement wherein the State agreed to dismiss Counts II through IV in exchange for Portillo's plea of guilty to Count I, burglary. The State agreed to dismiss all pending charges against Portillo in a separate cause, for which Portillo was out on bond at the time of the present offense. Finally the agreement provided that Portillo's executed sentence would be capped at ten years.

The trial court accepted Portillo's plea agreement. The court found Portillo's limited criminal history and his acceptance of responsibility for his actions as mitigating factors. The court found as aggravating factors that Portillo was out on bond at the time of the offense and

¹ See Ind. Code § 35-43-2-1.

² See Ind. Code § 35-43-4-2.

³ See Ind. Code § 35-43-2-1.5.

⁴ See Ind. Code § 35-44-3-3.

that he committed a residential burglary while the homeowners were present. The trial court sentenced Portillo to six years of executed time. Portillo now appeals.

DISCUSSION AND DECISION

The Indiana Constitution authorizes the Court of Appeals to review and revise sentences to the extent provided by the Supreme Court rules. Ind. Const. art. VII, § 6; *Childress v. State*, 848 N.E.2d 1073, 1079 (Ind. 2006). Indiana Appellate Rule 7(B) permits this Court to revise a sentence if, “after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” However, this Court “must and should exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires us to give ‘due consideration’ to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions.” *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

When determining whether a sentence is inappropriate, we recognize that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Weiss v. State*, 848 N.E.2d 1070, 1072 (Ind. 2006). A person who commits a Class B felony shall be imprisoned for a fixed term of between six and twenty years, the advisory sentence being ten years. Ind. Code § 35-50-2-5. Thus, Portillo received the minimum number of years prescribed in the sentencing range, an amount well below the advisory sentence of ten years.

Nevertheless, Portillo argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We disagree. When examining both the nature of the offense and the defendant's character, "we may look to any factors appearing in the record." *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied*. The defendant bears the burden of demonstrating that the sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

Our review of the nature of the offense reveals that Portillo committed residential burglary while the victims were home. In all other respects, the burglary is unremarkable. Looking to Portillo's character, we see that while his criminal history is limited, he was out on bond for another crime at the time he committed this burglary.

The trial court sentenced Portillo to six years, the minimum sentence in the range for a Class B felony. After due consideration, we cannot say that the six-year executed sentence the trial court imposed is inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.