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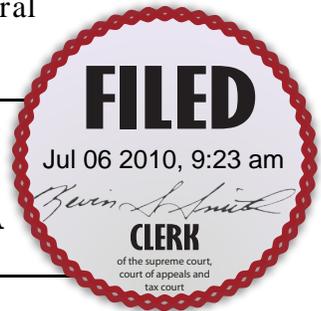
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**IN THE
COURT OF APPEALS OF INDIANA**



TERRY HUDDLESTON,)
)
Appellant/Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee/Plaintiff.)

No. 15A04-0912-CR-705

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause Nos. 15C01-0902-FB-10, 15C01-0603-FC-13

July 6, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Terry Huddleston pled guilty to Possession of a Controlled Substance with Intent to Deliver as a Class B felony.¹ Additionally, the conviction violated the terms of probation imposed following a prior conviction for Burglary as a Class C felony. Huddleston received a twelve-year sentence with four years suspended to probation for the Possession of a Controlled Substance with Intent to Deliver as a Class B felony. As a result of his probation violation, the trial court revoked Huddleston's probation and ordered him to serve five years of his previously suspended sentence, which were to run consecutively to his twelve-year sentence. Huddleston now appeals, raising the following issues:

- I. Whether his twelve-year sentence is inappropriate in light of the nature of the offense and his character.
- II. Whether the trial court abused its discretion in revoking his five-year suspended sentence following his admission to violating the terms of his probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 9, 2009, Dearborn Sheriff's Detective Shane McHenry received information from a confidential informant ("CI") that Huddleston would be selling Oxycontin from an apartment in Dearborn County, Indiana. Detectives conducted surveillance and observed Huddleston enter and leave two separate apartments. Later that evening, the CI informed Detective McHenry that Huddleston was in Salina Henderson's

¹ Ind. Code § 35-48-4-2(a)(2)(C) (2008).

apartment. Detectives went to Henderson's apartment and listened outside the door where they could hear Huddleston talking with Henderson about selling drugs. A few minutes later, Huddleston and Henderson left the apartment and entered Henderson's vehicle. Police were notified to be on the lookout for Henderson's vehicle.

At approximately 12:25 a.m. on January 10, 2009, Lawrenceburg Police Officer Jacob Jump stopped Henderson's vehicle because its license plate was not illuminated. Huddleston told Officer Jump that he wanted to look at the light. Officer Jump told Huddleston that he needed to pat him down and check for weapons before he would allow Huddleston to inspect the light. Huddleston consented, and, during the pat down, Officer Jump felt a prescription bottle in Huddleston's pocket, which was later found to be Oxycotin. Officer Jump also seized other prescription bottles that were in plain view inside Henderson's vehicle.

On February 4, 2009, the State charged Huddleston with possession of a controlled substance with the intent to deliver, a Class B felony, in Cause Number 15C01-0902-FB-10 ("Cause FB-10"). On February 11, 2009, the Dearborn County Probation Department filed a request for probation violation hearing, alleging that Huddleston had violated his terms of probation in Cause Number 15C01-0603-FC-13 ("Cause FC-13") by committing a new offense in Cause FB-10. On July 23, 2009, Huddleston pled guilty to a single count of possession with intent to deliver in Cause FB-10 and admitted to the probation violation in Cause FC-13. On October 27, 2009, the trial court revoked Huddleston's probation and ordered him to serve five years of his suspended sentence in Cause FC-13. On November 4, 2009, the trial court imposed a twelve-year sentence with four years

suspended to probation in Cause FB-10. The sentences were ordered to run consecutively. The trial court found Huddleston's guilty plea, two dependent sons, the fact that he exhibited remorse for his actions and accepted responsibility to be mitigating circumstances. The trial court found as aggravating circumstances Huddleston's criminal history and involvement in illegal drug sales. Tr. p. 67-68.

DISCUSSION AND DECISION

I. Appropriateness of Sentence

On appeal, Huddleston alleges that his twelve-year sentence for possessing drugs with intent to deliver is inappropriate. This 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." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied*. Moreover, the defendant bears the burden of persuading this Court that his sentence is inappropriate. *Patterson v. State*, 909 N.E.2d 1058, 1063 (quoting *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007)).

As for the nature of Huddleston's offense, he argues that his offense was not inherently dangerous. Specifically, Huddleston argues that no physical or financial harm was done. Furthermore, he contends that because he was arrested before any sales took place, there were no victims. As for his character, Huddleston claims that he had led a

law-abiding life until he became addicted to prescription pain killers. He contends that he needs treatment for his addictions and not a harsh punishment as he seeks to regain control of his life and help his two sons. Second, Huddleston argues that by pleading guilty he saved the county time and resources.

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.” *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007). In this case, “[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.” Ind. Code. § 35-50-2-5 (2008). Here, the trial court sentenced Huddleston to twelve years with four years suspended to probation.

As for Huddleston’s offense, we cannot agree that his activities were innocuous. It is abundantly clear that Huddleston’s involvement in illegal drug trafficking was significant; the record demonstrates that he participated in three drug exchanges on the day he committed the instant offense. Huddleston was in possession of multiple bottles, pills, and drugs when apprehended. It is apparent that January 9, 2009, was not an isolated incident, but part of an ongoing drug-dealing concern. Moreover, we do not find Huddleston’s argument regarding the “victimless” nature of his offense to be particularly compelling. First, it is apparent that the only reason Huddleston had no victim was because he was caught first. Second, to the extent that Huddleston argues that drug dealing is an inherently victimless crime, we note that he himself acknowledges being a victim of his addictions and that they have forced him into a life of crime.

As for Huddleston's character, his criminal history reveals that he was on probation for a Class C felony burglary, at the time he committed this offense. Tr. p. 67. Second, Huddleston also admitted to long-term illegal drug use, thus admitting to breaking the law several other times. Third, we note Huddleston's failure to seek medical treatment for his addiction until he was incarcerated. We find it inconsistent for Huddleston to escape responsibility by blaming his crimes on prescription drugs when he has failed to seek any type of treatment to fix his problem. Clearly, previous attempts to rehabilitate Huddleston and deter him from future crimes have failed.

Huddleston also suggests that his guilty plea should be viewed as strong evidence of good character because he claims to have received no benefit from it. It is apparent, however, that Huddleston received a significant benefit. At the very least, Huddleston received the benefit of the dismissal of a different charge for possession of Aprozolam. Tr. p. 68.

Huddleston relies on *James v. State*, 868 N.E.2d 543 (Ind. Ct. App. 2007), in which a sixteen-year-old defendant's sentence was deemed inappropriate in light of the nature of the offense and his character. The *James* court held that due to defendant's age, tough childhood, and substance abuse, a maximum sentence on all counts was inappropriate. *Id.* at 549. However, we conclude that the case before us is distinguishable on the facts from *James*. Unlike the defendant in *James*, Huddleston did not receive the maximum sentence. Furthermore, Huddleston was not sixteen years old when he committed these offenses, but thirty-seven. Unlike the defendant in *James*, Huddleston's acts were not signs of immaturity or of a teenager whose behavior was more vulnerable

to outside influences, but were instead calculated criminal acts. In light of the nature of Huddleston's offense and his character, his twelve-year sentence is appropriate.

II. Probation Revocation

With respect to Huddleston's probation revocation, we conclude that he has failed to make a cogent argument as to why the trial court abused its discretion in revoking his probation and ordering him to serve five years of his suspended sentence in Cause FC-13. It is well-established that failure to make a cogent claim results in waiver of the claim. Ind. Appellate Rule 46 (A)(8)(a); *Johnson v. State*, 837 N.E.2d 209, 217 (Ind. Ct. App. 2005), *trans. denied*. See, e.g., *Cooper v. State*, 854 N.E.2d 831, 834 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority"); *Smith v. State*, 822 N.E.2d 193, 202-203 (Ind. Ct. App. 2005) ("Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record."), *trans denied*. Here, Huddleston argues that the trial court failed to take into consideration the nature of his probation violation and his character. However, Huddleston does not point to any specific authority or cite to the record to support his argument. Therefore, Huddleston has waived the issue for appellate consideration.

The judgment of the trial court is affirmed.

RILEY, J., and MATHIAS, J., concur.