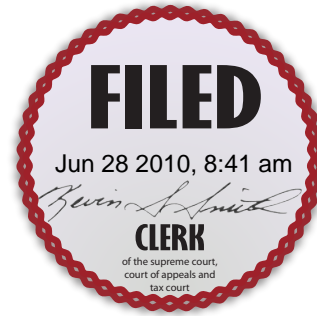


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MARK I. COX

The Mark I. Cox Law Firm Office, LLC
Richmond, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER

Attorney General of Indiana

GEORGE P. SHERMAN

Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

TRAVIS HALVELAND,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 89A04-1002-CR-111

APPEAL FROM THE WAYNE SUPERIOR COURT

The Honorable Gregory A. Horn, Judge

Cause No. 89D02-0805-FD-48

June 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Travis Halveland appeals his sentence for theft as a class D felony.¹ Halveland raises one issue, which we revise and restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. On May 19, 2008, Mark Faucett, a loss prevention officer at a Meijer store in Richmond, Indiana, was conducting floor surveillance and observed Halveland “select an I-Pod charger, remove the packaging and conceal the charger inside his right rear pants pocket.” Transcript at 13. Faucett then observed Halveland remove his sandals from his feet and place a pair of “Reebok tennis shoes” on them. Id. Halveland left the Meijer store without paying for the items, and Faucett followed Halveland out into the parking lot where Halveland was detained. Halveland was led back into the Meijer and returned the shoes and charger, worth at total of \$104.98, to Faucett. Halveland asked Faucett: “Am I going to jail?” Id.

On May 22, 2008, the State charged Halveland with theft as a class D felony. On October 19, 2009, Halveland filed a notice of his intent to plead guilty to the charge. On January 19, 2010, a hearing was held and the trial court accepted Halveland’s guilty plea. The trial court identified Halveland’s criminal history and that he was “currently on probation out of Fayette County, Indiana and was released on bond at the time this crime was committed” as aggravators. Appellant’s Appendix at 29. The trial court stated in mitigation that “[i]ncarceration of [Halveland] would be a hardship on [his] dependants.”

¹ Ind. Code § 35-43-4-2 (2004) (subsequently amended by Pub. L. No. 158-2009, § 8 (eff. July 1, 2009)).

Id. The trial court sentenced Halveland to the advisory term of 547 days in the Department of Correction.

The sole issue is whether Halveland's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) 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." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Halveland argues that his sentence should be modified to either a suspended sentence or to home detention.

Our review of the nature of the offense reveals that on May 19, 2008, Halveland was observed by Faucett at a Meijer store concealing an "I-Pod charger" in his rear pants pocket. Transcript at 13. Faucett then observed Halveland switch his sandals for a pair of "Reebok tennis shoes" on his feet. Id. Halveland did not pay for the items, and he was apprehended in the parking lot of the Meijer store.

Our review of the character of the offender reveals that Halveland is engaged, and he has helped his fiancé to care for her three children, including a special needs child. Halveland also has two children of his own, and he testified that he had been exercising his visitation rights and paying child support. Halveland also has a significant criminal history dating back to when he was a juvenile. On March 29, 1995, he was placed on probation for auto theft. On May 31, 1995, he received probation for a charge of truancy.

On April 24, 1996, he again was placed on probation for delinquency. On October 9, 1996, he was placed on probation for possession of alcohol by a minor.

As an adult, Halveland continued to fail to obey the law. On May 19, 1999, he was sentenced to sixty days suspended with one year informal probation for minor consuming alcoholic beverage as a class C misdemeanor. On May 9, 2000, he was found guilty of possession, transportation and consumption of an alcoholic beverage as a class C misdemeanor, operating with a B.A.C. of .10% as a class C misdemeanor, and illegal transportation of alcoholic beverage as a class C misdemeanor, each offense committed on a different date. In addition, Halveland's probation was revoked. He was sentenced to a total of sixty days executed, and his driver's license was suspended for ninety days. On December 14, 2001, he was found guilty by bench trial of domestic battery as a class A misdemeanor. On October 29, 2002, he was found guilty of driving while suspended as a class A misdemeanor and sentenced to one year suspended and a ninety-day driver's license suspension.

On February 3, 2005, Halveland entered a diversion program pursuant to a charge of battery as a class B misdemeanor.² On July 20, 2005, he was found guilty of driving while suspended as a class A misdemeanor and his driver's license was again suspended for ninety days. Finally, on June 26, 2007, Halveland was found guilty of operating a motor vehicle while intoxicated as a class C misdemeanor and for public intoxication as a class B misdemeanor and was sentenced to sixty days suspended to probation and

² On July 2, 2007 "the case was closed as 'decided.'" Presentence Investigation Report at 4.

ordered to participate in a drug and alcohol evaluation at the Targeted Recovery and Chemical Sobriety Program. His driver's license was also suspended for another year.

After due consideration of the trial court's decision sentencing Halveland to the advisory term, we cannot say that the sentence imposed is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Pinkston v. State, 836 N.E.2d 453, 466 (Ind. Ct. App. 2005) (holding that advisory sentence for theft as a class D felony was appropriate), trans. denied.

For the foregoing reasons, we affirm Halveland's sentence for theft as a class D felony.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.