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ATTORNEY FOR APPELLANT:

CHRIS P. FRAZIER
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE DONGIEUX WIGGINS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LEON WOODEN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0906-CR-326
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
The Honorable Stanley Kroh, Master Commissioner
Cause Nos. 49G04-0810-FC-233212 & 49G04-0708-FD-164803

January 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Leon Wooden appeals his six-year sentence for Class C felony welfare fraud. He contends that his sentence is inappropriate in light of the nature of the offense and his character. Finding his sentence appropriate, we affirm.

Facts and Procedural History

In August 2007 the State charged Wooden with Class D felony failure to register as a sex offender. In October 2008, in an unrelated incident, the State charged Wooden with Class C felony welfare fraud, Class D felony theft, two counts of Class C felony forgery, two counts of Class D felony identity deception, Class D felony attempted welfare fraud, Class D felony attempted theft, and Class C felony bribery. In March 2009 Wooden pled guilty pursuant to a plea agreement to Class D felony failure to register as a sex offender[1] and Class C felony welfare fraud.[2] In exchange, the State agreed to dismiss the remaining charges. The plea agreement provided the following:

> Open sentencing, with a cap of 4 years on the initial executed portion of the sentence. The Court may impose additional time beyond those 4 years, suspend that time, and place the Defendant on probation. The parties will be allowed to argue their positions regarding suspended time at sentencing.

Appellant's App. p. 121. At the guilty plea hearing, the State presented the following factual basis:

> As to cause number 49-G04-0810-FC-233212, if the case would have continued to trial, the State would have shown that the defendant, Leon Wooden, between February of 2008 and October of 2008 received more than $2,500.00 public assistance by means of a misleading [written] statement, specifically by sending an outdated deed to the Indianapolis Housing Agency indicating that he still owned the property at 3243 North

[1] Ind. Code § 11-8-8-17(a).

[2] Ind. Code § 35-43-5-7(a), (b)(2).

> New Jersey Street when he no longer owned it. 3243 New Jersey Street -- North New Jersey Street is in Marion County in the State of Indiana. Additionally Judge, as to -- here it is, sorry about that -- as to cause number 49-G04-0708-FD-164803 the State would have shown on or about August 7th of 2007 in Marion County, in the State of Indiana, Leon Wooden had been previously convicted of child molesting here in Marion County, that he had a duty to register as a sex offender, and he did knowingly and intentionally fail to update his registry and have his photo taken annually.

Tr. p. 20-21. The trial court accepted the plea agreement.

At Wooden's sentencing hearing, defense counsel asked the trial court to consider, among other things, the non-violent nature of the offense and Wooden's "pride in . . . hiring people like himself who have felony convictions so that they can do some kind of work." *Id.* at 41. The trial court found Wooden's guilty plea to be a mitigating factor and his criminal history to be an aggravating factor. Wooden was subsequently sentenced to six years for welfare fraud – two years executed and four years suspended. The two-year executed sentence was ordered to be served at Marion County Community Corrections and two of his four suspended years was ordered to be spent on probation. He was sentenced to a concurrent one and a half years suspended for failing to register as a sex offender. Wooden now appeals.

Discussion and Decision

Wooden's sole contention on appeal is that his six-year sentence for welfare fraud is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court "may revise 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." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

The statutory range for a Class C felony is between two and eight years, with the advisory sentence being four years. Ind. Code § 35-50-2-6. Here, the trial court sentenced Wooden to six years for welfare fraud – two years executed in community corrections, two years suspended to probation, and two years suspended. This was well within the confines of the plea agreement, which imposed a four-year cap on the executed portion of his sentence and allowed for additional time if suspended to probation.

As for the nature of the offense, Wooden defrauded the government by knowingly or intentionally obtaining more than $2500 in public assistance by sending an outdated deed to the Indianapolis Housing Agency indicating that he owned a specific property when he no longer owned it. Although Wooden asserts that he should be afforded sentencing leniency because his offense was non-violent, the crime of welfare fraud, as defined by our legislature, is not a crime of violence, and we presume the legislature considered the nature of the crime of welfare fraud in determining its penal consequences.

As for Wooden's character, the Pre-Sentence Investigation Report reveals that Wooden was convicted of resisting law enforcement as a Class A misdemeanor in 1993 and child molesting as a Class C felony in 1994. Additionally, the Indiana Department of

Correction conduct summary for Wooden indicates that he has accumulated over forty behavioral violations, most of which occurred in 1995. Although we commend Wooden for his actions in "help[ing] to rehabilitate other felons by providing them with work opportunities in his business," Appellant's Br. p. 8, it is not enough to render his sentence inappropriate.

Wooden has failed to persuade us that his six-year sentence for welfare fraud is inappropriate in light of his character and the nature of his offense.

Affirmed.

RILEY, J., and CRONE, J., concur.