

STATEMENT OF THE CASE

Diagentry L. Lewis appeals her sentence following her convictions for two counts of Theft, as Class D felonies, pursuant to a guilty plea. Lewis raises a single issue for our review, namely, whether her sentence is inappropriate in light of the nature of the offenses and her character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 28, 2007, J.C. Penney personnel notified the Fort Wayne Police Department that Lewis and another woman had been seen leaving a J.C. Penney store with several stolen leather jackets. The store employees also reported that they had seen Lewis and the other woman leave in a blue SUV. Officers later found Lewis as the passenger in a blue SUV, and J.C. Penney bags were in plain sight in the vehicle. Store employees identified Lewis as one of the women whom the employees had seen leaving the store.

Officers transported Lewis to the police station and read her the Rights and the Waiver of Rights forms. Upon searching the SUV, officers found fifteen leather coats and six pairs of glasses. Lewis then admitted that she and the other woman had stolen from J.C. Penney the fifteen leather coats found in the SUV. She also admitted that she had stolen from Heartland Glasses two of the six pairs of glasses that were found in the vehicle.

The State charged Lewis with two counts of theft, as Class D felonies. On November 13, 2007, Lewis entered into a Drug Court Participation Agreement and

pleaded guilty to two counts of theft as charged.¹ The court took Lewis' guilty plea under advisement. Approximately one month later, Lewis left the jurisdiction for Georgia, where she committed forgery, giving police a false name, and possessing or displaying false identification.² A court in Georgia placed Lewis on probation for ten years for those offenses, after which Lewis was extradited to Indiana.

Following a hearing held on September 29, 2008, the trial court found that Lewis had violated the terms of the Drug Court Participation Agreement, revoked her participation in that program, and ordered the preparation of a pre-sentence investigation report.³ On October 27, the court accepted Lewis' guilty plea and entered judgment of conviction. The court then sentenced her to three years on each theft count, to be served concurrently, stating as follows:

Court does find as mitigating circumstances your plea of guilty and acceptance of responsibility. Court does find as aggravating circumstances your criminal record and failed efforts at rehabilitation. From 1989 to 2008 you have accumulated twenty-one misdemeanor convictions and eight prior felony convictions. They run the gamut from Never Receiving a License to Criminal Conversion, Dealing in Cocaine, Operating While Suspended, Resisting Law Enforcement, Check Deception, Forgery, False Informing, Theft, Aiding Forgery, these Thefts. With all of these convictions you have been given the opportunity at any number of times through any number of different placements to rehabilitate your behavior. You've been given the benefit of fines and Court costs alone. Short jail sentences. Longer jail sentences. You've been in the Department of Correction. You've been on Home Detention. You've been under community service. You had sentences modified from suspended sentences to executed placement and those things didn't turn out. You've been ordered to make restitution for your crimes. You've been in the Volunteers of America Placement.

¹ Lewis has not included a copy of the Drug Court Participation Agreement in her appendix.

² The record does not contain any documentation regarding the Georgia conviction(s) or sentence(s).

³ Lewis has not included a copy of the pre-sentence investigation report in her appendix.

You've been on Adult Probation. You've been through the Community Transition Program. You've been through the Re-Entry Court Program. You've been on parole and you've been in the Drug Court Program, and while you were in the Drug Court Program you absconded to Georgia and committed offenses that you've been placed on ten years of probation for[:] Forgery, giving the police a false name and possessing or displaying a false identification. The local community corrections program has denied you placement because of an active felony warrant, because of your history of violating community-based corrections programs, and that your criminal history is not compatible to community corrections placement.

Sentencing Transcript at 11-13. Lewis now appeals.

DISCUSSION AND DECISION

Lewis contends that her sentence is inappropriate in light of the nature of the offenses and her character. Indiana Appellate Rule 7(B) provides that this court “may review a sentence authorized by statute 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.” Although Rule 7(B) does not require us to be “very deferential” to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Lewis contends that her sentence is inappropriate in light of the nature of the offense. In support, she points out that “there was no evidence of any violent conduct” on her part in committing the offenses, and she argues that her particular offenses “should not be considered the absolute worst of the worst[.]” Appellant’s Brief at 9. But we observe that the legislature set the sentencing range for theft, as a Class D felony,

between six months and three years. See Ind. Code § 35-50-2-7. And, while the offense of theft in itself does not necessarily involve violence, the absence of violence in this case is not in itself persuasive.

Regarding Lewis' argument that hers were not the worst of theft offenses, we have observed that,

“despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.”

Ritchie v. State, 875 N.E.2d 706, 725 (Ind. 2007) (citation omitted). Thus, in considering Lewis' argument, “[w]e concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character.” Brown v. State, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), trans. denied. Applying that standard, we conclude that Lewis' offenses, walking out of J.C. Penney with fifteen leather coats and another store with two pairs of glasses, were brazen. As such, we cannot say that Lewis' concurrent three-year sentences are inappropriate in light of their nature.

Nor can we say that Lewis' sentence is inappropriate in light of her character. Lewis argues that the gravity and nature of her prior offenses supports her contention that the imposition of concurrent three-year sentences is inappropriate. We cannot agree. As noted at sentencing by the trial court and conceded by Lewis, she has a lengthy criminal history, which includes twenty-one misdemeanor convictions and eight prior felony

convictions. Her prior offenses include convictions for crimes against property, drug offenses, and various types of deceptive acts. Although those former offenses do not all match the present offenses in gravity or nature, collectively her history speaks of a career criminal. Moreover, her history also includes multiple lenient sentences and opportunities for rehabilitation as well as periods of incarceration, yet she continues to commit offenses.⁴ Considering the instant offenses against the backdrop of her criminal history, we cannot say that her sentences are inappropriate in light of her character.

In its appellee's brief, the State also argues that Lewis' sentence is inappropriate and requests that we revise her sentence upward. The State may argue for an increase in a defendant's sentence if the defendant has requested review of her sentence under Article 7, Sections 4 or 6 of the Indiana Constitution. McCullough v. State, 900 N.E.2d 745, 750-51 (Ind. Ct. App. 2008). Here, the State argues that the trial court's imposition of concurrent sentences was inappropriate because of Lewis' extensive criminal history and because there were multiple victims.

As discussed above, the trial court was well-versed in Lewis's lengthy criminal history. The trial court was also well aware that there were two victims involved, J.C. Penney and Heartland Glasses. Again, in reviewing a sentence under Appellate Rule 7(B) must give due consideration to the trial court's decision. Rutherford, 866 N.E.2d at 873. In light of the trial court's awareness of the number of victims and Lewis' criminal

⁴ Without a copy of the pre-sentence investigation report, we do not know the number or length of Lewis' prior periods of incarceration. But the trial court referred to multiple periods of incarceration when, at sentencing, the court stated that Lewis had "sentences modified from suspended sentences to executed placement[.]" Sentencing Transcript at 12.

history, we cannot say that the State has met its burden of persuading this court that Lewis' concurrent sentences are inappropriate.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.