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IN THE COURT OF APPEALS OF INDIANA

RICHARD H. EDWARDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 36A01-0905-CR-231
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable William E. Vance, Judge
Cause No. 36C01-0810-FD-363

February 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Richard H. Edwards appeals his conviction for Theft, as a Class D felony, and his adjudication as an habitual offender following a jury trial. Edwards raises the following issues for our review:

1. Whether he knowingly, voluntarily, and intelligently waived his right to counsel.

2. Whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 6, 2008, Edwards, wearing slippers on his feet, entered the Tractor Supply retail store in Seymour. Once inside the store, he put on a pair of boots for sale. A Tractor Supply employee then observed Edwards leave the store wearing the boots without having paid for them. The employee also saw Edwards taking other items out of his pants and loading them into a van. The store's supervisor contacted police, who found Edwards in his disabled van after he had blown out a tire. Police searched Edwards' van and found the stolen boots, along with other merchandise that Edwards had stolen from the Tractor Supply store.

The State charged Edwards with theft, as a Class D felony, receiving stolen property, as a Class D felony, and with being an habitual offender. Prior to trial, the State dismissed the receiving stolen property charge. Edwards opted to represent himself at trial, and a jury found him guilty of theft, as a Class D felony, and adjudicated him to be an habitual offender. The trial court sentenced Edwards to three years for theft, enhanced

by three years for the habitual offender adjudication, for an aggregate executed sentence of six years. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Right to Counsel

Edwards first contends that he did not knowingly, intelligently, and voluntarily waive his right to counsel. A criminal defendant is guaranteed the right to representation by counsel by the United States and Indiana constitutions. U.S. Const. amends. VI, XIV; Ind. Const. Art. I § 13. The right to counsel can only be relinquished by a knowing, voluntary and intelligent waiver of the right. Stroud v. State, 809 N.E.2d 274, 280 (Ind. 2004). A court need not provide an exhaustive list of the dangers of pro se representation,[1] but must "impress upon the defendant the disadvantages of self-representation." Kubsch v. State, 866 N.E.2d 726, 736 (Ind. 2003) (quoting United States v. Todd, 424 F.3d 525, 531 (7th Cir. 2005), cert. denied, 126 S. Ct. 2352 (2006)).

Whether there has been a knowing and intelligent waiver of the right to counsel depends on the particular facts and circumstances surrounding the case. Poynter v. State, 749 N.E.2d 1122, 1127 (Ind. 2001). To review the adequacy of a waiver, we consider four factors:

> "(1) the extent of the court's inquiry into the defendant's decision, (2) other evidence in the record that establishes whether the defendant understood the dangers and disadvantages of self-representation, (3) the background and experience of the defendant, and (4) the context of the defendant's decision to proceed pro se."

[1] As this court has observed, "[a]lthough guidelines for a trial court to advise the defendant when he considers self-representation have been suggested, it is sufficient for the trial court to 'acquaint the defendant with the advantages to attorney representation and the drawbacks of self-representation.'" Rice v. State, 874 N.E.2d 988, 992 (Ind. Ct. App. 2007) (quoting Jones v. State, 783 N.E.2d 1132, 1138 (Ind. 2003)).

Id. (quoting United States v. Hoskins, 243 F.3d 407, 410 (7th Cir. 2001)).

Here, the trial court thoroughly challenged Edwards' decision to proceed pro se during the course of two pretrial hearings. In particular, the trial court engaged Edwards in the following colloquys:

[January 7, 2009]

Court: [L]et's talk about your wish to represent yourself in this case?

* * *

Court: How far did you go in school Mr. Edwards?

Edwards: Four years of college.

Court: Alright. [And] you have some experience in the law?

Edwards: Three years of law (inaudible) and two years of Kentucky State (inaudible).

Court: Okay. [Have] you had any experience in the Courtroom?

Edwards: Yeah, I've been to four jury trials and on appeal on two more cases.

Court: Well I want to talk about your experience in jury trials because the first part of this case of course deals with the resolution of the matter at trial. The four jury trials that you have participated in, were those trials that you were a defendant in?

Edwards: That's correct.

Court: And did you represent yourself in those cases?

Edwards: No, I had attorneys on all four of them.

Court: What's the extent of your experience as you said you were a law clerk, and how many years did you do that?

Edwards: That's correct. Three years at (inaudible) and two at Kentucky State Reformatory at LaGrange.

* * *

Court: Okay. What kind of legal work did you do during those periods?

Edwards: Let's see, child support, working with (inaudible) and permit things, modifications for defendants, filed suit on four or five different jails in Indiana and two in Kentucky, seek placement in Indiana, Circuit Court of Appeals in Chicago.

Court: Let me ask you this: did you, the appeals that you indicated you worked on, can you give me citations to cases I could see that, where those have been resolved?

Edwards: Judge, this has been like five or six years ago.

Court: Well that's okay. . . . In the State of Indiana, did you work on any appeals for any prisoners in the State of Indiana?

Edwards: Yeah, post-conviction relief [petitions] . . . .

* * *

Edwards: Not only were they appeals but after the appeals, filed for Post-Conviction and then filed sentence modifications to the courts in Indiana and also handled child support cases and I also handled jail lawsuits and I filed a prison lawsuit myself, sued Branchville Correctional Facility and it's on the record.

* * *

Court: Okay. You're aware in this case, Mr. Edwards, that the State is seeking habitual enhancement?

Edwards: I'm aware of that.

Court: Can you explain to me what the ramifications of that are for you?

Edwards: It's a separate enhancement, if you go to jury trial and you're convicted of theft and there's habitual for the second phase of the trial. I've been through that.

Court: What's the potential penalty for you if that were to be found?

Edwards: Well if you get convicted of theft, it's three years and on small habitual [sic] it's one and a half each run separate, it's called consecutive sentence. You have to go to jury trial to get habitual offender, no plea bargain on that.

Court: Very well. The Court finds the Defendant has sought to withdraw his application for pauper counsel. The application is ordered withdrawn. Defendant seeks to represent himself in this matter. That request is granted.

* * *

[March 18, 2009]

Court: Okay, I'm going to . . . I went back and listened to the other times we've been in court. I had admonished you every time you have been here. I believe you ought to have a lawyer. I still believe you ought to have a lawyer. I think that a person who tries a case on his own is just asking for problems. But I went back and listened to the tape . . . . [T]here was a case handed down yesterday I think, it was from the Indiana Supreme Court that dealt with this issue. In fact, it was on remand from the United States Supreme Court to the Indiana Supreme Court. The question dealt with a gentleman who wanted to represent himself and the trial court judge wouldn't let him and said that, on that case, it was because the gentleman had a history of mental problems, and the trial court refused to let him represent himself and in the appeal process in Indiana, that was upheld. The United States Supreme Court remanded it for some findings by the Supreme Court on the case, they still found he shouldn't represent himself but some of the language in there speaks of the right of self-representation that I think I've covered . . . on why it is, Mr. Edwards, that you should have an attorney looking out for your interests in this case. And I just reiterate that it would be . . . but that's your call and I've done all I can do to convince you that you should not proceed pro se in this case. So, on the record, I'm going to ask you again, do you still intend [to try] this on your own?

Edwards: I sure am.

Appellant's App. at 37-63.

On appeal, Edwards maintains that the fact that he did not understand the maximum sentence he faced "demonstrates a significant fact showing that the defendant's purported waiver of his right to legal counsel was not knowingly and intelligently made." Brief of Appellant at 9. Further, Edwards points out that the transcripts of the pretrial hearings show that he was "at times confused," and, on appeal, he clarifies that "his testimony concerning prior legal experience at the Kentucky State Prison did not demonstrate actual legal experience." Id. at 10. Accordingly, Edwards concludes that he did not knowingly, intelligently, and voluntarily waive his right to counsel.

But our review of the record supports the trial court's decision to permit Edwards to proceed pro se. Again, our Supreme Court has held that there is no "exhaustive list of the dangers" the trial court must articulate to a defendant before he can proceed pro se. See Kubsch, 866 N.E.2d at 736. After inquiring into Edwards' educational background and experience with legal proceedings, the trial court repeatedly admonished him of the dangers of self-representation. There has been no suggestion that Edwards has a history of mental illness or misrepresented his experience with legal proceedings. Indeed, Edwards confirmed the trial court's understanding that Edwards had served as a "law clerk," and he explained that he had experience working on petitions for post-conviction relief, appeals, and litigation involving child support issues. Appellant's App. at 38. We

cannot say that the trial court abused its discretion when it permitted Edwards to represent himself at trial.

Issue Two: Sentence

Edwards also contends that his sentence is inappropriate in light of the nature of the offense and his character. 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 imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration in original).

Edwards contends that his sentence is inappropriate in light of the nature of the offense. But "revision of a sentence under Indiana Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of his offenses and his character." Williams v. State, 891 N.E.2d 621, 633 (Ind. Ct. App.

2008); see Ind. Appellate Rule 7(B). Edwards presents no argument regarding the inappropriateness of his sentence in light of his character.[2] Therefore, the argument is waived. Williams, 891 N.E.2d at 633; see App. R. 46(A)(8)(a).

Waiver notwithstanding, we hold that Edwards' sentence is not inappropriate. Edwards stole boots and several articles of clothing from Tractor Supply Company, and those items were recovered following Edwards' arrest. Thus, the nature of the offense, without more, does not warrant an enhanced sentence. But Edwards' extensive criminal history includes nine convictions for Class D felony theft and two convictions for conversion since 1982. Moreover, Edwards violated the terms of his probation in 2000, and he was on probation for a theft conviction at the time of the instant offense. Edwards' criminal history and repeated refusal to comply with the terms of probation in the past reflect a poor character. We cannot say that his six-year sentence, enhanced by his habitual offender adjudication, is inappropriate under Indiana Appellate Rule 7(B).

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.

[2] Edwards suggests that the trial court gave too much aggravating weight to his criminal history, which is not available for review on appeal. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) ("[b]ecause the trial court no longer has the obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence . . . a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors."), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). To the extent that Edwards intended that that section of his argument reflects on his character, we hold that the sentence is not inappropriate in light of his character, as we explain in more detail below.