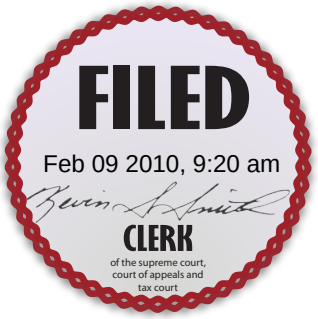

ATTORNEY FOR APPELLANT:

CARA SCHAEFER WIENEKE
Wieneke Law Office, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JONATHAN R. CRANE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 47A01-0905-CR-218
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAWRENCE SUPERIOR COURT
The Honorable William G. Sleva, Judge
Cause No. 47D02-0610-FD-782

February 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Following a jury trial, Jonathan R. Crane was convicted of possession of marijuana[1] as a Class D felony and was sentenced to two years, of which all but sixty days was suspended to probation. Crane appeals, challenging the appropriateness of his sentence. He raises one issue, which we restate as: whether his sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 14, 2006, Mitchell Police Department Detective Randal Phelix obtained a search warrant to search for drugs in Crane's residence in Mitchell, Indiana. That afternoon, Detective Phelix and Indiana State Trooper John Patrick executed the warrant. Upon their arrival, they encountered Crane, his four-year-old son, and a woman leaving the home. The officers patted down Crane and the woman for the officers' safety, and they discovered a hand-rolled marijuana cigarette in a pack of cigarettes in Crane's possession and a bag of marijuana on the woman. In the house, officers found two small bags of marijuana in a gym bag in the kitchen. A canine unit was called to the scene to assist. The dog alerted to a lower kitchen cabinet, where officers found two large bags of marijuana, which together weighed a total of 545.88 grams. Crane admitted the marijuana belonged to him.

The State charged Crane with possession of marijuana as a Class D felony because the total weight exceeded thirty grams. A jury found Crane guilty as charged. At the subsequent sentencing hearing, the trial court followed the recommendation of the probation department

[1] *See* Ind. Code § 35-48-4-11(1).

and imposed a two-year sentence, of which the trial court suspended to probation all but sixty days. Crane now appeals his sentence.

DISCUSSION AND DECISION

An appellate court may revise a sentence after careful review of the trial court's decision if it concludes that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. The burden is on the defendant to persuade this court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006); *Patterson v. State*, 909 N.E.2d 1058, 1063 (Ind. Ct. App. 2009).

Under our current sentencing statutes, the advisory sentence for a Class D felony is one and one-half years, with the maximum term being three years. Ind. Code §35-50-2-7. Here, the trial court imposed a sentence of two years, thus six months above the advisory sentence. Crane argues that his two-year sentence—consisting of sixty days executed, with the remainder suspended to probation—was inappropriate primarily because of his character. *Appellant's Br.* at 4. Specifically, Crane urges that he has been "generally law-abiding" during his life and notes that "[he] has not committed any offense more serious than a

speeding ticket" in the last twenty years. *Id.* According to the record before us, Crane's only adult conviction was Class A misdemeanor operating a vehicle while intoxicated in 1988. As to his character, the State acknowledges, and we agree, that Crane's criminal record is not remarkable.

However, the same cannot be said of the nature of his offense. The amount of marijuana found in Crane's residence was over 545 grams. This amount vastly exceeds the thirty grams necessary for him to be charged with felony possession. *See* Ind. Code §35-48-4-11. Furthermore, Crane's four-year-old son, of whom Crane shared joint custody, was present at Crane's residence on the day that police found the 545 grams of marijuana. Of additional concern is the fact that that the bulk of those drugs was located in a low kitchen cabinet, thus accessible to the child.

While Crane is not the most heinous of offenders, nor is the nature of his crime the worst of the worst, he did not receive the maximum sentence that the trial court could have imposed for his Class D felony conviction. *See Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002) (noting that maximum possible sentences should generally be reserved for the worst offenses and offenders). Crane has failed to persuade us that the two-year sentence, with only sixty days executed, was inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

DARDEN, J., and MAY, J., concur.