



Antonio Dallas Jenkins appeals his conviction of Dealing In a Schedule III Controlled Substance,<sup>1</sup> a class B felony, and the sentence imposed thereon. Jenkins presents the following restated issues for review:

1. Did the trial court err in excluding evidence during trial?
2. Was the evidence sufficient to support the conviction?
3. Did the trial court improperly apply the proceeds from Jenkins's bond to the public defender fees?
4. Did the trial court err in sentencing Jenkins?

We affirm.

The facts favorable to the conviction are that Carol Lynn Rodgers Hale began working as a confidential informant for the Tri County Drug Task Force in 2007 following her arrest for writing a bad check and possession of marijuana. On May 10, 2007, Hale called Jenkins to arrange a purchase of prescription drugs, asking him if he had any pills. Jenkins responded in the affirmative and arrangements were made for Hale to purchase a generic of Vicodin, which we will henceforth refer to as Vicodin, from Jenkins. Hale called Detective James Baughman of the Portland Police Department and reported that she and Jenkins had arranged a drug buy. Hale met with Detective Baughman and two other officers the next day. Detective Baughman searched Hale's person, fitted her with recording equipment, and gave her cash for the purchase. Detective Baughman and another officer drove Hale to Jenkins's residence. Initially, Jenkins purchased five pills for five dollars apiece. She asked if he had more to sell and he sold her an additional four pills for twenty dollars. Hale

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<sup>1</sup> Ind. Code Ann. § 35-48-4-2 (West, Westlaw through 2011 Pub. Laws approved & effective through

departed and met with the officers, where she gave the pills she had purchased to Detective Baughman. Subsequent tests revealed that the pills Jenkins sold to Hale contained a generic for Vicodin, Hydrocodone, a controlled substance.

Jenkins was charged with dealing in a schedule III controlled substance as a class B felony and dealing in marijuana as a class A misdemeanor, although the latter charge was ultimately dropped. He was convicted as charged following a jury trial. The trial court sentenced Jenkins to ten years in prison and ordered the entire \$2,500 in cash proceeds from Jenkins's bond to be used to reimburse Randolph County for pauper attorney fees. Jenkins was also ordered to pay \$382.50 in restitution to the Tri County Drug Task Force.

1.

Shortly before trial, the State moved to dismiss the second count against Jenkins, this one alleging dealing in marijuana based upon Hale's claim that Jenkins had sold marijuana to her on May 1, 2007, ten days before the controlled buy that led to the instant conviction. The State moved to dismiss the marijuana count shortly before trial was to commence. The State also submitted a motion in limine seeking to exclude any mention of that alleged transaction. In arguing against the motion in limine, Jenkins's attorney explained:

[I]t has been charged that my client was did [sic] a particular marijuana deal on a particular day and we have furnished to the State a witness who is going to explain that particular deal that he is charged with was someone else and that the confidential informant was not telling the truth as to who she did that with.

*Transcript* at 44. The trial court granted the motion in limine. In an offer to prove regarding the same evidentiary question during trial, defense counsel explained:

we would offer that the defense would wish to question the C.I. about some uncharged criminal activity against [Jenkins] which basically was a alleged [sic] purchase of marijuana and such accusation that she made earlier was false and we would have offered that Joshua Miller would have been called as a witness to refute that specific act.

*Id.* at 213. Jenkins contends that the trial court erred in excluding evidence pertaining to the alleged May 1 transaction upon which the dismissed count was based.

Our standard of review for the admissibility of evidence is well established. The admission or exclusion of evidence lies within the sound discretion of the trial court and is afforded great deference on appeal. *Whiteside v. State*, 853 N.E.2d 1021 (Ind. Ct. App. 2006). We will reverse the trial court's ruling on the admissibility of evidence only for an abuse of discretion. *Id.* An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor. *Id.*

Jenkins first contends that the trial court's exclusion of evidence pertaining to prior false allegations of Hale deprived him of his constitutional right to present a defense.<sup>2</sup> In support of his argument, Jenkins relies upon *State v. Walton*, 715 N.E.2d 824 (Ind. 1999). In *Walton*, our Supreme Court considered whether the common-law exception to the Rape Shield Rule survived the adoption of the Indiana Rules of Evidence. Specifically, the Court considered whether evidence of prior false accusations of rape made by the complaining

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<sup>2</sup> Every defendant has the fundamental right to present witnesses in their own defense. *Roach v. State*, 695 N.E.2d 934 (Ind. 1998). Yet, this right is not absolute. *Id.* "In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Id.* at 939 (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)).

witness were admissible. The Court analyzed the interplay between Ind. Evidence Rules 412 and 608(b). The Court noted that Evid. R. 412 reflected the following basic principles of the Rape Shield Rule:

“[I]nquiry into a victim’s prior sexual activity is sufficiently problematic that it should not be permitted to become a focus of the defense. Rule 412 is intended to prevent the victim from being put on trial, to protect the victim against surprise, harassment, and unnecessary invasion of privacy, and, importantly, to remove obstacles to reporting sex crimes.”

*State v. Walton*, 715 N.E.2d at 826 (quoting *Williams v. State*, 681 N.E.2d 195, 200 (Ind. 1997)). The court then considered whether permitting the admission of such evidence under Evid. R. 412 is at odds with Evid. R. 608, which states, in relevant part: “[f]or the purpose of attacking or supporting the witness’s credibility, other than conviction of a crime as provided in Rule 609, specific instances may not be inquired into or proven by extrinsic evidence.” Evid. R. 608(b). The Court noted that Evid. R. 608(b) provides no exception for prior false accusations. The Court nevertheless concluded that in the context of the Rape Shield Rule, as incorporated in Rule 412, “the evidentiary rule preventing evidence of specific acts of untruthfulness [Evid. R. 608(b)] must yield to the defendant’s Sixth Amendment right of confrontation and right to present a full defense.” *State v. Walton*, 715 N.E.2d at 827.

The Court held that the common-law exception permitting the admission of evidence of prior false accusations of rape by the complaining witness survived the adoption of the Rules of Evidence. Nevertheless, the Court noted that for evidence of prior false accusations of rape to be admissible, it must be shown that (1) the complaining witness admitted he or

she made a prior false accusation of rape; or (2) the accusation is demonstrably false. *State v. Walton*, 715 N.E.2d 824 (citing *Stewart v. State*, 531 N.E.2d 1146 (Ind. 1988)). We have subsequently held that the common-law exception upheld in *Walton* is limited to a very narrow set of circumstances, i.e., prior false allegations of rape. *See Saunders v. State*, 848 N.E.2d 1117 (Ind. Ct. App. 2006), *trans. denied*.

In the instant case, the allegation in question does not involve rape, but rather a claim that Jenkins sold marijuana to Hale on a prior occasion. Even assuming for the sake of argument that the two conditions for admissibility set out in *Walton* are present here (i.e., that Hale admitted she made a prior false accusation or (2) that the accusation is demonstrably false), the allegation in question does not involve rape and thus is not admissible pursuant to *Walton*.

Jenkins also claims the evidence was admissible under Evid. R. 616. He does not, however, direct our attention to the place in the transcript where he argued for admissibility on this ground at trial. “A party may not object on one ground at trial and raise a different ground on appeal.” *Brown v. State*, 728 N.E.2d 876, 878 (Ind. 2000) (citations omitted). This argument is waived. *See Brown v. State*, 728 N.E.2d 876.

2.

Jenkins contends the evidence was insufficient to support his conviction. Specifically, he contends that the State relied upon Hale’s testimony to prove the element of delivery. Jenkins contends that Hale’s “pattern of conduct and her own testimony established her perpetual lack of veracity and the unlikelihood of the events she described.” *Appellant’s Brief* at 21. In other words, Jenkins contends Hale’s testimony is not worthy of belief.

When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). “We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence.” *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

*Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009).

Jenkins’s challenge asks us to ignore a central tenet of reviewing the evidence supporting a conviction, i.e., that we will not re-assess witness credibility. All of the alleged weaknesses inherent in Hale’s testimony, e.g., Hale’s criminal background and possible ulterior motives for testifying against Jenkins, were brought to the jury’s attention. With all of that in mind, the jury nonetheless determined that she was telling the truth in relating Jenkins’s actions relative to the May 11 Vicodin sale. We will not second-guess that determination.

3.

Following his arrest, Jenkins was released on a \$25,000 personal appearance bond, which he secured by posting a ten-percent cash deposit with the trial court clerk. The bond provided, in relevant part, as follows: “If a judgment for a fine, court costs, restitution, public defender fees or probation users (sic) fees is entered in this cause, the balance of the deposit after deduction of the bond costs may, upon order of the court be applied by the Court Clerk to the payment of judgment.” *Appellant’s Appendix* at 25. At sentencing, the court addressed this bond. After defense counsel informed the court that he believed his fees were about \$1,300 or \$1,400 through the end of trial and “a couple hundred dollars” for the sentencing hearing. *Id.* at 425. The court ruled:

Court's going to order then the cash bond once we get a final billing from [Jenkins's attorney] be released. That monies be paid to the Auditor for reimbursement of public defender fees out of that Twenty Five Hundred Dollars, remaining monies be paid on costs owing in this case and anything left over be refunded to the poster.

*Id.* In its sentencing order, the court stated: “the pauper attorney fee bill in this case is \$3241.18. You shall reimburse Randolph County, Indiana, the sum of \$2,500.00 for pauper attorney fees, to be paid from the cash bond.” *Id.* at 19. Jenkins contends the trial court improperly applied the entirety of the proceeds from his bond to the public defender fees because the evidence supports an award of only \$1700.

Jenkins acknowledges that the court was permitted to order that Jenkins's bond deposit be applied to his pauper attorney fees. He impliedly contends, however, that there must be proof in the record as to the amount of the fee. Further, it might be inferred that he claims such proof must be offered either at a hearing on the record or via a submission reflected on the chronological case summary (“[n]either the transcript nor the chronological case summary nor the Clerk's Record reveals the basis for that calculation”). *Appellant's Brief* at 10-11. We can find no authority for the proposition that the proof of the amount of pauper attorney fees in this context must be submitted in any particular form or forum. Indeed, the “proof” upon which Jenkins is willing to rely is nothing more than a very general estimate offered by pauper counsel at the sentencing hearing (i.e., “[a]nd if it is my recollection it was about Thirteen Hundred Dollars through the trial or somewhere in that area, 13 or 14 Hundred Dollars, I don't remember, whatever I've got at sentencing and that's only a couple hundred dollars”). *Transcript* at 425.

It seems to us that the trial court's representation in its judgment entry that “[t]he

pauper attorney fee bill in this case is \$3,241.18”, *Appellant’s Appendix* at 19, is far more reliable as proof of the pauper attorney’s actual fees, especially in light of the court’s concluding comment on this subject at the sentencing hearing that it was “going to order ... the cash bond once we get a final billing from [pauper counsel] be released.” *Transcript* at 425. In any event, it does not seem that Jenkins quibbles with the amount of the fees billed as much as he challenges the validity of the proof thereof. We certainly would prefer that there be some documentation of the amount of attorney fees in this context, but where the amount in question is not challenged as unreasonable, and the amount quoted by the trial court is not unreasonable on its face,<sup>3</sup> we are not inclined to disturb the trial court’s finding in this regard based upon an unsupported technical argument of uncertain merit.

4.

Jenkins contends his sentence is inappropriate in light of his character and the nature of his offenses. Article 7, section 4 of the Indiana Constitution grants our Supreme Court the power to review and revise criminal sentences. Pursuant to Ind. Appellate Rule 7, the Supreme Court authorized this court to perform the same task. *Cardwell v. State*, 895 N.E.2d 1219 (Ind. 2008). Per App. R. 7(B), we may revise a sentence “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.” *Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009), *cert. denied*, 131 S.Ct. 414 (2010). “[S]entencing is principally a discretionary

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<sup>3</sup>\$3241.18 does not strike this court as an unreasonable amount for legal representation involving a jury trial, through and including a sentencing hearing. Moreover, we note that Ind. Code Ann. § 35-33-8-3.2(a)(2)(B) (West, Westlaw through 2011 Pub. Laws approved & effective through 2/24/2011) authorizes a court to order an indigent defendant to pay pauper attorney fees only up to the amount of the defendant’s bond cash deposit,

function in which the trial court's judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d at 1223. Jenkins bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006). The trial court imposed a ten-year sentence for Jenkins's dealing conviction. This is the advisory sentence for Jenkins's class B felony conviction for dealing in a schedule III controlled substance. The advisory sentence is the starting point the General Assembly has selected as an appropriate sentence for the crime committed. *Id.*

Jenkins initially challenges the trial court's failure to explain the reasons for imposing the sentence that it did. Indeed, the trial court erred in failing to explain its reasoning in imposing the advisory sentence. Trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* When we find that an irregularity has occurred in a trial court's sentencing determination, we may follow one of three courses of action. We may: 1) “remand to the trial court for a clarification or new sentencing determination”, 2) “affirm the sentence if the error is harmless”, or 3) “reweigh the proper aggravating and mitigating circumstances independently at the appellate level.” *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005). In this case, we choose the second alternative.

With respect to the nature of the offense, the transaction upon which Jenkins's

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in this case \$2500, which is significantly less than the amount the trial court indicated had been billed by pauper counsel.

conviction was based was not atypical in any way, in terms of quantity, locale, or surrounding circumstances. With respect to Jenkins's character, we note that Jenkins has three prior felony drug convictions and one prior burglary conviction, although those convictions occurred between 1985 and 1992. During that time, he violated parole on three occasions by committing an additional drug offense. Jenkins contends that it is a mitigating factor that several years elapsed between his last drug offense and the instant one. We note, however, that he was in prison for a significant portion of that time. We note also that he was on parole when he committed the instant offense.

In view of the foregoing, we conclude that Jenkins has not carried his burden of establishing that, in light of the nature of his offense and his character, the advisory sentence is inappropriate and should be reduced. *See Childress v. State*, 848 N.E.2d 1073.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.