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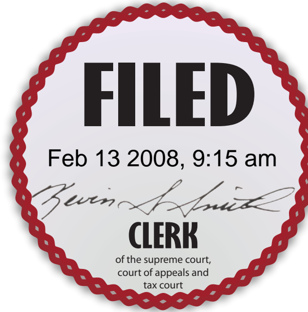

ATTORNEY FOR APPELLANT:

KIMBERLY A. JACKSON
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JESSICA A. MEEK
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

WILLIE POINDEXTER,	)	
Appellant-Defendant,	)	
vs.	)	No. 49A02-0707-CR-554
STATE OF INDIANA,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Paula Lapossa, Judge
Cause No. 49G01-9106-PC-076969

February 13, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Willie Poindexter ("Poindexter") pleaded guilty in Marion Superior Court to Class C felony escape and was sentenced to the presumptive term of four years. Poindexter appeals and presents three issues, which we restate as:

I. whether the trial court's sentencing statement was inadequate;

II. whether the trial court imposed impermissible conditions of probation; and

III. whether his sentence was inappropriate.

We affirm.

Facts and Procedural History

On June 15, 1991, Poindexter fled from lawful detention at the Riverside Residential Center, where he was being held on charges of Class D felony criminal recklessness and Class B misdemeanor battery. When authorities at Riverside discovered Poindexter's absence, they notified the police, who found Poindexter later that day hiding in a house on the east side of Indianapolis. On June 17, 1991, the State charged Poindexter with Class C felony escape. On July 19, 1991, Poindexter entered into an agreement with the State whereby he would plead guilty and the State would make no recommendation regarding Poindexter's sentence. The trial court accepted the agreement and held a sentencing hearing on August 8, 1992. After discussing Poindexter's substance abuse problems and criminal history, the trial court heard argument from Poindexter's counsel, who argued for substance abuse treatment and probation. The trial court then imposed sentence as follows:

> THE COURT: . . . Mr. Poindexter, at this time, I Order, Judge, and Decree that you are 20 years of age. That you are guilty of the crime of Escape, a Class C Felony, and I now[,] having read the Presentence

> Investigation[,] commit you to the Department of Corrections [sic] for classification and confinement for four (4) years. I'm going to suspend that four (4) years on the condition that you do two (2) years on probation. That you undergo evaluation and treatment for drug abuse as directed by the Probation Office. Do you have a high school diploma?
>
> THE DEFENDANT: No, ma'am.
>
> THE COURT: That you obtain your GED. Have you deter – have you established that you – in court – that you're the father of the child that you told me about?
>
> THE DEFENDANT: Yes, I am...
>
> THE COURT: Have you established that in court?
>
> THE DEFENDANT: No...
>
> THE COURT: All right, you're ordered to establish in court that you're the father of the child you told me about....
>
> * * *
>
> THE COURT: All right. And you are to pay support for that child, maintain verifiable employment and – 40 hours a week – and if that means that you [have] got to have two jobs – you [have] got to have two jobs. Now, let me tell you something, Mr. Poindexter, nobody can do this for you. And you're not going to have much structure. This is all going to be you. The Probation Office is going to tell you – and get your [sic] over there – and they're say you've got to go. But then you're going to be out in the streets. And you're going to have your friends there. And then it's up to you to whether you're a strong enough man. And I hope you are, because I don't want to see you in here on a probation revocation. I give people one chance. Now, if it happens that you do – are unable to abide by these conditions of probation, and we have a revocation hearing, and you have to do some of this time, you will [get] credit for fifty-one (51) days spent in Marion County jail awaiting the disposition of this case.

Tr. pp. 38-39.

On January 28, 1994, Poindexter was found to be in violation of the terms of his probation and ordered to serve the previously suspended term of four years. Poindexter initially attacked his conviction by way of a petition for post-conviction relief, which he filed on March 21, 2003. On May 10, 2004, the trial court allowed Poindexter to

withdraw this petition without prejudice. Then, on April 30, 2007, almost fifteen years from the date he was sentenced, Poindexter filed a petition for permission to file a belated notice of appeal. The trial court granted Poindexter's petition that same day, and Poindexter now appeals.[1]

I. Adequacy of Sentencing Statement

Poindexter first claims that the trial court's sentencing statement was inadequate for meaningful appellate review. The State counters that the trial court explained enough during the sentencing hearing to justify imposition of the presumptive sentence. We conclude, however, that because the trial court imposed the presumptive sentence, it was not required to list aggravating or mitigating factors. See Childress v. State, 848 N.E.2d 1073, 1080-81 (Ind. 2006).[2] A trial court must set forth the reason it imposed a sentence only when it deviates from the presumptive sentence. Id. If, however, the trial court finds aggravators and mitigators, concludes that they balance, and imposes the

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[1] The State does not argue that the trial court erred in granting Poindexter permission to file a belated notice of appeal. We therefore do not address this issue. The State does argue, however, that because Poindexter was ordered to serve his four-year executed sentence in 1994, the current appeal, which challenges only various aspects of this sentence, should be dismissed as moot because Poindexter must have already completed this sentence. Indeed, the State points out that the Department of Correction's website indicates that Poindexter's projected release date for his escape conviction was June 31, 1997. See http://www.in.gov/apps/indcorrection/ofs/?lname=poindexter&fname=willie&search1.x=0&search1.y=0. In his reply brief, Poindexter notes that he is currently incarcerated and that, given the order of his offenses and the likelihood that his multiple sentences were ordered to be served consecutively, any change in his sentence for escape could alter the sentence he is currently serving. Given the record before us, we cannot say with certainty that the current case is truly moot, even if Poindexter has already completed serving his sentence for escape.

[2] In support of his argument that the trial court was required to enter a sentencing statement, Poindexter cites Anglemyer v. State, 868 N.E.2d 482 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218. However, Poindexter committed his crime in 1991, well before the 2005 amendments at issue in Anglemyer. Therefore, Anglemyer is inapplicable here. See Gutermuth v. State, 868 N.E.2d 427, 431 n.4 (Ind. 2007) (sentencing statute in effect at the time a crime is committed governs the sentence for that crime). For the same reason, Poindexter's citation to Indiana Code section 35-38-1-1.3 (2007) is unavailing, as that statute was not effective until July 1, 2007.

presumptive sentence, then it must provide a statement of its reasons for imposing the presumptive sentence. Burgess v. State, 854 N.E.2d 35, 39 (Ind. Ct. App. 2006).

Here, the trial court did discuss Poindexter's criminal history and substance-abuse problem during the sentencing hearing, but it did not explicitly find aggravators and mitigators and conclude that they balance. Therefore, it was not required to explain its imposition of the presumptive sentence. See Childress, 848 N.E.2d at 1080; Hammons v. State, 493 N.E.2d 1250, 1254 (Ind. 1986) (when trial court imposes the presumptive sentence, court on appeal will presume that the trial court considered the statutorily-mandated factors).[3]

II. Conditions of Probation

Citing, Freije v. State, 709 N.E.2d 323 (Ind. 1999), Poindexter complains that the following conditions of probation were improper because they were not set forth in his plea agreement: (1) that he establish his paternity of his child; (2) that he pay child support for this child; and (3) that he obtain his GED. However, Poindexter made no objection to these conditions of probation and has therefore failed to properly preserve this issue for appellate review. See Stott v. State, 822 N.E.2d 176, 179 (Ind. Ct. App. 2005), trans. denied; cf. Freije, 709 N.E.2d at 324 (noting that defendant specifically objected to imposition of conditions of probation which were not included in plea agreement).

[3] Even if we were to conclude otherwise, any error on the part of the trial court would be harmless. Given Poindexter's extensive criminal history, which we detail below, the trial court could have properly imposed an enhanced sentence. In light of this criminal history, we also conclude that consideration of Poindexter's guilty plea as mitigating factor would not require imposition of a sentence less than the presumptive.

Regardless, even if we were to consider Poindexter's claims on the merits, he would not prevail. The court in Freije did hold that the trial court's imposition of home detention and community corrections as conditions of probation was improper because such conditions were substantial obligations of a punitive nature and must be included in the plea agreement. Freije, 709 N.E.2d at 324. But the Freije court also held that, regardless of the language of a plea agreement, a trial court is free to impose "administrative or ministerial conditions 'such as reporting to the probation department, notifying the probation officer concerning changes in address or place of employment, *supporting dependents*, remaining within the jurisdiction of the court, [and] *pursuing a course of vocational training* [.]'" Id. at 325 (quoting Disney v. State, 441 N.E.2d 489, 494 (Ind. Ct. App. 1982)) (emphasis added).

With regard to the probation condition that Poindexter obtain a GED, the State correctly points out that it was Poindexter's trial counsel who suggested that Poindexter "get into a GED program immediately." Tr. p. 36. Therefore, any error in this condition of probation would be invited error and not grounds for reversal. Wright v. State, 828 N.E.2d 904, 907 (Ind. 2005).[4]

Poindexter also claims that the trial court erred in imposing as a condition of probation that he establish paternity of his child and pay child support. We reject Poindexter's claims that these conditions are punitive in nature. To the contrary, as explained in Freije, requiring that a defendant support dependents is among the

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[4] Moreover, "pursuing a course of vocational training," which could arguably include obtaining a GED, is among the conditions of probation a trial court is free to impose regardless of the language of the plea agreement. Freije,709 N.E.2d at 325.

conditions of probation which a trial court may impose regardless of the language of the plea agreement. Freije, 709 N.E.2d at 325; see also Ind. Code § 35-38-2-2.3(a)(4) (2004) (trial court may impose as a condition of probation that a person "support the person's dependents and meet other family responsibilities."). Thus, the trial court was within its discretion to order Poindexter to pay child support as a condition of probation. Further, we cannot say that requiring Poindexter to establish paternity of a child, which Poindexter himself admitted was his, is somehow punitive. In sum, the trial court did not err in imposing non-punitive conditions of probation which were not set forth in the plea agreement.

III. Appropriateness of Sentence

Lastly, Poindexter claims that his sentence is inappropriate. As an appellate court, we may revise a sentence otherwise authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) (2007). Because the presumptive sentence is the starting point the legislature selected as an appropriate sentence for the crime committed, the defendant bears a heavy burden in persuading us that his presumptive sentence is inappropriate. McKinney v. State, 873 N.E.2d 630, 646-47 (Ind. Ct. App. 2007), trans. denied. Poindexter has not met this burden.

Poindexter's juvenile record includes adjudications for false reporting, criminal trespass, felony battery, dealing in a sawed-off shotgun, theft, and criminal mischief. Further, although he was only twenty years old at the time of sentencing, Poindexter had adult convictions for resisting law enforcement, disorderly conduct, and auto theft and

had already had his probation revoked once. Additionally, Poindexter was detained on charges of criminal recklessness and battery when he committed the instant offense by escaping from custody. Despite this history of misbehavior, which itself would justify an enhanced sentence, the trial court imposed the presumptive term of four years and suspended this sentence to two years of probation, giving Poindexter a chance to avoid incarceration and better himself.[5] We fail to see how this could be considered inappropriate.

Conclusion

Because the trial court imposed the presumptive sentence without finding aggravating or mitigating factors, the trial court's sentencing statement was not inadequate. The trial court did not err in imposing non-punitive conditions of probation which were not included in the plea agreement, and the presumptive sentence imposed by the trial court was not inappropriate.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.

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[5] Although unknown to the trial court at the time of sentencing, we note that Poindexter wasted the chance offered to him when he again violated the conditions of his probation and had his probation in the current case revoked.