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FILED
Aug 19 2011, 9:22 am
CLERK
of the supreme court, court of appeals and tax court

# IN THE
# COURT OF APPEALS OF INDIANA

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| THEODORE TOBIAS SCHWARTZ, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 90A04-1102-CR-109 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable David L. Hanselman, Sr., Judge
Cause No. 90C01-0908-FB-22

**August 19, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

Theodore Schwartz appeals his sentence following his convictions for burglary, as a Class B felony; two counts of robbery, as Class C felonies; residential entry, a Class D felony; auto theft, a Class D felony; and resisting law enforcement, as a Class D felony, pursuant to a plea agreement. Schwartz presents a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

## FACTS AND PROCEDURAL HISTORY

On August 19, 2009, Schwartz committed several crimes in Allen County, including rape, as a Class A felony, before he drove himself to Wells County, where he broke into two residences, stole a minivan, attempted to steal a wallet from a woman shopping at the Ossian Community Market, stole the cash drawer from the cashier at the market, and engaged law enforcement officers in a chase that ended with Schwartz crashing the minivan into the side of a police car before stopping in a corn field. Even then, Schwartz fled the minivan on foot before being apprehended. He subsequently tested positive for methamphetamine and morphine.

The State charged Schwartz with burglary, two counts of robbery, residential entry, auto theft, and resisting law enforcement. On October 14, 2010, Schwartz pleaded guilty as charged, and his plea agreement left sentencing open to the trial court's discretion. On February 17, 2011, the trial court sentenced Schwartz to an aggregate sentence of fifteen years for the six felonies. And the trial court ordered that his sentence

be served consecutive to Schwartz's sentences in two other causes, one in Allen County and the other in Adams County. This appeal ensued.

## DISCUSSION AND DECISION

Schwartz contends that his sentence is inappropriate in light of the nature of the offenses and his character. In particular, his sole contention on appeal is that the trial court should have ordered his sentence to run concurrent with his sentences in the Allen County and Adams County causes. Schwartz asks us to instruct the trial court to order that his sentence run concurrent with those other sentences.

Revision of a sentence under Appellate Rule 7(B) requires the defendant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). In reviewing a defendant's sentence under Appellate Rule 7(B), we give due consideration to the trial court's decision. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade this court that his sentence is inappropriate. Id.

The Indiana Supreme Court recently stated that "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. The principal role of appellate review is to attempt to "leaven the outliers." Id. at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant,

the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case." Id. at 1224.

Schwartz first argues that his sentence is inappropriate in light of the nature of the offenses. He maintains that "[n]o one was injured" by his actions and that "[t]here is no penological purpose served" by ordering the sentence to run consecutive to his other sentences. Brief of Appellant at 8. But Schwartz ignores the fact that one of the victims was a thirteen-year-old boy. In addition, Schwartz told one of his victims, the cashier, that he had a gun, and he poked his finger towards her from inside a pocket in his sweatshirt. And, as the State observes, two of the offenses, Burglary, as a Class B felony, and Resisting Law Enforcement, as a Class D felony, are statutory crimes of violence. See Ind. Code § 35-50-1-2. Finally, Schwartz's crimes involved multiple victims. We cannot say that Schwartz's sentence is inappropriate in light of the nature of the offenses.

Schwartz also maintains that his sentence is inappropriate in light of the nature of his character. In support of that contention, Schwartz stresses that "prior to becoming addicted to methamphetamine[, he] had a family, was a skilled worker, and was a productive member of the community." Brief of Appellant at 9. And Schwartz goes on to criticize the trial court for expressing its "philosophical position" that consecutive sentences were appropriate "because the victims in Wells County had to get their own measure of justice." Id. We fail to see what that discussion has to do with Schwartz's character. Regardless, in light of Schwartz's criminal history, which includes eleven felony convictions and at least eight misdemeanor convictions in four different counties and a violation of probation, we cannot say that Schwartz's character warrants a lesser

sentence. The trial court had discretion to order Schwartz's sentence to run consecutive to his other sentences, and Schwartz has not met his burden to persuade us that his sentence is inappropriate.

Affirmed.

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