

STATEMENT OF THE CASE

Appellant-Defendant, Glenn L. Carpenter (Carpenter), appeals his conviction of unlawful possession of a firearm, his adjudication as an habitual offender, and the sentence imposed thereon.

We affirm.

ISSUES

Carpenter raises two issues on appeal, which we restate as follows:

- (1) Whether the trial court abused its discretion in admitting evidence;
and
- (2) Whether the trial court erred in sentencing Carpenter.

FACTS AND PROCEDURAL HISTORY

On October 2, 2009, forty-five-year-old Carpenter entered a pediatric dental office in Marion County, Indiana, and fell asleep in the waiting room. When office employees attempted to wake him, Carpenter did not respond. The employees eventually called the police. Three officers arrived and found an unresponsive Carpenter slouched over in a chair. The officers detected the odor of alcohol emanating from Carpenter. The officers eventually roused Carpenter, stood him up, and handcuffed him. Carpenter did not know where he was or how he had arrived there. The officers searched Carpenter and found a semiautomatic handgun, marijuana, cocaine, and a crack pipe.

That same day, the State charged Carpenter with Count I, unlawful possession of a firearm by a serious violent felon as a Class B felony; Count II, possession of cocaine and a

firearm as a Class C felony; and Count III, possession of cocaine as a Class D felony. On March 29, 2010, the State amended its information adding an habitual offender count. On April 1, 2010, the trial court granted the State's motion to dismiss the charges of possession of cocaine and a firearm and possession of cocaine. At trial, before the presentation of evidence, Carpenter pointed out that the State had dismissed the charges involving cocaine. He therefore requested as part of a motion in limine that the cocaine, marijuana, and crack pipe not be mentioned to the jury. The State told the court it was "fine with [the request] unless for whatever reason the door is opened." (Transcript p. 82).

During his direct testimony, Carpenter testified that he does not drink alcohol and has never done so. He further testified that he has black-outs when he does not take his diabetes medication. During cross-examination, the State asked Carpenter if he had cocaine in his possession at the time of his arrest. Defense counsel objected, and the trial court overruled the objection. Specifically, the trial court found that Carpenter had opened the door when he raised the issue that he may have been intoxicated from something other than alcohol.

At the close of the evidence, the jury convicted Carpenter of unlawful possession of a firearm by a serious violent felon. Subsequently, Carpenter stipulated to the prior convictions supporting the habitual offender charge. Following an April 20, 2010, sentencing hearing, the trial court found that Carpenter's extensive criminal history was an aggravating factor, and found no mitigating factors. The trial court imposed a twenty-year sentence to be enhanced by twenty years on the habitual offender count, for a total sentence of forty years.

Carpenter now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Admission of Evidence

Carpenter first argues that the trial court abused its discretion in admitting evidence that drugs and paraphernalia were found on his person. A trial court has broad discretion in ruling on the admission of evidence, and such a ruling will be disturbed on review only upon a showing of an abuse of that discretion. *Kimbrough v. State*, 911 N.E.2d 621, 631 (Ind. Ct. App. 2009). An abuse of discretion occurs if the court’s decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

Indiana Evidence Rule 404(b) provides in relevant part that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” However, otherwise inadmissible evidence may be admitted where the defendant “opens the door” to questioning on that evidence. *Clark v. State*, 915 N.E.2d 126, 130 (Ind. 2009). A defendant opens the door “when the trier of fact has been left with a false or misleading impression of the facts.” *Id.*

Here, Carpenter testified that he does not drink alcohol and has never done so. He also testified that he has black-outs when he does not take his diabetes medication. This testimony left the jury with the misleading impression that Carpenter’s unconsciousness at the dental office was because of his diabetes. The trial court properly found that this testimony “opened the door” to evidence about the drugs and drug paraphernalia found on Carpenter’s person. We find no error.

II. Sentencing

Carpenter argues that the trial court erred in sentencing him. Specifically, he contends that his sentence is inappropriate in light of his character and the nature of the offense.¹

Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). When considering whether a sentence is inappropriate, we give due consideration to the trial court's decision. *Allen v. State*, 925 N.E.2d 469, 481 (Ind. Ct. App. 2010), *trans. denied*.

With respect to the nature of the offense, we note that with six prior felony convictions for possession of cocaine, theft, robbery, forgery, and dealing as well as eleven prior misdemeanor convictions for driving while suspended, resisting law enforcement, refusal to identify, and possession of marijuana, Carpenter entered a pediatric dental office with a gun, cocaine, marijuana, and a crack pipe in his pocket. Carpenter's prior convictions show a disregard for the law as well as an escalation in the severity of his crimes. *See Ruiz v. State*, 818 N.E.2d 927, 929 (Ind. 2004) (holding that the significance of prior criminal history

¹ Carpenter also argues that the trial court erred in failing to find certain mitigating circumstances. However, this court has previously explained that if the defendant fails to raise a mitigating factor at sentencing, we will presume the factor is not significant, and the defendant is precluded from raising it for the first time on appeal. *Pennington v. State*, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005).

varies based on the gravity, nature, and number of prior offenses as they relate to the current offense).

With respect to the character of the offender, Carpenter has a criminal history that spans over twenty years. As the State points out, he has not gone more than three years without a conviction over the past twenty-three years. His prior contacts with the law have not caused him to reform himself.

Based upon our review of the evidence, we see nothing in the character of this offender or in the nature of this offense that would suggest that Carpenter's sentence is inappropriate.

CONCLUSION

Based upon the foregoing, we conclude that the trial court did not abuse its discretion in admitting evidence and that Carpenter's sentence was not inappropriate in light of his character and the nature of the offense.

Affirmed.

ROBB, C.J., concurs.

BROWN, J., concurs in part and dissents in part with separate opinion.

**IN THE
COURT OF APPEALS OF INDIANA**

GLENN L. CARPENTER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-1005-CR-521
)	
STATE OF INDIANA)	
)	
Appellee-Plaintiff.)	

Brown, J., concurring in part and dissenting in part

I concur with the majority as to the admission of evidence, but respectfully dissent as to sentencing.

As to the nature of the offense, Carpenter was asleep in a chair in the waiting room of a dentist's office with an unloaded gun, along with drugs and paraphernalia, in his pocket. He didn't brandish the weapon or threaten anyone with it. While it is anyone's guess how he ended up there, and he certainly should not have, he was simply asleep.

As to his character, Carpenter has numerous misdemeanor convictions, mostly for driving while suspended, on his record. His felony history consists of two class C felony

drug convictions, one class C felony forgery conviction, two class D felony theft convictions including one for shoplifting, and his robbery conviction which did not involve violence and consisted of taking \$25 from a pizza delivery man.

I do not believe the maximum punishment of twenty years in prison, which was enhanced by another twenty years in prison, fits the crime and would reverse and remand with instructions to impose a sentence of the advisory term of ten years enhanced by ten years for being an habitual offender.