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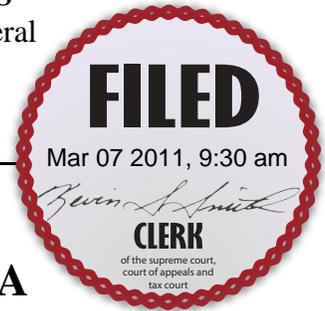
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**IN THE  
COURT OF APPEALS OF INDIANA**

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SETH R. ADKINS, )

Appellant-Defendant, )

vs. )

No. 57A03-1010-CR-569

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE NOBLE SUPERIOR COURT  
DIVISION 1  
The Honorable Robert E. Kirsch, Judge  
Cause No. 57D01-0911-FA-20

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**March 7, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Seth R. Adkins (Adkins), appeals his sentence following a plea of guilty to dealing methamphetamine, a Class A felony, Ind. Code § 35-48-4-1.1(b)(1).

We affirm.

## ISSUE

Adkins raises one issue on appeal, which we restate as: Whether Adkins' sentence is appropriate in light of his character and the nature of the offense.

## FACTS AND PROCEDURAL HISTORY

On November 5, 2009, Officer Joshua Halsey (Officer Halsey) with the Ligonier Police Department stopped Adkins for disregarding an automatic traffic signal in Ligonier, Noble County, Indiana. Tazza May (May) and her infant child were passengers in the vehicle, which was owned by May. While checking Adkins' license, Officer Halsey was informed that Adkins' driving privileges were suspended. Officer Leslie Ware (Officer Ware) arrived to help Officer Halsey with the traffic stop. Officer Ware indicated that he had stopped Adkins the previous night for a traffic violation and at that time, Adkins was in possession of cold medication containing pseudoephedrine, which Adkins thought was illegal to possess.

Officer Halsey returned to the vehicle and informed May that Adkins would not be allowed to drive the vehicle. When asked if there was anything illegal in the vehicle, May became very nervous and declined to consent to a search of her vehicle. Officer Halsey retrieved his canine partner from his patrol car and again approached the vehicle. Officer

Halsey's canine partner alerted to the driver's side door and Officer Halsey instructed all passengers to exit the vehicle.

When Adkins exited the car, he dropped a glove. As Officer Halsey picked up the glove to hand it to Adkins, the Officer observed a clear plastic baggie with a white powder substance on the door sill. This powder substance was identified as being methamphetamine. After placing Adkins under arrest and upon searching him, Officer Halsey discovered a clear plastic bag containing methamphetamine and a piece of aluminum foil in the shape of a "boat"<sup>1</sup> in Adkins' right front pants pocket. The methamphetamine from the glove weighed approximately four grams and the methamphetamine located in Adkins' pants' pocket weighed approximately one gram. Adkins admitted that he intended to deliver the methamphetamine to someone else.

On November 5, 2009, the State filed an Information charging Adkins with Count I, dealing in methamphetamine, a Class A felony, I.C. § 35-48-4-1.1(b)(1); Count II, possession of methamphetamine, a Class D felony, I.C. §35-48-4-6.1(a); Count III, possession of a controlled substance, a Class D felony, I.C. § 35-48-4-7(a); and Count IV, possession of paraphernalia, a Class A misdemeanor, I.C. § 35-48-4-8.3(b). On June 15, 2010, Adkins pled guilty to Count I. On September 24, 2010, during the sentencing hearing, the trial court sentenced Adkins to twenty years with five years suspended.

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

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<sup>1</sup> A piece of aluminum foil in the shape of a "boat" is the common way to smoke and ingest methamphetamine. (Appellant's App. p. 19).

## DISCUSSION AND DECISION

Adkins contends that the trial court abused its discretion by sentencing him to a twenty year sentence with five years suspended for a Class A felony. This court may revise a sentence after careful review of the trial court's decision if it concludes that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, this court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). The burden is upon the defendant to show that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Here, the trial court imposed a twenty year executed sentence with five years suspended for dealing in methamphetamine, a Class A felony. Statutorily, a person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty years. *See* I.C. § 35-50-2-4. As such, the trial court sentenced Adkins to the minimum sentence possible under the statute. Adkins now contends that the trial court should have suspended more of his sentence.

With respect to the nature of the offense, we note that Adkins possessed approximately five grams of methamphetamine while an infant was riding in the vehicle with him. Also, Adkins admitted that he intended to deliver this methamphetamine to another person.

Turning to Adkins' character, we note that Adkins' criminal history includes two prior substance offenses. He admits that he has a substance abuse problem: he first tried drugs when he was twelve years old and has experimented with methamphetamine and marijuana and has been addicted to Vicodin and Xanax. He previously attended approximately five weeks of substance abuse treatment prior to relapsing.

In addition, while out on bond for the instant offense and one week after his guilty plea, Adkins was charged with dealing methamphetamine within 1,000 feet of a public park on June 22, 2010. On September 18, 2010, Adkins was also charged with possession of a controlled substance and possession of paraphernalia.

It is clear that Adkins has a serious substance abuse problem. Although Adkins made an effort for a mere five weeks to break this habit, he has failed to reform himself. Even despite the plea agreement in the current offense, Adkins continued to possess and deal methamphetamine. In light of these circumstances, we conclude that Adkins' twenty year sentence with five years suspended is appropriate.

#### CONCLUSION

Based on the foregoing, we conclude that the trial court properly sentenced Adkins.

Affirmed.

ROBB, C.J., and BROWN, J., concur.