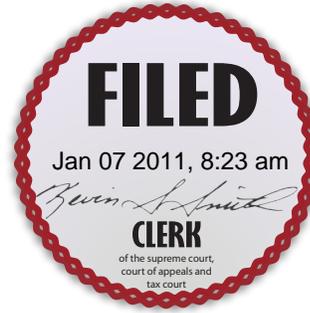


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

LESTER LYLE,)

Appellant-Defendant,)

vs.)

No. 15A01-1005-CR-258

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Sally A. Blankenship, Judge
Cause No. 15D02-0902-FD-038

January 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Lester Lyle (“Lyle”) appeals his sentence of two and one-half years imprisonment for his conviction of Class D felony unlawfully acquiring a controlled substance.¹ We affirm.

Issue

On appeal, Lyle raises the single issue of whether his sentence is inappropriate.

Facts and Procedural History

On March 2, 2008, Lawrenceburg, Indiana Police Officer Nicholas Beetz (“Officer Beetz”) received a telephone call from a CVS pharmacy advising him that, earlier that day, it had filled a pain medication prescription for Lyle and his daughter, Terri Hash (“Hash”). These prescriptions were for OxyContin and Roxicodone, both brand names for oxycodone, and Soma, a brand name for carisoprodol. All are controlled substances commonly abused and illegally sold on the streets. Lyle and his daughter obtained over \$1400 of these medications from the CVS, and paid for them with one hundred dollar bills. Lyle lived in Winchester, Ohio at the time, which is approximately one hundred and twenty-three miles away.

After receiving this call, Officer Beetz conducted an investigation and determined that Lyle and Hash were “doctor shopping,” a method by which persons involved in abusing or selling medications for personal profit obtain a large number of medications. App. 7. Specifically, since January 2008, Lyle consulted with six different physicians in both Indiana

¹ Ind. Code § 35-48-4-14(c).

and Ohio, and filled prescriptions at seven different pharmacies, also both in Indiana and Ohio. He established care with one physician, Dr. Hoy, as far back as 2002, and by September 2007, he was simultaneously receiving pain medication from four different doctors. In fact, on September 18, 2007, Lyle established care with two different physicians on the same day. He refused surgery for his low back pain, filled his prescriptions at different pharmacies to avoid detection, and breached pain management contracts which specifically advised him of criminal penalties involved in receiving prescriptions from multiple doctors.

On February 8, 2010, Lyle pled guilty to unlawfully acquiring a controlled substance, as a Class D Felony. At his sentencing hearing on April 6, 2010, Lyle presented evidence of his medical problems and history of prescription medication abuse. He testified that he has cancer, but refuses to undergo treatment. As a result of this refusal, he was dismissed from care at the Mount Carmel Health Center. Lyle also presented evidence of lumbar and cervical problems, as well as his current compliance with his pain medication regime. Lyle has, however, been non-compliant in the past. At the hearing, he also acknowledged his criminal history.

On April 27, 2010, the trial court pronounced its sentence, noting that, in making its decision, it considered Lyle's criminal history, the fact that he was involved in a scheme to obtain controlled substances that involved multiple physicians and pharmacies in more than one state, that he purchased over \$1400 worth of substances, and the fact that his crime involved a co-defendant. The court also considered the fact that Lyle pled guilty and has a

history of medical issues. He was sentenced to two and one-half years imprisonment and ordered to pay costs. This appeal followed.

Discussion and Decision

Lyle contends that his sentence is inappropriate pursuant to Indiana Appellate Rule 7(B). In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a 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. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to “leaven the outliers.” Id. at 1225. “Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Id. at 1224.

The sentencing range for a Class D felony of unlawfully acquiring a controlled

substance runs between six months and three years, with an advisory sentence of one and one-half years. Ind. Code § 35-50-2-7(a). Lyle's sentence was one year above the advisory sentence, and he argues that his sentence should be revised.

The nature of Lyle's offense is that he made several misrepresentations to multiple physicians and pharmacies in two different states. He also used these misrepresentations to obtain an inordinate amount (over \$1400 worth) of controlled substances, and drove approximately one hundred twenty-three miles from his home to avoid detection. Additionally, Lyle involved his daughter in his crime and had done so for several years, indicating that the extent of Lyle's offense was more than just a mere misrepresentation; rather, it entailed a more elaborate scheme.

The character of the offender is such that he has three prior convictions—one for trafficking in drugs, and two for theft. He has also refused medical treatment for both his cancer and back pain, which could have obviated the need for prescription drugs. Lyle acknowledges non-compliance with his medication regimen, and he was filling prescriptions for controlled substances from six different doctors at the time of his arrest. Lyle's admission of guilt does reflect favorably on his character and the record reveals he has several medical impairments. Nevertheless, we do not find that his sentence is inappropriate, as any mitigating circumstances are outweighed by the extent of his crime, his prior convictions, and his history of prescription drug abuse.

Affirmed.

NAJAM, J., and DARDEN, J., concur.