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FILED
May 20 2009, 9:34 am
CLERK
of the supreme court, court of appeals and tax court

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# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| LEO J. STAPLETON, JR., | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 02A03-0811-CR-549 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth Scheibenberger, Judge
Cause No. 02D04-0805-FD-401

**May 20, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

Leo J. Stapleton, Jr., challenges the appropriateness of the two-and-one-half-year sentence he received for class D felony possession of paraphernalia. We affirm.

On May 7, 2008, Fort Wayne police arrested Stapleton on unrelated charges and took him to jail. During the booking process, an officer searched Stapleton and found a crack pipe in his sock. Stapleton asked the officer to "let it slide[.]" Tr. at 63. The State charged Stapleton with class D felony possession of paraphernalia on the basis that he had a prior such conviction.[1] *See* Ind. Code § 35-48-4-8.3(b) (elevating crime from class A misdemeanor to class D felony based on prior conviction). On September 16, 2008, a jury found him guilty of possessing paraphernalia, and Stapleton admitted to his prior conviction. On October 6, 2008, the trial court sentenced Stapleton as follows:

> The Court finds as aggravating circumstances the Defendant's 27 misdemeanor and four felony convictions[2] as set out by [the deputy prosecutor]. It appears that, based on all that, that prior attempts at rehabilitation have failed. Additionally, the Defendant was on parole at the time this offense was committed. Mitigating circumstance would appear to be his substance abuse, although he's certainly been given ample opportunity to deal with that, it looks like. It could even be a mitigating - - aggravating circumstance; but in any event, the Court finds that aggravating circumstances outweigh the mitigating circumstances. I'm going to order the Defendant committed to the Department of Correction - - keep this nice and simple - - 910 days - - that's two-and-a-half years, approximately - - consecutive to 02D04-0405-FB-90.

Sent. Tr. at 11.

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[1] In fact, Stapleton had four prior convictions for possession of paraphernalia. Appellant's Confidential App. at 4-5.

[2] The felony convictions are class B felony rape (Indiana 1992), drug abuse, felony 4 (Ohio 1994), class C felony carrying a handgun without a license (Indiana 1999), and class D felony resisting law enforcement (Indiana 2003). Appellant's Confidential App. at 3-4.

Stapleton asks us to revise his sentence pursuant to Indiana Appellate Rule 7(B), which states, "The 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." "The burden is on the defendant to persuade us that his sentence is inappropriate." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007). As for the nature of the offense, Stapleton was caught trying to smuggle a crack pipe into jail. Stapleton's extensive criminal history speaks volumes about his character, as does his violation of parole and his request to the officer who found the crack pipe to "let it slide." Simply put, Stapleton has failed to persuade us that his sentence is inappropriate.[3]

Affirmed.

BRADFORD, J., and BROWN, J., concur.

[3] To the extent Stapleton claims that the trial court gave insufficient mitigating weight to his substance abuse, we note that such a claim is not subject to appellate review. *Fuller v. State*, 875 N.E.2d 326, 334 (Ind. Ct. App. 2007), *trans. denied*. We agree with the trial court that in light of its intractability, Stapleton's substance abuse could also be considered an aggravating factor.