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IN THE
COURT OF APPEALS OF INDIANA

SCOTT A. TARTER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 90A02-0901-CR-22
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable David L. Hanselman, Sr., Judge
Cause No. 90C01-0604-FB-5

OCTOBER 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Appellant-Defendant Scott Tarter appeals the sentence he received for his plea of guilty to dealing in a schedule I, II or III controlled substance, a Class B felony, Ind. Code § 35-48-4-2. We affirm.

Tarter presents one issue for our review, which we restate as: whether Tarter's sentence is inappropriate.

Tarter had methadone pills, which had been prescribed to him by his doctor. On January 7 or 8, 2006, he sold some of the pills to Ashley Brown. Brown's ingestion of some of the methadone sold to her by Tarter was a contributing factor in her death on January 9, 2006. As a result of this incident, Tarter was charged with two counts of dealing in a schedule I, II or III controlled substance, both as Class B felonies. He subsequently pleaded guilty to one count of dealing in a schedule I, II or III controlled substance and was sentenced to the Indiana Department of Correction for six years. It is from this sentence that Tarter now appeals.

On appeal, Tarter's sole contention is that his sentence is inappropriate. Particularly, Tarter argues that his mental illness and limited mental ability make a fully executed six year sentence inappropriate.

We have the authority to revise a sentence if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the appellate court that his or her sentence has met the

inappropriateness standard of review. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

With respect to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Here, Tarter was convicted of a Class B felony. The advisory sentence for a Class B felony is ten (10) years, with a maximum of twenty (20) years and a minimum of six (6) years. *See* Ind. Code §§ 35-50-2-5. Tarter received the minimum sentence of six years for his conviction of dealing in a schedule I, II or III controlled substance. We note that Tarter's offense goes beyond simply dealing in a controlled substance. As a result of Tarter's sale of this drug, a woman died. Therefore, the severity of the unintended consequences of Tarter's actions is a further consideration of the nature of this offense.

With regard to Tarter's character, we note that he has six misdemeanor convictions, one of which was charged as a D felony and entered as an A misdemeanor. In addition, Tarter was on probation at the time he committed the current offense, which is a "substantial consideration" in our assessment of his character. *See Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008), *trans. denied*, 898 N.E.2d 1223; *see also Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied* (holding that even if other aggravating circumstance was insignificant, trial court would have acted within its discretion in ordering maximum sentences based on fact that defendant committed crime

while on probation). Moreover, while the instant case was pending, Tarter was charged with a further offense of public intoxication, as a Class B misdemeanor.

Also in regard to Tarter's character, we recognize that he has suffered from mental illnesses. There are several considerations that bear on the weight, if any, that should be given to mental illness in sentencing. These factors include: (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. *Biehl v. State*, 738 N.E.2d 337, 340 (Ind. Ct. App. 2000), *trans. denied*, 753 N.E.2d 3 (2001).

Here, the trial court was presented with reports from both a psychologist and a psychiatrist who evaluated Tarter. As stated in their reports, Tarter has the capacity to understand right from wrong, and he had that ability at the time he sold the drug to Brown. Further, it was determined that Tarter's cognitive functioning is below the average range and that he has suffered from mental illnesses since at least 1996. Tarter's most recent diagnosis was schizoaffective disorder, bipolar type, meaning that he has psychotic symptoms and mood changes. However, the psychiatrist found that Tarter's inconsistent and selectively chosen statements during the evaluation did not show delusional thinking, but rather showed Tarter's attempts to change his statements to be advantageous to his situation. Therefore, the psychiatrist concluded that Tarter was not significantly out of touch with reality due to psychotic thinking at the time of the offense.

Finally, there is no apparent connection between the instant offense and Tarter's mental disorders, and Tarter concedes this point in his brief. Additionally, in providing information for his presentence report, Tarter revealed numerous medications that he is presently taking on a daily basis but stated that he is not presently involved in any mental health counseling and that he neither wants nor needs any. Thus, Tarter's mental illness bears little weight on our analysis of his character. *See Scott v. State*, 840 N.E.2d 376, 384 (Ind. Ct. App. 2006), *trans. denied* (concluding that defendant's mental illness should have been given little weight where defendant was capable of controlling his behavior, did not have significant limitations on his functioning, and failed to identify a nexus between his mental illness and the offense); *cf. Biehl*, 738 N.E.2d at 340 (concluding that defendant with no criminal history who is suffering from severe, longstanding mental illness that has some connection with crime for which he was convicted and sentenced is entitled to receive considerable mitigation of his sentence).

Tarter has not carried his burden of persuading this Court that his sentence has met the inappropriateness standard of review. *See Anglemyer*, 868 N.E.2d at 494. Our review of the nature of the offense and the character of the offender does not lead us to conclude that Tarter's six year sentence is inappropriate.

Affirmed.

BARNES, J., and BROWN, J., concur.