APPELLANT PRO SE:

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IN THE COURT OF APPEALS OF INDIANA

RONALD R. KLEMMECK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 46A03-0506-CR-429
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Walter C. Chapala, Judge
Cause No. 46D01-0309-FC-0096

OCTOBER 30, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

Klemmeck pled guilty to two counts of driving after his driving privileges had been suspended for life, Class C felonies. Under the terms of his plea agreement he could be sentenced to not more than seven and one half years on each offence with his total sentence not to exceed fifteen years. Two other counts were dismissed as part of the agreement.

The court sentenced Klemmeck to eight years on count I and seven years on count II, the sentences to run consecutively for a total of fifteen years. The court added that after completing ten years of his sentence, Klemmeck could petition the court for modification.[1]

Klemmeck raises three contentions on appeal. First he argues that by sentencing him to eight years and seven years, the trial court violated the terms of the plea bargain which called for seven and one half years on each count. However, since the plea bargain permitted a total sentence of fifteen years and that is the total sentence Klemmeck received, this error was harmless if the total fifteen year sentence was proper. *Ind. Appellate Rule 66(A); Gantt v. State,* 825 N.E.2d 874, 879 (Ind. Ct. App. 2005).

Klemmeck next argues that the fifteen year sentence was excessive. While Klemmeck's case was decided prior to our supreme court's decision in *Childress v. State,* 848 N.E.2d 1073 (Ind. 2006), *Childress* controls our review of Klemmeck's sentence. The court there held that in plea-bargain judgments where the terms of the plea

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[1] Defendant was given credit for 221 days pre-sentence confinement with good time recommended. Thus, if he earned good time in prison, he could seek modification in a little less than four actual years.

agreement reposed in the court any discretion in determining the sentence, on appeal the defendant is entitled to contest the merits of the trial court's sentencing discretion. 848 N.E.2d at 1079.

In imposing sentence the trial court found aggravating circumstances in Klemmeck's prior record. Klemmeck asserts that he is an alcoholic and all his offenses were non-violent. The record shows, however, that as an adult he had prior convictions for five felonies and twenty misdemeanors. He had an extensive juvenile record. In sum, there was no error in the court imposing the fifteen year sentence. The court acknowledged Klemmeck's alcohol problem and a desire to see him rehabilitated when it set the basis for a modification of the sentence. We find no abuse of discretion in the sentence.

Finally, Klemmeck contends that he did not receive effective assistance of counsel from his trial attorney. To rebut the presumption that counsel gave adequate assistance, a petitioner must show that counsel's behavior fell below an objective standard of reasonableness based on prevailing professional norms, *and* that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Carr v. State*, 728 N.E.2d 125, 131 (Ind. 2000).

Klemmeck claims that counsel did not adequately investigate the first charge or the state would have been forced to dismiss it. He offers no explanation as to how this would occur. The first charge was based on the report of Deputy Andrew Hynek, who knew Klemmeck and observed him driving a red Chrysler on August 29, 2003. Hynek did not stop Klemmeck because he was not aware until three days later that Klemmeck's

license had been suspended for life. His argument fails to satisfy the second prong of the test.

The same is true of his second contention concerning failure to enforce the plea agreement since we have already determined that the sentencing error was harmless.

Finally, he says counsel failed to effectively argue for concurrent, rather than consecutive, sentences. At sentencing counsel examined both Klemmeck and his wife in an endeavor to secure leniency. We cannot say that his conduct fell below the standard of reasonableness, or that had he argued differently the result would likely have changed.

We find no reversible error.

Affirmed.

NAJAM, J., and BARNES, J., concur.