

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeremy L. Rodgers,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 30, 2021

Court of Appeals Case No.
20A-CR-2162

Appeal from the Wayne Superior
Court

The Honorable Charles K. Todd,
Jr., Judge

Trial Court Cause No.
89D01-1802-F4-4

Brown, Judge.

- [1] Jeremy L. Rodgers appeals his sentence for two counts of possession of a controlled substance as class A misdemeanors and possession of a narcotic drug as a level 4 felony as enhanced by his status as an habitual offender and asserts his sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On February 1, 2018, Wayne County Sheriff's Deputy Ryan Sams received information that Rodgers, who had an active warrant for a parole violation, was at the Village Pantry in Richmond. Officers also received information that Rodgers had been dealing drugs in the area earlier that night. Deputy Sams arrived at the area and observed several subjects, including Rodgers, enter a vehicle and leave. Deputy Sams initiated a traffic stop, and the driver consented to a search of the vehicle. Rodgers initially misidentified himself, but admitted his true identity when Deputy Sams confronted him. At the jail, Rodgers became combative and refused to allow officers to search his person. Officers eventually discovered that Rodgers possessed \$2,000 in cash, at least ten grams but less than twenty-eight grams of heroin or fentanyl, and buprenorphine and alprazolam without a prescription.
- [3] On February 2, 2018, the State charged Rodgers with: Count I, possession of a narcotic drug as a level 4 felony; Count II, possession of a controlled substance as a class A misdemeanor; and Count III, possession of a controlled substance as a class A misdemeanor. The State also alleged that Rodgers was an habitual offender.

- [4] On February 12, 2018, the court entered an Order on Initial Hearing which appointed a public defender for Rodgers and indicated that it ordered him in open court to be personally present in court for any and all hearings. On September 4, 2019, the court issued an arrest warrant after Rodgers failed to appear for a pre-trial hearing.
- [5] On January 15, 2020, Rodgers filed a notice of intention to plead guilty. On January 16, 2020, the court held a hearing, and Rodgers pled guilty as charged. The court accepted Rodgers' pleas and entered judgments of conviction and found him to be an habitual offender.
- [6] On October 21, 2020, the court held a sentencing hearing. Hope Peer, a recovery coach and care coordinator employed at Centerstone, testified that Rodgers began participating in a group counseling addressing substance abuse in February 2020 and recently completed the program. She testified Rodgers reached a point where he felt a willingness to address his addiction issues which was somewhat of a breakthrough and that he would benefit from continued substance abuse treatment.
- [7] Tiffany Renee Harsh testified that she had known Rodgers for seventeen years, she had a sixteen-year-old child with him, and he co-parented their child. When asked to describe the impact Rodgers' incarceration would have on their daughter, she answered that it made it more difficult for her to build on the relationship and bothered her emotionally. On cross-examination, she stated their teenage child was "kind of in to her own thing and she's busy a lot"

Transcript Volume II at 45. When asked if their child had done remarkably well considering that she had been the primary caregiver, Harsh answered affirmatively. When asked if she “really [had] raised her exclusively,” she answered: “For the most part, yes.” *Id.* at 46. She also acknowledged that Rodgers had not paid child support in some time and that the arrearage was “something like” \$25,000. *Id.* at 48.

[8] Michael Alby, the neighbor of Rodgers’ mother, testified that Rodgers’ mother had only one leg and could hardly walk and that Alby helped her do dishes, sweep the floor, and take the trash out. He also testified that he had a bad heart and could not walk and Rodgers helped him cut the grass.

[9] The court admitted a letter from Rodgers’ mother which asserted that Rodgers always had problems being around a crowd, had ADD and ADHD, was a “good kid,” and “just got involved in drugs,” and that she was disabled and needed Rodgers to help her. *Id.* at 57.

[10] Rodgers testified that he did not realize he had a problem with drugs for a long time. He acknowledged he was extremely intoxicated when he was brought into the jail. He testified that Alby helped his mother “out a lot.” *Id.* at 65. He testified that he was “not going out here doing drugs and running around no more.” *Id.* at 66. He asked the court to consider recommending that he be able to participate in therapeutic communities at the Department of Correction. He also acknowledged that he had not been paying child support for most of his daughter’s life. On redirect, he testified that his daughter stayed with him on

weekends and they did “all kinds of stuff.” *Id.* at 69. He also apologized to the court and the State.

[11] On October 23, 2020, the court found Rodgers’ significant criminal history, his violation of conditions of pre-trial release by committing criminal offenses while on bond, and the fact that he was on parole for a felony offense at the time he committed these offenses as aggravating circumstances. The court found Rodgers’ acceptance of responsibility for his actions by pleading guilty and that he had taken positive steps in an effort to change while incarcerated pending sentencing as mitigating circumstances. It also found that the aggravating circumstances significantly outweighed the mitigating circumstances.

[12] The court sentenced Rodgers to concurrent sentences of eight years for possession of a narcotic drug as a level 4 felony and one year for each of his convictions for possession of a controlled substance as class A misdemeanors. The court enhanced the sentence under Count I by eight years due to his status as an habitual offender for an aggregate sentence of sixteen years. The court also stated that Rodgers would be eligible for Purposeful Incarceration upon his completion of twelve years of his sixteen-year sentence and that it would consider modification provided that Rodgers successfully completes Purposeful Incarceration.

Discussion

[13] Rodgers claims his sentence is inappropriate. He argues that he was extremely intoxicated when he was arrested. He asserts he pled guilty and was

remorseful, he co-parented his child, he was never given the tools to beat his addiction, and his sixteen-year-old daughter and disabled mother would suffer hardships from his incarceration. He also argues that he had recently participated in counseling for his addiction and had made a breakthrough. He requests an aggregate sentence of fourteen years.¹

[14] Ind. Appellate Rule 7(B) provides that we “may revise a sentence 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.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[15] Ind. Code § 35-50-3-2 provides that a person who commits a class A misdemeanor shall be imprisoned for a fixed term of not more than one year. Ind. Code § 35-50-2-5.5 provides that a person who commits a level 4 felony shall be imprisoned for a fixed term of between two and twelve years with the advisory sentence being six years. Ind. Code § 35-50-2-8(i) provides that the court shall sentence a person found to be an habitual offender to an additional

¹ To the extent Rodgers cites Article 1, Section 18 of the Indiana Constitution, which provides that “[t]he penal code shall be founded on the principles of reformation, and not of vindictive justice,” we observe that the Indiana Supreme Court has held that “particularized, individual applications are not reviewable under Article 1, Section 18 because Section 18 applies to the penal code as a whole and does not protect fact-specific challenges.” *Ratliff v. Cohn*, 693 N.E.2d 530, 542 (Ind. 1998), *reh’g denied*.

fixed term that is between six and twenty years for a level 4 felony, and an additional term imposed under this subsection is nonsuspendible.

[16] Our review of the nature of the offenses reveals that officers received information that Rodgers had been dealing drugs. He initially misidentified himself and later became combative at jail and refused to allow officers to search him. Officers discovered that Rodgers possessed \$2,000 in cash, at least ten grams but less than twenty-eight grams of heroin or fentanyl, and buprenorphine and alprazolam without a prescription.

[17] Our review of the character of the offender reveals that Rodgers pled guilty as charged. The presentence investigation report (“PSI”) states that Rodgers indicated he first tried alcohol when he was ten years old, was drinking daily at the age of fifteen and would drink “a fifth or more with friends,” and last used alcohol in “2010 or longer.” Appellant’s Appendix Volume II at 183. It states that he first tried cocaine at the age of fifteen, used powder “daily or whenever [he] could come across it,” and last used it in 2019; first tried crack cocaine when he was sixteen years old, used it daily, and last used it in 2019; started snorting heroin when he was twenty-two years old and then started injecting it intravenously, used it “as many times as [he] could a day,” and last used it in 2019; and started using methamphetamine when he was thirty-three years old and used it daily until his arrest on September 6, 2019. *Id.* It indicates Rodgers had been involved with counseling for substance use as a juvenile in 1997, and as an adult in 1999, in 2003-2004, and in 2011. According to Rodgers, he completed Meridian’s in-patient facility in 2017, and he participated in and

completed the Substance Abuse program at the Wayne County Jail in 2000. He participated in a group addressing substance abuse in February 2020 and completed the program.

[18] The PSI indicates Rodgers owes child support and is unsure of the amount, and we note that, at the sentencing hearing, Harsh indicated Rodgers had not paid child support in some time and the arrearage was approximately \$25,000. With respect to his assertion that his incarceration would result in hardship to his family, we note that the trial court stated that the “reality is your being incarcerated is not going to put any undue hardship” on his daughter. Transcript Volume II at 85. We also note that Rodgers acknowledged that Alby helped his mother “out a lot.” *Id.* at 65.

[19] Rodgers, who was born in 1980, committed his “first criminal offense . . . as a juvenile” when he was thirteen years old. Appellant’s Appendix Volume II at 182. As an adult, he was convicted of public intoxication as a class B misdemeanor in 1998; operating while intoxicated as a class A misdemeanor, robbery as a class B felony, and battery as a class C felony in 1999; perjury as a class D felony in 2000; operating while intoxicated as a class A misdemeanor and operator never licensed as a class C misdemeanor in 2002; operating while intoxicated and theft as class D felonies in 2003; possession of a legend drug as a class D felonies and operating while intoxicated as a class A misdemeanor in 2004; domestic battery, possession of marijuana, and driving while suspended as class A misdemeanors in 2005; public intoxication as a class B misdemeanor and operating a vehicle as an habitual traffic violator as a class D felony in

2007; resisting law enforcement as a class A misdemeanor and false reporting or informing as a class B misdemeanor in 2011; possession of paraphernalia as a class A misdemeanor in 2013; and receiving stolen property as a class D felony for which he received an enhanced sentence for being an habitual offender in 2015. Meanwhile in Ohio, Rodgers was convicted of trafficking in heroin and possession of heroin as 2nd degree felonies in 2011. The PSI indicates that at least ten of Rodgers' sentences were either fully or partially suspended; he has had the opportunity for probation five times; his probation was revoked and a failure to appear warrant was issued in 2005; his probation was terminated and he had three years revoked in 2006; a contempt of court resulting in thirty days served was issued in 2015; and he had two parole violations in 2018. The PSI indicates his overall risk assessment score using the Indiana Risk Assessment System places him in the high risk to reoffend category.

[20] After due consideration, we conclude that Rodgers has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offenses and his character.

[21] For the foregoing reasons, we affirm Rodgers' sentence.

[22] Affirmed.

Bradford, C.J., and Vaidik, J., concur.