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**IN THE
COURT OF APPEALS OF INDIANA**

DONALD S. STEPHENS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 03A01-0707-CR-312

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No. 03C01-0612-FC-2527

December 14, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Donald R. Stephens (Stephens), appeals his conviction for Count I, possession of cocaine, as a Class D felony, Ind. Code § 35-48-4-6(a), and Count II, possession of paraphernalia, a Class A misdemeanor, I.C. § 35-48-4-8.3.

We affirm.

ISSUE

Stephens raises one issue on appeal which we restate as follows: Whether the trial court appropriately sentenced him in light of the nature of the offense and his character.

FACTS AND PROCEDURAL HISTORY

At approximately 9:40 p.m. on December 1, 2006, Columbus Police Lieutenant Ruth Stillinger (Officer Stillinger) received a report of a suspicious person in the 800 block of Cottage Avenue in Columbus, Indiana. Upon her arrival in the area, Officer Stillinger observed a person, later identified as Stephens, hiding behind a bush between the curb and the sidewalk in front of the residence at 813 Cottage Avenue. When she illuminated the place with her headlights, Stephens started to walk toward the yard between two adjacent houses. Officer Stillinger, exiting her vehicle, ordered Stephens to stop. Stephens continued walking and Officer Stillinger repeated her order. Stephens turned and simultaneously removed his right hand from his pocket, dropping something on the ground. Stephens then immediately walked toward Officer Stillinger.

Stephens responded negatively to Officer Stillinger's question whether he lived in the area. He also denied going back and forth between the street and the alley between the two

houses. Instead, Stephens clarified that he lived in North Vernon and gave his name as Rick Stephens. However, at Officer Stillinger's request, he handed her identification indicating his name to be Donald Stephens. Officer Stillinger asked Stephens if he had any weapons on him; Stephens replied he carried a knife.

Before being able to conduct a pat down search of Stephens, Officer John Luttrell of the Columbus Police Department (Officer Luttrell) arrived. Officer Luttrell padded Stephens down for weapons, while Officer Stillinger checked Stephens' identification. The identification check revealed that a warrant had been issued for Stephens' arrest. After Stephens was handcuffed, Officer Stillinger, accompanied by another officer, examined the area where Stephens had dropped something. The officers found a glass pipe with some residue on it and three baggies. Testing later revealed that the baggies contained cocaine. Additionally, during pat down search of Stephens, Officer Luttrell discovered a set of digital scales, coated with a white powdery residue.

On December 13, 2006, the State filed an Information, charging Stephens with Count I, possession of cocaine, as a Class C felony, and Count II, possession of paraphernalia, a Class A misdemeanor. On May 1, 2007, prior to the commencement of the bench trial, the State filed an amendment, amending Count I from a Class C felony to a Class D felony. At the close of the bench trial, the trial court found Stephens guilty as charged. On June 5, 2007, the trial court sentenced Stephens to two years and three months for Count I, possession of cocaine, and one year for Count II, possession of paraphernalia, with sentences to run concurrently.

Stephens now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Stephens argues that the trial court inappropriately sentenced him. Specifically, he contends that the trial court failed to consider two additional mitigators before pronouncing his sentence. “[S]o long as a sentence is within the statutory range, it is subject to review only for an abuse of discretion.” *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *reh’g granted on other grounds*, 875 N.E.2d 218 (2007). An abuse of discretion occurs if we find the trial court’s decision is clearly against the logic and effect of the facts and circumstance before the court. *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006). However, “[i]n order to carry out our function of reviewing the trial court’s exercise of discretion in sentencing, we must be told of [its] reasons for imposing the sentence. . . . This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions. Of course[,] such facts must have support in the record.” *Anglemeyer*, 868 N.E.2d at 490. Where the trial court has entered a reasonably detailed sentencing statement explaining its reasons for a given sentence that is supported by the record, we may only review the sentence through Appellate Rule 7(B), which provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we] find that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” *Id.*

In the present case, Stephens was convicted of Count I, possession of cocaine, which is a Class D felony and carries an advisory sentence of one and one-half years, a minimum

sentence of six months and a maximum sentence of three years. I.C. § 35-50-2-7. Additionally, the trial court convicted him of Count II, possession of paraphernalia, which is a Class A misdemeanor, carrying a “fixed term of not more than one year.” I.C. § 35-50-3-2. At the sentencing hearing, the trial court explained its reasons for imposing a sentence of two years and three months for Count I and a concurrent sentence of one year for Count II, finding as aggravators (1) Stephens’ accumulation of a large number of prior convictions, including one prior felony and (2) treatment can be best provided by a penal facility because of Stephens’ continuing denial that he has a substance abuse problem. The trial court found no mitigating circumstances.

Stephens now alleges that the trial court improperly failed to take into account two proposed mitigators. Specifically, he maintains that the trial court did not give any weight to the fact that (1) his imprisonment would be a hardship on his family as he is their sole provider and (2) this was his first felony drug offense. As our supreme court clarified in *Anglemyer*, “[a]n allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record.” *Anglemyer*, 868 N.E.2d at 493. Additionally, even “[i]f the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist. *Id.*

We conclude that Stephens failed to carry his burden of proof. Initially, we note that jail is always a hardship on dependents, and Stephens fails to explain how his sentence is more of a hardship on his family than would be the advisory sentence. *See Vasquez v. State*,

839 N.E.2d 1229, 1234 (Ind. Ct. App. 2005), *trans. denied*. Furthermore, even though the instant offense was Stephens' first felony drug conviction, this does not justify any mitigation. His criminal history indicates he incurred previous substance offenses. In 1987 and 2003, he was convicted for operating a motor vehicle under the influence, as a Class A misdemeanor, while in 1989, he was convicted for a Class B misdemeanor public intoxication. In total, his history reveals that between 1986 and the instant offense, Stephens was convicted of nine misdemeanors and one felony, *i.e.*, a Class D felony resisting law enforcement. Accordingly, the trial court did not improperly fail to take into account a proposed mitigator.

Additionally, we find the current sentence to be in line with the nature of the offense and Stephens' character. Stephens had three plastic baggies of cocaine, a crack pipe, and digital scales on him at the time of his arrest. Although he initially attempted to get rid of the baggies and crack pipe by dropping them on the ground prior to speaking to Officer Stillinger, the Officer nevertheless located them.

With regard to his character, the record establishes that Stephens has a lengthy criminal history, with the current offenses representing his tenth misdemeanor and second felony conviction. The presentence report further indicates that even though he was not convicted, he has been arrested in the past for dealing in controlled substances and possession of marijuana. Moreover, during the interview for his presentence report, Stephens tested positive for marijuana. Even confronted with this positive test, Stephens continued to

deny he had a substance abuse problem. Therefore, in light of the evidence before us, we conclude that the trial court properly sentenced Stephens.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not inappropriately sentence Stephens.

Affirmed.

KIRSCH, J., and MAY, J., concur.