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ATTORNEY FOR APPELLANT:

WILLIAM A. EASTRIDGE
Assistant Public Defender
New Albany, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JASON W. DOYLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 22A04-0904-CR-202
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Susan L. Orth, Judge
Cause No. 22D01-0802-FC-111

November 12, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Jason W. Doyle appeals his five-year sentence for Possession of a Controlled Substance[1] as a class C felony. He argues that his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

Around midnight on February 19, 2008, Doyle brought his three-year-old daughter to Patricia Sumner's residence and left her there. Doyle's contact with his daughter was in violation of a protective order.[2] When he returned at approximately 4:50 a.m. to retrieve his daughter, Sumner refused to turn over the child and instead called the New Albany Police Department. Soon thereafter, an officer arrived and spoke with Doyle. The officer provided Doyle with a trespass warning and told him not to return.

Doyle returned to Sumner's residence later that day, and police were once again dispatched to the residence. Upon his arrival, Captain Greg Pennell observed Doyle beating on the back door of the residence. Thereafter, Pennell noticed a strong odor of alcoholic beverage on Doyle's breath and that his eyes were glassy. Pennell was advised by dispatch of the active protective order against Doyle restraining him from contact with his daughter or his daughter's mother (not Sumner). Pennell placed Doyle under arrest for invasion of privacy and criminal trespass.

Upon their arrival at the Floyd County Jail, Pennell searched Doyle's person and

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[1] Ind. Code Ann. § 35-48-4-7 (West, PREMISE through 2009 Public Laws approved and effective through 4/20/2009).

[2] Because of the limited record before us, we do not know why Doyle had his daughter originally in his care that night, nor do we know the nature of Sumner's relationship with Doyle or his daughter.

found three partially smoked marijuana cigarettes, paraphernalia, and a cellophane bag that contained one yellow tablet and one broken blue tablet. The tablets were later identified as Alprazolam (Xanax), a Schedule IV controlled substance. Doyle had possessed the controlled substance was within 1000 feet of a family housing complex.

Doyle was charged with class C felony possession of a controlled substance, class A misdemeanor possession of marijuana, class A misdemeanor possession of paraphernalia, and class A misdemeanor invasion of privacy. About a year after his arrest, Doyle entered into a plea agreement with the State, pursuant to which he pleaded guilty to the class C felony and the State dismissed the remaining charges. Sentencing was left to the discretion of the trial court. At the conclusion of the sentencing hearing, the court sentenced Doyle to five years in prison.

On appeal, Doyle contends his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). On appeal, Doyle bears the burden of persuading us that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

In the instant, Doyle received a sentence that was one year above the advisory

sentence and three years less than the maximum sentence. *See* Ind. Code Ann. § 35-50-2-6 (West, PREMISE through 2009 Public Laws approved and effective through 4/20/2009). The trial court based the five-year sentence imposed primarily upon Doyle's extensive criminal history. The court explained that it hoped to finally get Doyle's attention so that he would succeed in treatment during the periods of probation that the court was ordering in two cases involving probation violations that were joined at the sentencing hearing.

At the age of thirty-two, Doyle has amassed a lengthy criminal history. In addition to his four prior felony convictions and four misdemeanor convictions, Doyle has numerous other arrests and many probations violations. In fact, he was on probation in two separate cases when he committed the instant offense. His probation officer since 2004 testified that Doyle has been on probation for many years and has been basically unsuccessful.

For the most part, Doyle's criminal behavior directly or indirectly involves substance abuse, particularly alcohol.[3] As a result, he argues that his sentence should be suspended so that he can seek treatment. This, however, ignores the fact that Doyle has been granted much leniency in the past and has received inpatient treatment on at least two occasions to no avail. The record reveals that Doyle has continued to reoffend and has been undeterred by probation. As the State put it at the sentencing hearing, "enough is enough." *Appendix* at 97.

We agree with Doyle that there is nothing particularly egregious with respect to the nature of this possession offense. The nature of the offense aside, Doyle's poor character, as

[3] Doyle's prior convictions and arrests include such offenses as battery, domestic battery, theft, OWI, public intoxication, resisting law enforcement, and invasion of privacy.

reflected by his extensive criminal history and record of probation violations, clearly warrants the sentence imposed.[4]

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.

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[4] At the sentencing hearing, the State aptly observed the following in response to Doyle's argument that the offense was *de minimus*:

> *De minimus* charges. I guess that means because he just had a little bit of drugs at the time, but isn't that sort of his whole career has been *de minimus* kind of charges that he keeps violating, and violating, and committing, and recommitting again, and again, and again. And there just comes a point in time when you have to hold somebody accountable for their actions….

Id. at 97.