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**IN THE
COURT OF APPEALS OF INDIANA**



MICKEL MILLS,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A05-0910-CR-616

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel N. Cruz, Commissioner
Cause No. 49F18-0906-FD-56438

July 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Mickel Mills entered a plea of guilty to Class D felony criminal trespass¹ and Class A misdemeanor criminal trespass.² Mills argues his sentence is inappropriate in light of his character and the nature of the offense. We affirm.

FACTS AND PROCEDURAL HISTORY

On June 15, 2009, police found an intoxicated Mills asleep in the parking lot of a Kroger Store. Police arrested him and the State charged him with one count of Class D felony criminal trespass, one count of Class A misdemeanor criminal trespass, and one count of Class B misdemeanor public intoxication.³ Mills agreed to plead guilty to Class D felony criminal trespass and Class A misdemeanor criminal trespass.

The advisory sentence for a Class D felony is one and a half years, but a sentence can range from six months to three years. Ind. Code § 35-50-2-7. The plea bargain provided for a sentence of 545 days, 12 weeks of Alcoholics Anonymous meetings, and an order requiring Mills to stay away from all Kroger stores in Marion County. There was a cap of 365 days executed, open to placement, with the balance suspended and on probation. The trial court accepted the plea agreement and ordered 365 days be served on probation and 180 days be served at the Department of Correction.

DISCUSSION AND DECISION

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). We give deference to the trial court, recognizing its special expertise in making sentencing decisions. *Barber v.*

¹ Ind. Code § 35-43-2-2.

² Ind. Code § 35-43-2-2.

³ Ind. Code § 7.1-5-1-3.

State, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied*. The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Mills argues his sentence is inappropriate in the light of the nature of his offense. “[R]egarding the nature of the offense, 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), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007). Pursuant to the plea agreement, the trial court was required to impose the advisory sentence and could not order executed more than 365 days of that 545-day advisory sentence. The court suspended 365 days and ordered 180 days served executed.

Mills notes his offense was nonviolent and posed no danger to others. However, trespass is not a violent crime as defined by our legislature. *See* Ind.Code § 35-43-2-2. Nor does absence of physical injury or violence during a crime necessarily warrant reduction in sentence. *See, e.g., White v. State*, 433 N.E.2d 761, 763 (Ind. 1982) (holding the absence of injuries or violence does not negate application of enhanced sentence following robbery conviction). Neither of these assertions regarding the nature of the offense necessitates a reduction in Mills’ sentence.

Next Mills argues his sentence is inappropriate because his character and his crimes result from an addiction to alcohol.⁴ Mills believes his good character is

⁴ Mills argues his offense results from his addiction to alcohol and requests we allow him to “move toward treatment.” (Appellant’s Br. at 9.) Mills’ sentence includes treatment in the form of 12 weeks of Alcoholics Anonymous meetings. Furthermore, Mills cites no authority suggesting alcoholism requires a reduction in a sentence. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring argument be supported by coherent reasoning with citations to authority).

demonstrated by his older age, his “direct and honest” temperament, (Appellant’s Br. at 7), his desire to avoid future arrests, and his desire for treatment and reform.⁵

When considering the “character of the offender,” one relevant fact is the defendant’s criminal history. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The significance of a criminal history in assessing a defendant’s character varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* Mills has multiple prior convictions that include possessing a handgun without a license, public intoxication, battery, resisting law enforcement, and felony theft. Mills was on probation for a prior trespass when he committed this offense; that also reflects poorly on his character. *See Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008) (committing “offenses while on probation is a substantial consideration in our assessment of his character”), *trans. denied*.

Mills contends he wants to avoid future arrests and wants to reform, but his assertions are inconsistent with his actions and criminal history. Mills trespassed at Kroger four days after being convicted and placed on probation for committing criminal trespass at that same Kroger. Returning and committing an identical offense at the same place does not indicate a desire to avoid arrest.

⁵ Mills argues “[R]emoving the ‘stay away’ order would bring his sentence into conformity with the constitutional requirement of supporting reform.” (Appellant’s Br. at 9.) Mills cites Article I, Section 18 of the Indiana Constitution for the notion that “the penal code shall be founded on the principles of reformation, and not vindictive justice.” (Appellant’s Br. at 7.) Mills acknowledges there is “nothing vindictive” about his sentence (*id.* at 7), leaving us unsure what constitutional claim he is attempting to assert. Because Mills provided no cogent argument, he waived this argument for our review. *See Cooper v. State*, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (waiving arguments for failure to cite authority or provide cogent argument). Nevertheless, we note “Section 18 applies only to the penal code as a whole and not to individual sentences.” *Scruggs v. State*, 737 N.E.2d 385, 387 n.3 (Ind. 2000).

Mills describes himself as “direct and honest,” (Appellant’s Br. at 7), but his actions reflect a pattern of criminal conduct that does not suggest he is honest about wanting to reform himself and avoid arrest. A record of arrests, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State. *Cotto v. State*, 829 N.E.2d 520 (Ind. 2005). Such information 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. *Id.* Mills’ exposure to the criminal justice system has not deterred him from criminal activity; as the trial judge told Mills at sentencing, “I don’t think you get it.” (Tr. at 11.)

Mills has not demonstrated the inappropriateness of his sentence in light of the nature of the offense or his character. Therefore, we affirm.

Affirmed.

BAILEY, J., and BARNES, J., concur.