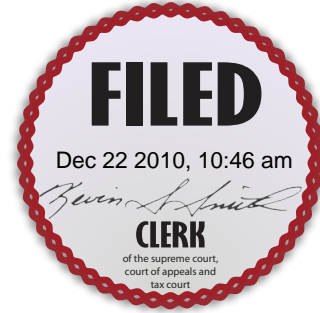


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JEFFREY D. BOGGS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 40A01-1004-CR-163

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0604-FC-78

December 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Jeffrey D. Boggs was convicted after a jury trial of escape¹ as a Class C felony and was given an eight-year executed sentence. He appeals, raising the following restated issues:

- I. Whether the State presented sufficient evidence to support his conviction for escape as a Class C felony;
- II. Whether the trial court erred in declining to apply credit time to the present case when doing so would result in Boggs receiving “double credit”; and
- III. Whether Boggs’s eight-year sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 11, 2006, Boggs was booked into the Jennings County Jail. At approximately midnight on April 24, 2006, Jennings County Sheriff’s Deputy Chris Ristuccia received a phone call at the jail inquiring as to whether Boggs was an inmate at the jail. The female caller told Deputy Ristuccia that Boggs had called her and said he was in Kentucky. Deputy Ristuccia informed the caller that Boggs was in custody at the jail. After the call, however, he and other officers conducted a perimeter check and observed that a window was missing from one of the cells. A subsequent lockdown of the jail and headcount of the inmates revealed that four inmates were missing: Boggs, Scott Pickett, David Fields, and Gerald Perkins. A search of the cells was done, and two saw blades and a red metal rod were found.

¹ See Ind. Code § 35-44-3-5(a).

Indiana State Police Master Trooper Roger Drew and Chief Deputy Jeff Jones (“Deputy Jones”) of the Jennings County Sheriff’s Department investigated the incident. A canine search was conducted and turned up nothing significant. Deputy Jones listened to recorded jail phone calls of the missing inmates and discovered that Pickett’s mother may have been involved. Deputy Jones obtained a still image from surveillance video showing Pickett’s mother purchasing the saw blades used during the escape. A receipt for the purchase of the saw blades was also obtained. Pickett’s mother was later arrested. On May 10, 2006, Deputy Jones received a call from Whitley County, Kentucky that officers there had detained Boggs and Pickett after a traffic stop. Deputy Jones went to Kentucky and retrieved the two men.

The State charged Boggs with escape as a Class C felony. A jury trial was conducted on February 1, 2010, and Boggs was found guilty as charged. On April 10, 2010, a sentencing hearing was held, and the trial court sentenced him to eight years executed. Boggs now appeals.

DISCUSSION AND DECISION

I. Sufficient Evidence

Our standard of reviewing claims of sufficiency of the evidence is well settled. When reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences supporting the verdict. *Mork v. State*, 912 N.E.2d 408, 411 (Ind. Ct. App. 2009) (citing *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007)). We do not reweigh the evidence or assess witness credibility. *Id.* We consider conflicting evidence most favorably to the trial court’s ruling. *Id.* ““We expect jurors to draw upon their own

personal knowledge and experience in assessing credibility and deciding guilt or innocence.’” *Neville v. State*, 802 N.E.2d 516, 519 (Ind. Ct. App. 2004) (quoting *Carter v. State*, 754 N.E.2d 877, 882 (Ind. 2001), *cert. denied* (2002)), *trans. denied*. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.*

Boggs argues that the State failed to present sufficient evidence to support his conviction for escape. He contends that there was no evidence beyond a reasonable doubt that he intentionally fled from lawful detention, and therefore the State failed to meet its burden. Boggs specifically claims that there was no evidence presented that he participated in the planning of the escape and that none of the physical evidence discovered could be connected to him.

In order to convict Boggs of escape as a Class C felony, the State was required to prove that he intentionally fled from lawful detention, specifically, the Jennings County Jail, on April 24, 2006. Ind. Code § 35-44-3-5(a). The evidence presented at trial showed that Boggs was initially booked into jail on February 11, 2006. Around midnight on April 24, 2006, officers determined that one window in Boggs’s cellblock was damaged and missing. After a lockdown and headcount, four inmates were found to be missing: Boggs, Pickett, Fields, and Perkins. On May 10, 2006, Deputy Jones received a call from Whitley County, Kentucky informing him that officers there had detained both Boggs and Pickett after a traffic stop. Deputy Jones traveled to Whitley County to

retrieve Boggs and Pickett. Evidence was also produced that Pickett's mother purchased the saw blades used to cut the metal bars on the cellblock window and break the window. From this evidence, it could reasonably be inferred that Boggs intentionally fled from the Jennings County Jail. We conclude that the State presented sufficient evidence to support Boggs's conviction for escape.

II. Pretrial Credit Time

Every Indiana prisoner is entitled to credit against his sentence for time actually served, which means that one day is removed from a prisoner's remaining sentence for each day he is incarcerated with respect to that sentence. *Robinson v. State*, 805 N.E.2d 783, 789 (Ind. 2004). In addition to credit for time actually served, prisoners are also entitled to "credit time" depending on what "class" the inmate is assigned, and further reductions for certain educational accomplishments. *Neff v. State*, 888 N.E.2d 1249, 1250 (Ind. 2008). Determination of a defendant's pretrial credit is dependent upon (1) pretrial confinement, and (2) the pretrial confinement being a result of the criminal charge for which sentence is being imposed. *Payne v. State*, 838 N.E.2d 503, 510 (Ind. Ct. App. 2005), *trans. denied* (2006). Therefore, "each court is responsible only for crediting time in confinement as a result of the charge for which that court is sentencing the defendant." *Carneal v. State*, 859 N.E.2d 1255, 1258 (Ind. Ct. App. 2007) (quoting *Willoughby v. State*, 626 N.E.2d 601, 602-03 (Ind. Ct. App. 1993)) (emphasis omitted), *trans. denied*.

Boggs argues that the trial court erred when it awarded him zero credit days for the time he served from May 10, 2006 until the date of his sentencing on April 5, 2010.

Although he concedes that he may not be entitled to credit for time served after he was sentenced on another cause on July 16, 2009, he contends that he should have received credit from the time of his arrest until he was sentenced for his other crimes. Boggs therefore asserts he should have received credit time totaling 1,163 days. We disagree.

Here, on February 11, 2006, Boggs was awaiting trial in his B felony methamphetamine case, in which he was eventually found to be guilty and an habitual offender. He was sentenced on July 16, 2009 in that cause. At his sentencing in the present case, the trial court specifically noted that it could not apply “double credit” to the instant case because the trial court had already given Boggs credit for his pretrial incarceration against the forty-year sentence for his B felony cause, which was for attempted dealing in methamphetamine, among other convictions, and an habitual offender determination. *Tr.* at 228. Boggs committed the instant offense while in custody awaiting trial on the B felony cause. He was not entitled to double credit for his conviction in the present case. The trial court did not err in refusing to apply credit time to Boggs’s sentence for his escape conviction.

III. Inappropriate Sentence

“This court has authority to revise a sentence ‘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.’” *Spitler v. State*, 908 N.E.2d 694, 696 (Ind. Ct. App. 2009) (quoting Ind. Appellate Rule 7(B)), *trans. denied*. “Although Indiana Appellate Rule 7(B) does not require us to be ‘extremely’ deferential to a trial court’s sentencing decision, we still must give due consideration to that decision.”

Patterson v. State, 909 N.E.2d 1058, 1062-63 (Ind. Ct. App. 2009) (quoting *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007)). We understand and recognize the unique perspective a trial court brings to its sentencing decisions. *Id.* at 1063. The defendant bears the burden of persuading this court that his sentence is inappropriate. *Id.*

Boggs argues that his sentence was inappropriate in light of the nature of the offense and the character of the offender. He specifically contends that his maximum sentence of eight years was inappropriate in light of the nature of the offense. He claims that no evidence was presented to show that the commission of his crime occurred in any worse manner than similar crimes, and therefore his sentence should be revised.

As to the nature of the offense, Boggs escaped from the jail with three other inmates, Pickett, Fields, and Perkins. The inmates destroyed a window by sawing through the metal bars on the window, shattering the glass, and pushing the window out. Officers from several law enforcement agencies, including Jennings County, North Vernon, Seymour, and the State Police, were taken from their other duties to track down Boggs and the other inmates.

As to Boggs's character, he had an adult criminal history dating back to 1985 consisting of multiple felony and misdemeanor convictions and an habitual offender determination. He also has several probation violations and had an active warrant out of Hamilton County, Ohio at the time of his sentencing. We conclude that his eight-year sentence was not inappropriate in light of the nature of the offense and character of the offender. Affirmed.

CRONE, J., and BRADFORD, J., concur.