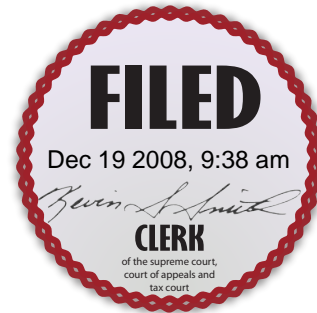


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KENNETH SCOTT,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0805-CR-436

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Nancy Broyles, Commissioner

The Honorable Grant Hawkins, Judge

Cause No. 49G05-0711-FB-248618

December 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Kenneth L. Scott appeals his sentence, following a jury trial, for class A misdemeanor criminal recklessness; and class D felony criminal confinement.

We affirm.

ISSUE

Whether Scott's sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

The evidence reveals that, on November 19, 2007, Bloomington resident Brian Roof drove to Indianapolis to visit Blake Lake. Roof parked his car in the parking lot of a nearby IHOP restaurant and spent the night at Lake's apartment. The following morning, he encountered Scott in the IHOP parking lot. Roof recognized Scott as a friend of Lake's, but could not identify him by name. Scott asked whether Roof wanted to purchase marijuana; Roof responded that he did and agreed to drive them to the designated location.

When they arrived at their destination, the drugs were not yet available for sale. The men drove around and made several stops to pass the time. As they neared the intersection of 32nd Street and Kenwood Avenue, Scott suddenly leaned over and grabbed Roof's crotch. Roof slammed on the brakes and stopped the car in the middle of the street. He shouted at Scott and ordered him from the car. Scott grabbed a knife protruding from between the seats of Roof's car. The men struggled over the knife, but

Scott ultimately prevailed. Scott then grabbed the keys from the ignition and jumped out of the car. Roof exited as well, shouting for help.

In the meantime, Jacklyn Sinclair had pulled up behind Roof's car, which was still in the middle of Kenwood Avenue. She observed Roof shouting for help from the driver's side of his car; Scott, armed with a knife, was standing on the passenger side. Sinclair telephoned the police. When Scott saw Sinclair on her cell phone, he threw the knife over a fence into an empty parking lot. He then re-entered the car through the passenger side door, locked the car doors, and hopped over the center console into the driver's seat. When Scott put the keys into the ignition, Roof stuck his right arm through the partially-open driver's side window and attempted to retrieve his keys. Scott rolled up the window, pinning Roof's arm at the elbow. He then drove off at approximately thirty-five to forty miles per hour, dragging Roof for approximately one hundred yards down Kenwood Avenue.

Sinclair followed as Scott drove southbound on Kenwood Avenue towards 30th Street. Suddenly, Scott braked abruptly, shifted the car into reverse, and "slammed into" Sinclair's truck, doing considerable damage. (Tr. 118). Upon the impact of the crash, Roof was thrown from the vehicle and suffered cuts and bruises. Scott headed west on 30th Street. It is undisputed that he later had a car accident in Roof's car.

On November 28, 2008, the State charged Scott with the following offenses: count I, class B felony carjacking; count II, class B felony robbery; count III, class D felony

criminal recklessness; and count IV, class D felony criminal confinement. At his jury trial on April 15, 2008, Roof and Sinclair testified to the foregoing facts.

During the State's case-in-chief, Scott "was very demonstrative," and "made faces and . . . dramatic hand gestures." (Tr. 76). Courtroom deputies testified that he had also attempted to communicate with two jurors. The prosecutor and defense counsel moved for a mistrial. The trial court denied the motions, opting instead to replace one of the jurors with an alternate. The trial court admonished Scott and allowed the trial to proceed.

Thereafter, Scott took the stand and testified in contradiction to the testimony of Roof and Sinclair as follows. He procured crack cocaine and marijuana for himself and Roof. The men smoked together. When their supply ran low, Roof asked Scott to acquire more drugs. Scott agreed, provided that Roof would loan him the use of his car. Roof became angry and pulled a knife on him. Scott took the knife from Roof, exited the car, and threw the knife away. Scott testified that he re-entered the car and gave Roof an additional quantity of cocaine. Roof smoked the cocaine and again requested more. Scott agreed to give Roof more cocaine if Roof would allow him to perform oral sex on him. Roof agreed, unzipped his pants, and pulled out his penis. Scott testified that he gave him some cocaine and while he was performing oral sex on Roof, Sinclair pulled up behind Roof's car, which was in the middle of the street, and honked her horn. Roof was startled and dropped the drugs and paraphernalia, and quickly shifted the car into gear

and reversed into Sinclair's truck. Scott further testified that before Roof exited the car, he asked him whether he could still use his car and Roof agreed.

After the close of the evidence, the jury deliberated and returned with the following verdict. The jury found Scott not guilty of class B felony carjacking and class B felony robbery, and guilty of criminal recklessness as a class A misdemeanor, and criminal confinement as a class D felony. The trial court accepted the verdicts and proceeded to sentencing and found, as a mitigating circumstance, the potential hardship to Scott's children that would result from his incarceration. It also found Scott's courtroom antics, his prior failed attempts at probation, and his juvenile and adult criminal history to be aggravating circumstances. The trial court imposed a one-year sentence for class A misdemeanor criminal recklessness, and a two and a half year-sentence for class D felony criminal confinement to run concurrently. Scott now appeals.

DECISION

Scott argues that his sentence is inappropriate pursuant to Indiana Appellate Rule 7(b). We disagree.

Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decisions, the court concludes the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." *Anglemyer v.*

State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

In determining whether a sentence is inappropriate, we recognize that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Weiss v. State*, 848 N.E.2d 1070, 1072 (Ind. 2006). The advisory sentence for a class A misdemeanor is not more than one year. Here, the trial court imposed a one-year sentence for the class A misdemeanor criminal recklessness conviction. The advisory sentence for a class D felony is one and one-half years. The trial court, here, enhanced Scott’s sentence by one year, for a total sentence of two and one-half years for the class D felony criminal confinement conviction. We initially note that Scott faced a maximum combined sentence of four years on these two convictions. The trial court imposed an aggregate sentence of two and one-half years.

We initially note that Scott fails to present any argument or authority regarding the alleged inappropriateness of his sentence. He merely states that in imposing its sentences, the trial court “should have taken into consideration the fact that the jury had returned Not Guilty [verdicts] on the two lead B Felony charges of Carjacking and Robbery.” Scott’s Br. at 10. *See* Indiana Appellate Rule 46(A)(8)(a) (appellant’s argument must contain contentions on the issue presented, supported by cogent reasoning and citation to authority). Thus, we deem this issue waived.

Waiver notwithstanding, Scott’s inappropriateness argument fails. As to the nature of the criminal recklessness offense, we observe that while under the influence of

illicit drugs, Scott shifted Roof's car into reverse and rammed the vehicle driven by Sinclair, posing a considerable threat to Sinclair's personal safety and caused extensive damage to her vehicle. As to the nature of the criminal confinement offense, we observe that Scott deliberately pinned Roof's arm in the driver's side window of the car to prevent him from retrieving his car keys. He then drove the car at approximately thirty-five to forty miles per hour, dragging Roof for a distance of approximately one hundred feet on a public roadway and causing him injury.

As to Scott's character, he has an extensive criminal history consisting of multiple arrests. *See Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) ("A record of arrest, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State. Such information may be relevant to the trial court's assessment of the defendant's character in terms of the risk that he will commit another crime."). His juvenile record includes three true findings of juvenile delinquency. As an adult, he has been convicted of four misdemeanor offenses: possession of paraphernalia, resisting law enforcement, and check deception on two occasions. He has prior felony convictions for class C felony escape, class C felony forgery, and two convictions of class D felony possession of cocaine or narcotics. He has violated the terms of court-ordered probation and had his probation revoked on four occasions.

The instant facts reveal that Scott placed Roof and Sinclair in considerable peril, in addition to damaging Sinclair's vehicle. Despite repeated run-ins with the law, numerous

incarcerations and failed attempts at probation and drug rehabilitation, Scott does not appear to be inclined toward reforming his criminal behavior. Nor do his disruptive courtroom antics speak well to his character. His attempts to communicate with and/or influence jurors indicate a genuine disregard for the trial court's authority. Based upon the foregoing, he has failed to persuade us that his sentence was inappropriate.

Affirmed.

RILEY, J.,