

Jeremy Sutton pleaded guilty to Possession of Marijuana as a class D felony.¹ On appeal, Sutton challenges the 730-day sentence imposed by the trial court.

We affirm.

On October 4, 2007, officers with the Indianapolis Metropolitan Police Department went to a home located at 2928 East 34th Street to serve an arrest warrant for Charles Davis, Sr. Upon arriving, officers knocked on the front door and, after some delay, were able to present the warrant to Debreet Sutton, Sutton's mother. As the officers searched the residence for Davis, they observed a pair of black and silver digital scales and several quantities of marijuana. Sutton's mother initially accepted responsibility for the marijuana, claiming that someone had found it in the yard and brought it into the home. Thereafter, Sutton spontaneously told one of the officers, "it's my weed, I don't want anyone to go down." *Appellant's Appendix* at 12. The officers then arrested Sutton and his mother.

The following day the State charged Sutton with dealing in marijuana and possession of marijuana, both as class D felonies. On December 20, 2007, Sutton entered into a plea agreement with the State that called for Sutton to plead guilty to possession of marijuana and the State dismissed the dealing charge. The plea agreement provided that the trial court had discretion to sentence Sutton to executed time in the range of 180 days to 730 days.

Sutton presented his current enrollment in school and drug addiction as mitigating factors. Sutton also informed the court that he had an eighteen-month-old son. The trial court acknowledged Sutton's addiction and found his acceptance of responsibility to be

¹Ind. Code Ann. § 35-48-4-11 (West, PREMISE through 2007 1st Regular Sess.).

mitigating factors. The court found Sutton's criminal history² to be an aggravating factor that outweighed the mitigators. The court sentenced Sutton to 730 days at the Department of Correction with the opportunity to petition the court for different placement after one year.

On appeal, Sutton argues that the trial court improperly sentenced him "by failing to accord greater mitigating weight to his having an 18 month old son, acceptance of responsibility, and educational involvement." *Appellant's Brief* at 3. With regard to his acceptance of responsibility and educational involvement, the trial court acknowledged both. Specifically, the trial court noted that Sutton had pleaded guilty and further stated that it would permit Sutton to petition the court after 365 days, or "six actual months" at the DOC, for a different placement if Sutton demonstrated that he was continuing his education and bettering himself. *Transcript* at 19. Sutton's claim is thus that the trial court failed to afford sufficient mitigating weight to these mitigating factors. Such claim is no longer subject to appellate review. *See Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *reh'g granted on other grounds*, 875 N.E.2d 218 (2007) ("[b]ecause the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence, . . . a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors").

With regard to the third proffered mitigating circumstance, i.e., that incarceration would impose undue hardship on Sutton's eighteen-month-old son, Sutton has failed to establish that such is a significant mitigating factor. *See Anglemeyer v. State*, 868 N.E.2d 482. To be sure, Sutton testified that he had an eighteen-month-old son who stayed with him "part

²Sutton's criminal history consisted of four class B felony convictions under one prior cause.

of the week.” *Transcript* at 11. Sutton’s son was mentioned only once throughout the entire sentencing hearing and at no point did Sutton submit that incarceration would cause his son undue hardship.

In his statement of the standard of review, Sutton recites our authority to review and revise a sentence if we conclude that the sentence is “inappropriate in light of the nature of the offense and the character of the offender.” *See* Indiana Appellate Rule 7(B). Sutton fails to provide a separate analysis or citation to authority to support this claim. *See* Ind. Appellate Rule 46(A)(8). He has therefore waived the issue for review. *See Hollowell v. State*, 707 N.E.2d 1014 (Ind. Ct. App. 1999).³

Judgment affirmed.

DARDEN, J., and BARNES, J., concur

³Waiver notwithstanding, the trial court’s imposition of a 730-day sentence with permission to petition the court for alternate placement after “six actual months” at the DOC is not inappropriate. *Transcript* at 19.