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ATTORNEY FOR APPELLANT:

CRAIG R. PERSINGER
Marion, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

ROBERT HOFFMAN, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 85A02-0912-CR-1233
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WABASH CIRCUIT COURT
The Honorable Robert R. McCallen III, Judge
Cause No. 85C01-0905-FD-60

April 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Robert Hoffman, Jr. ("Hoffman") appeals the sentence imposed following his plea of guilty to Possession of a Narcotic Drug, as a Class D felony,[1] and Possession of Marijuana, as a Class A misdemeanor.[2] He presents the sole issue of whether his two and one-half-year sentence is inappropriate pursuant to Indiana Appellate Rule 7(B). We affirm.

Facts and Procedural History

On May 16, 2009, Hoffman was sitting in his parked vehicle at a Speedway gas station when Wabash County Sheriff's Department Deputy Carey Babbitt ("Deputy Babbitt") approached Hoffman to advise him of a non-functioning tail light. At that time, Deputy Babbitt observed Hoffman holding a clear plastic bag that contained marijuana. Officer Babbitt requested that Hoffman exit the vehicle. Hoffman exited and then secreted something under the rear spoiler of his vehicle; the item was found to be a cellophane wrapper containing marijuana. A search of Hoffman's person yielded a small bag containing heroin.

Hoffman was arrested and charged with the aforementioned offenses. On September 28, 2009, he pled guilty, without the benefit of a plea agreement, to both charges. He received concurrent sentences of two and one-half years, with six months suspended, for Possession of a Narcotic Drug, and one year for Possession of Marijuana. He now appeals.

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[1] Ind. Code § 35-48-4-6(a).

[2] Ind. Code § 35-48-4-11(1).

Discussion and Decision

In Anglemyer v. State, 868 N.E.2d 482 (Ind. 2007), our Supreme Court articulated the process by which the imposition of sentences and the review of sentences on appeal should proceed:

> 1. The trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.
> 2. The reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion.
> 3. The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse.
> 4. Appellate review of the merits of a sentence may be sought on the grounds outlined in Appellate Rule 7(B).

Anglemyer, 868 N.E.2d at 491.

Hoffman asks that we revise his sentence pursuant to Indiana Appellate Rule 7(B), which provides that we may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. The defendant has the burden of persuading us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

However, although Hoffman frames his sentencing issue in terms of inappropriateness, his arguments are not directed to the nature of the offenses or to his character. Rather, he contends that the trial court failed to give his guilty plea "the requisite mitigating weight" and that the burden upon his dependents "was not adequately considered." Appellant's Brief at 6. He also claims that the trial court omitted a significant mitigator, his completion of a drug rehabilitation program prior to his commission of the instant offenses.

As set out by our Supreme Court in Anglemyer, the relative weight assigned by the trial court is not subject to appellate review. 868 N.E.2d at 491. Thus, we do not address Hoffman's contention that the trial court failed to properly weigh his decision to plead guilty or hardship to his dependents. We do, however, review an allegation that a significant mitigating circumstance was wholly omitted as a sentencing consideration. See id.

The trial court need not consider alleged mitigating factors that are highly disputable in nature, weight, or significance. Newsome v. State, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), trans. denied. Although Hoffman claims that his completion of a drug rehabilitation program indicates his desire for rehabilitation, the record reveals that he was in possession of drugs twenty-six days after completing the program. Thus, we cannot say that the trial court abused its discretion by omitting the alleged mitigator.

Notwithstanding Hoffman's failure to present a cogent argument regarding the nature of his offenses or his character, we next consider whether his sentence is inappropriate. The sentencing range for a Class D felony is six months to three years, with an advisory sentence of one and one-half years. Ind. Code § 35-50-2-7. Accordingly, Hoffman's sentence exceeds the advisory sentence by one year (albeit with six months suspended to probation).

As to the nature of Hoffman's offenses, they are unremarkable. As to his character, Hoffman has a criminal history including four felony convictions and two misdemeanor convictions in less than three years. He was on probation at the time of the instant offenses. Despite prior leniency and rehabilitative opportunities, Hoffman continued to possess drugs.

In light of the nature of Hoffman's offenses and his character, we do not conclude that his aggregate two and one-half-year sentence (with six months suspended) is inappropriate.

Affirmed.

MAY, J., and BARNES, J., concur.