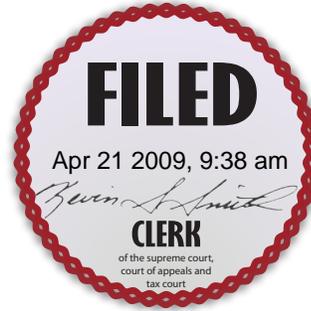


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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NICHOLAS ALAN STUMP, )

Appellant-Defendant, )

vs. )

No. 76A05-0810-CR-600

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE STEUBEN SUPERIOR COURT  
The Honorable William C. Fee, Judge  
Cause No. 76D01-0706-FA-644

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**April 21, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Nicholas Stump appeals his aggregate fifteen-year sentence for two counts of Class B felony dealing in a controlled substance. We affirm.

### **Issue**

The sole issue before us is whether Stump's sentence is inappropriate.

### **Facts**

On March 6, 2007, Stump sold seventy Klonopin (clonazepam) pills, thirty Adderall (amphetamine salt) pills, and four Ecstasy pills to an undercover police officer for \$500.00. Stump also allegedly sold Adderall to the undercover officer on March 14, 2007. On March 27, 2007, Stump allegedly sold a substance to the undercover officer that he claimed was crack cocaine, but which turned out not to be.

On June 13, 2007, the State charged Stump with four counts of Class B felony dealing in a controlled substance and one count of Class A felony conspiracy to deal in cocaine. On July 21, 2008, Stump agreed to plead guilty to two counts of Class B felony dealing in a controlled substance related to the March 6, 2007 transaction. The State in return agreed to dismiss the two remaining Class B felony dealing in a controlled substance counts and the Class A felony conspiracy to deal in cocaine count. Sentencing was left to the trial court's discretion, except that the sentences for the two convictions were to run concurrently. The trial court sentenced Stump to fifteen years for each conviction, with five years suspended; additionally, Stump is eligible to serve the last two

years of his executed sentence in a community corrections transitional living facility. Stump now appeals.

### **Analysis**

Stump only argues that his sentence is inappropriate. When considering whether a sentence is inappropriate under Indiana Appellate Rule 7(B) in light of the nature of the offense and the character of the offender, we need not be “extremely” deferential to a trial court’s sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Regarding the nature of the offenses, Stump argues that they were not egregious because there was no violence involved and, because he sold the drugs to an undercover officer, no one was harmed by the offenses. We remind Stump that he did not just sell a few pills; he sold over 100 pills containing three different controlled substances. The probable cause affidavit for these offenses hints at an ongoing operation by which Stump would obtain prescription medications from other persons to resell on the black market. Stump also indicated to the undercover officer that he could obtain more Ecstasy. Although the nature of the offenses is not overwhelmingly heinous, neither is it as minor as Stump contends.

As for Stump's character, he has juvenile delinquency adjudications for having committed Class A misdemeanor battery, Class A misdemeanor criminal trespass, and Class D felony theft. As an adult, Stump has convictions for Class A misdemeanor conversion and two for Class C felony burglary on separate occasions. He was on probation for burglary when he committed these offenses. Additionally, Stump was only twenty-three when he committed the current offenses. The fact that he has accumulated a lengthy criminal history at such a young age is troubling. This fact justifies an extended period of incarceration for Stump.

Stump contends, however, that he had a troubled childhood that contributed to his criminal activity. Our supreme court "has consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight." Coleman v. State, 741 N.E.2d 697, 700 (Ind. 2000), cert. denied. Stump also directs us to evidence that he completed a substance abuse program while incarcerated awaiting sentencing for these offenses as indicating that he is truly remorseful for his conduct and is attempting to better himself. We think this evidence cuts both ways. It would appear that Stump knew he had a substance abuse problem for many years, but took no steps to address that problem until he was jailed for these offenses, despite the fact that he already had numerous chances to address his addictions during his previous encounters with the juvenile and criminal justice systems. Evidence that a defendant was aware of a substance abuse problem but took no positive steps to treat it may be considered an aggravating circumstance. See Bryant v. State, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004), trans. denied. Moreover, the

fact that Stump only addressed his addictions while incarcerated may be indicative of him needing an extended period of incarceration in order to fully and completely reform himself.<sup>1</sup>

We also note that of Stump's fifteen-year sentence, or five above the advisory for a Class B felony, five years are suspended to probation and two years may be served by Stump in a community corrections transitional living program. Stump may serve less than the advisory sentence in the Department of Correction. This reduces the harshness of the sentence. The trial court stated that it made this adjustment to Stump's sentence to account for his remorse and his initial steps to redirect his life. We cannot say Stump's aggregate sentence of fifteen years, with five suspended and two to be served in community corrections, is inappropriate in light of the nature of the offenses and Stump's character.

### **Conclusion**

Stump's sentence is not inappropriate. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.

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<sup>1</sup> Stump does not directly argue that his guilty plea warrants a reduction in his sentence. In any event, Stump received a substantial benefit from the plea agreement through the State's agreed dismissal of several charges, thus reducing the plea's mitigating weight. See Sanchez v. State, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).