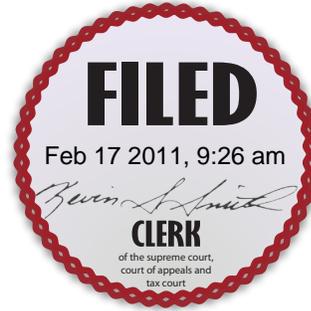


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOSEPH LEVETTE ROBINSON, III, )

Appellant-Defendant, )

vs. )

No. 79A02-1002-CR-142

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Thomas H. Busch, Judge  
Cause No. 79D02-0902-FB-4

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February 17, 2011

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Joseph Levette Robinson, III, appeals his conviction for Dealing in Cocaine, as a Class B felony, and his adjudication as an habitual substance offender following a jury trial. He presents two issues for our review:

1. Whether the State presented sufficient evidence to support his conviction.
2. Whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On February 2, 2009, Detective Jason Walters of the Lafayette Police Department, working undercover, telephoned Robinson on Robinson's cell phone to arrange a purchase of crack cocaine. Robinson instructed Detective Walters to meet him fifteen minutes later at a designated location. Detective Walters recorded the serial numbers of the bills he would use to buy the crack cocaine and drove to the location to meet Robinson, who arrived in a tan SUV. Detective Walters found Ashley Wright sitting in the driver's seat of the SUV, and Robinson was sitting in the front-passenger seat. Detective Walters handed Wright the money, and Wright handed the money to Robinson. Robinson then handed Wright a plastic baggie containing what was later determined to be crack cocaine, and Wright handed the baggie to Detective Walters.

After Wright and Robinson drove away, police officers stopped their SUV and arrested Robinson, who had the money Detective Walters had used to buy the crack cocaine on his person. The State charged Robinson with dealing in cocaine, as a Class B

felony; possession of cocaine, as a Class D felony; and maintaining a common nuisance, a Class D felony. A jury found him guilty of the first two counts, but acquitted him of maintaining a common nuisance. A jury also adjudicated Robinson an habitual substance offender. The trial court entered judgment of conviction only for dealing in cocaine, as a Class B felony, and imposed a sentence of eleven years, with four years suspended, enhanced by five years for being an habitual substance offender, for an aggregate term of sixteen years, with four years suspended.<sup>1</sup> This appeal ensued.

## **DISCUSSION AND DECISION**

### **Issue One: Sufficiency of the Evidence**

Robinson contends that the State presented insufficient evidence to support his conviction.<sup>2</sup> When the sufficiency of the evidence to support a conviction is challenged, we neither reweigh the evidence nor judge the credibility of the witnesses, and we affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Wright v. State, 828 N.E.2d 904, 905-06 (Ind. 2005). It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court's ruling. Id. at 906.

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<sup>1</sup> The trial court's oral sentencing statement refers to the duration of the suspended sentence as four years, but the abstract of judgment states that the suspended sentence is five years. Robinson does not raise as an issue on appeal the apparent inconsistency in the two sentencing statements, and we do not think this discrepancy bears on our analysis of Robinson's Appellate Rule 7(B) argument. For purposes of this appeal, we will consider Robinson's sentence as though only four years were suspended.

<sup>2</sup> Robinson challenges the jury's guilty verdict on the possession of cocaine charge. Because the trial court did not enter judgment of conviction on that count, there is no conviction to appeal, and we do not address Robinson's argument here.

To prove dealing in cocaine, as a Class B felony, the State was required to prove that Robinson knowingly or intentionally delivered cocaine to Detective Walters. See Ind. Code § 35-48-4-1(a)(1)(C). At trial, Detective Walters testified that he witnessed Robinson hand the baggie containing crack cocaine to Wright, who immediately handed it to Detective Walters. That evidence, without more, is sufficient to support Robinson's conviction.

To the extent that Robinson contends that the evidence does not show that he intentionally delivered cocaine to Detective Walters, he cannot prevail. First, the State need only have proved either that Robinson knowingly or intentionally delivered the cocaine. See I.C. § 35-48-4-1. Because Robinson makes no contention that the State failed to prove that he knowingly delivered the cocaine, he concedes the point by omission. Second, to the extent that Robinson asserts that the State was required to prove that he possessed the cocaine with intent to deliver it, Robinson is mistaken. Indiana Code Section 35-48-4-1 is written in the disjunctive and requires proof either of knowing or intentional delivery of cocaine or possession with intent to deliver cocaine. Here, the State charged Robinson with the former, namely, knowingly or intentionally delivering cocaine. Robinson's arguments on appeal miss the point. We hold that the evidence is sufficient to support Robinson's conviction of dealing in cocaine, as a Class B felony.

### **Issue Two: Sentence**

Robinson also contends that his sentence is inappropriate in light of the nature of the offense and his character. 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.

Initially, we note that Robinson does not make any argument that his sentence is inappropriate in light of the nature of the offense. Accordingly, he has waived appellate review of his sentence under Indiana Appellate Rule 7(B). See Williams v. State, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (holding defendant waived Rule 7(B) argument where he did not present cogent argument that his sentence was inappropriate in light of his character). Waiver notwithstanding, we address Robinson's argument with respect to his character.

Robinson maintains that his sentence is inappropriate "considering [his] age, the hardship on his family, and his relatively benign prior criminal history[.]" Brief of Appellant at 10. Robinson does not explain how his age and the hardship on his family are factors bearing on his character, and we fail to see any relevance. Regardless, in light of Robinson's criminal history, which includes at least three probation violations, we cannot say that Robinson's character warrants a lesser sentence. Indeed, Robinson was on probation at the time of the instant offense. The advisory sentence for a Class B felony is ten years. The trial court imposed an eleven-year sentence, with four years suspended, and that sentence was enhanced by five years because of the habitual

substance offender adjudication. Robinson has not met his burden to persuade us that his sentence is inappropriate.

Affirmed.

DARDEN, J., and BAILEY, J., concur.