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**IN THE
COURT OF APPEALS OF INDIANA**

STEPHEN RAY JONES, JR.,)

Appellant-Defendant,)

vs.)

No. 48A02-1006-CR-702

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-1001-FC-21

June 2, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Stephen Ray Jones, Jr. appeals his sentences for class C felony dealing in marijuana¹ and class A misdemeanor possession of marijuana.²

We affirm.

ISSUE

Whether Jones' sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

In January of 2010, law enforcement officials in California informed Madison County Drug Task Force Sergeant Jeffrey Ash that they had intercepted a package containing narcotics that was being shipped to a "D. Caldwell" at 2609 West 23rd Street, a residence in Anderson. (State's Ex. 1). A search of property and utility records did not reveal anyone with the name "Caldwell" living at 2609 West 23rd Street, Anderson.

When the package arrived in Indiana, Sergeant Ash dispatched a canine unit to the Muncie "FedEx hub [to] conduct a sniff" search of the package. (Tr. 254). After canine officer Brandley alerted to the presence of narcotics, officers obtained a search warrant for the package. Upon opening the package, officers discovered "two [] other cardboard boxes inside that box and inside those boxes each one [] contained two [] vacuum sealed packages of plant material" (Tr. 406). Officers removed three of the plastic bags, replacing them with books to "get the weight right" and resealed the

¹ Ind. Code § 35-48-4-10.

² I.C. § 35-48-4-11.

package. (Tr. 408). Officers subsequently arranged for surveillance of 2609 West 23rd Street and a controlled delivery of the package.

In the meantime, Jones' sister, Tonsuela Jones, telephoned their cousin, David Allen, and told him that she was sending a box of clothes to his and his mother's Anderson home, located at 2609 West 23rd Street. Allen did not think this was unusual as Tonsuela often stayed with her aunt and cousin during her school breaks. Tonsuela later told Allen that "[s]he didn't know anything about a package. [Jones] just told her to call [Allen] and tell [him] that she's having clothes sent to the house." (Tr. 248).

On January 17, 2010, Jones contacted Allen to arrange to be at the house when the package arrived. Jones indicated that the package "had a tracking [number] on it"; therefore, he knew it would arrive the next day, on Monday. (Tr. 246).

At approximately 3:00 a.m. on January 18, 2010, Jones arrived at Allen's house. Allen let Jones in before going back to sleep. When Allen awoke later that morning, he saw that "there was another guy" there with Jones. (Tr. 244). Allen did not recognize the man.

That same morning, officers conducting surveillance of the residence observed a Chevrolet HHR and a Toyota Corolla parked in the driveway. Later that day, however, they observed that only the HHR was parked in the driveway.

In the afternoon of January 18, 2010, an officer with the Anderson Police Department, posing as a Federal Express employee, delivered the package to Allen's residence. Jones accepted delivery of the package. Shortly thereafter, Officer Keith

Gaskill, who had been conducting surveillance of the residence, observed a man, later identified as Gerard Davis, “walk to the back of the HHR with a package, put it in the back of the HHR” and then get in the driver’s seat. (Tr. 312). “A few moments later,” Jones “got into the passenger side of the vehicle and they exited the driveway.” (Tr. 312). Officer Gaskill soon lost visual contact with the vehicle.

After Davis and Jones left the residence, Officer Thomas Naselroad watched as Davis drove east, past approximately two or three houses, before stopping. Jones then exited the HHR and got into the same Toyota that had been observed in the driveway of 2609 West 23rd Street earlier that day and drove to a nearby gas station.

After the men split up, officers conducted a traffic stop of both vehicles. A search of Jones’ vehicle revealed a plastic bag containing what appeared to be marijuana in the console. A search of Jones revealed that he was carrying \$628.00. A search of the vehicle driven by Davis revealed a plastic bag, containing what appeared to be marijuana, under the front passenger seat. Officers also discovered a package in the back of the HHR. The package was identified as the one that officers had intercepted at the Federal Express hub.

Tests revealed that the plastic bags found inside the package contained a total of 1,773.2 grams of marijuana. The plastic baggie found in the Toyota contained 6.64 grams of marijuana, and the plastic baggie found in the HHR contained 5.51 grams of marijuana. A survey revealed that 2609 West 23rd Street was located within 1,000 feet of park.

On January 19, 2010, the State charged Jones with Count 1, dealing in marijuana as a class C felony; and Count 2, possession of marijuana as a class A misdemeanor. The trial court commenced a two-day jury trial on May 13, 2010.

Officer Clifford Cole, a detective with the Madison County Drug Task Force, testified that the large amount of marijuana found in the package indicated that it most likely was to be “used for dealing marijuana.” (Tr. 430). He also testified that the “large amount of money” found on Jones’ person indicated “possible dealing marijuana also.” (Tr. 437). The jury found Jones guilty as charged.

The trial court ordered a pre-sentence investigation report (“PSI”) and held a sentencing hearing on June 7, 2010. According to the PSI, Jones had been adjudicated a juvenile delinquent for committing acts which, if committed by an adult, would have constituted the following: dealing in marijuana, which was later reduced to possession of marijuana; three counts of class D felony theft; class D felony receiving stolen property; class D felony resisting law enforcement; class A misdemeanor false reporting; and operating a vehicle without a license.

Jones had the following convictions as an adult: class C felony robbery; class C felony carrying a handgun without a license; class A misdemeanor operating a vehicle while intoxicated; class D felony possession of marijuana; driving while suspended; and illegal consumption of alcohol. Jones also had been arrested several other times. The PSI further reflected that when he committed the instant offense, Jones was on probation

for class D felony possession of marijuana, and charges for class D felony possession of cocaine and class D felony possession of a controlled substance were also pending.

During the hearing, Jones presented the following mitigating circumstances: he had obtained his general education degree while incarcerated in 2004; his age of twenty-four years; and the hardship his imprisonment would impose upon his three daughters. As to aggravating and mitigating circumstances, the trial court found as follows:

The Court finds aggravating circumstances in this case to be the fact that the defendant recently violated conditions of bond, parole or probation. That he has a very, very lengthy history of criminal and delinquent activity. . . . He does talk a good story but that's mostly, unfortunately, what his history has indicated, all talk and—he can talk the talk but he can't walk the walk as they would say. Mitigating circumstances alleged were the age, he's twenty-four (24) years old. . . . [In] one (1) year he can be old enough to run for Congress whose [sic] to say that twenty-four (24) year[s] old is . . . young enough to be considered as some mitigating circumstances. It's not right. He wants to be there for his family, well he hasn't been there for his family and now all of a sudden he wants to be there for his family but he has no skills No capacity to work. No working history other than getting his sister involved . . . in this nefarious crime to bring drugs in from California. . . . [T]he Court finds the aggravating circumstances outweigh any mitigating circumstances.

(Tr. 541-43). Accordingly, the trial court sentenced Jones to consecutive sentences of eight years on Count 1 and one year on Count 2.

DECISION

Jones asserts that his sentence is inappropriate. We disagree.

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to “persuade the appellate court that his or her sentence has met th[e] inappropriateness

standard of review.” *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007).

In determining whether a sentence is inappropriate, the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081. The advisory sentence for a class C felony is four years, with a potential maximum sentence of eight years. I.C. § 35-50-2-6. Indiana Code section 35-50-3-2 provides that a person who commits a class A misdemeanor “shall be imprisoned for a fixed term of not more than one (1) year[.]” Thus, Jones received the maximum sentence on both counts.

As to the nature of Jones’ offense, the record discloses that he conspired to have 1773.2 grams, almost four pounds, of marijuana shipped from California to Indiana. According to Officer Cole, the substantial quantity of marijuana clearly indicated that Jones intended to sell or distribute the marijuana. Moreover, Jones involved innocent relatives in his crime.

As to Jones’ character, this is not his first felony conviction or drug-related conviction. He has a lengthy criminal history of convictions, charges, and arrests. At the time he committed the instant offense, he was already on probation for possession of marijuana and facing additional charges for possession of cocaine and possession of a controlled substance. Thus, Jones clearly has a disregard for the law. *See, e.g., Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) (finding that a defendant’s record of arrests “may

be relevant to the trial court's assessment of the defendant's character in terms of the risk that he will commit another crime"). We therefore cannot say that his total sentence of nine years is inappropriate.

Affirmed.

RILEY, J., and BARNES, J., concur.