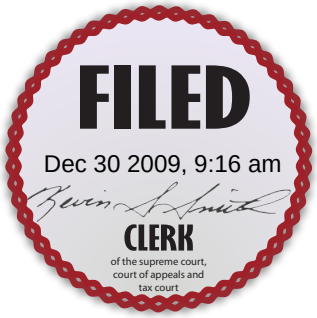

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IN THE
COURT OF APPEALS OF INDIANA

HERBERT D. ROBERTS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A05-0907-CR-364
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0712-FA-00059

DECEMBER 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

Herbert D. Roberts appeals his conviction by jury of two counts of class A felony dealing in cocaine as well as his sentence thereon. We affirm.

Roberts raises two issues for our review:

1. Whether the trial court erred in admitting evidence; and

2. Whether his sentence is inappropriate.

On March 27, 2007, Elkhart County Interdiction and Covert Enforcement Unit Detective James Anderson and a Cooperating Source purchased 12.8 grams of crack cocaine from Roberts in the CS's garage. Following the transaction, Roberts left in a burgundy SUV. Elkhart Police Department Corporal Jeffrey Eaton performed audio and video surveillance of the transaction from a nearby location. Detective Anderson gave Corporal Eaton a description of the vehicle Roberts was driving, and Corporal Eaton recorded the license plate number as Roberts drove by him. A check with the Bureau of Motor Vehicles revealed that the vehicle was registered to Roberts. On April 4, 2007, Detective Anderson and the CS purchased an additional 12.8 grams of crack cocaine from Roberts in a convenience store parking lot.

The State charged Roberts with two counts of dealing cocaine as class A felonies. At trial, the court allowed Corporal Eaton to testify that he recorded the license plate number of the burgundy SUV that Detective Anderson described to him, and a BMV check revealed that the vehicle was registered to Roberts. Also at trial, Detective Anderson identified Roberts as the individual that twice sold him the crack cocaine. The jury convicted Roberts of both charges, and the trial court sentenced him to forty-five

years for each conviction, sentences to run concurrently. Roberts appeals his convictions and sentence.

I. *Admission of Evidence*

Roberts argues that the trial court erred in admitting evidence. Specifically, he contends that the State committed a discovery violation when it failed to reveal that the license plate number was obtained during surveillance. He also argues that testimony the license plate was registered to Roberts is hearsay.

The admission of evidence is within the sound discretion of the trial court, and the decision whether to admit evidence will not be reversed absent a showing of manifest abuse of the trial court's discretion resulting in the denial of a fair trial. *Simmons v. State*, 760 N.E.2d 1154, 1158 (Ind. Ct. App. 2002). A claim of error in the admission of evidence will not prevail on appeal unless a substantial right of the party is affected. *Oldham v. State*, 779 N.E.2d 1162, 1170 (Ind. Ct. App. 2002), *trans. denied*. In determining whether an error in the introduction of evidence affected an appellant's substantial rights, we assess the probable impact of the evidence on the jury. *Id.*

Here, assuming without deciding the trial court erred in admitting the evidence, we find no reversible error because there is direct evidence that Roberts sold the cocaine to Detective Anderson. Given Detective Anderson's testimony that Roberts twice sold him twelve grams of cocaine, testimony about the license plate number and car registration would not affect any of Roberts' substantial rights. Under these circumstances, any error

in the admission of evidence was harmless. *See Berry v. State*, 715 N.E.2d 864, 867 (Ind. 1999).

II. *Sentencing*

Roberts also argues that his sentence is inappropriate. When reviewing a sentence imposed by the trial court, we "may revise a sentence authorized by statute 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." Ind. Appellate Rule 7(b).

Here, with regard to the character of the offender, Roberts has a prior criminal history that includes a conviction for dealing in cocaine as a class B felony. Roberts was sentenced to ten years with four years suspended to probation for that offense. He was on probation for the class B felony when he committed the two class A felonies in the instant case, and these offenses were not Roberts' first probation violation. We agree with the State that the "fact that he continued dealing while on probation indicates a contempt for the legal process and the authority of the courts and a blatant unwillingness to obey the rules of probation to which he was subject." Appellee's Br. at 13.

With regard to the nature of the offense, within a one-week period Roberts twice sold more than twelve grams of crack cocaine to Detective Anderson. Clearly, Roberts had access to a large amount of crack cocaine in a relatively short time, indicating that he was a substantial dealer of crack cocaine. Based upon our review of the evidence, we see

nothing in the character of this offender or in the nature of this offense that would suggest that Roberts' sentence is inappropriate.

Affirmed.

KIRSCH, J., and NAJAM, J., concur.