MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Darius J. Reynolds,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 5, 2021

Court of Appeals Case No. 20A-CR-1773

Appeal from the Tippecanoe Superior Court

The Honorable Steven P. Meyer, Judge

Trial Court Cause No. 79D02-2002-F4-12

Bradford, Chief Judge.

Case Summary

[1] Officers discovered marijuana in a vehicle being driven by Darius Reynolds during a traffic stop. Reynolds subsequently consented to the search of his home, in which officers discovered a handgun. In light of a prior conviction for criminal confinement, Reynolds qualified as a serious violent felon ("SVF") and could not legally possess the handgun. Thereafter, the State charged Reynolds with a number of charges, including Level 4 felony possession of a firearm by an SVF. Following a jury trial, Reynolds was found guilty of the Level 4 felony SVF charge and Class B misdemeanor possession of marijuana. The trial court sentenced Reynolds to an aggregate seven-year sentence, of which two years were to be executed in the Department of Correction ("DOC"), two years were to be executed in community corrections, and three years were suspended to probation. On appeal, Reynolds contends that his aggregate seven-year sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On February 17, 2020, Lafayette Police Officer David Chapman stopped a vehicle being driven by Reynolds after observing that the license plate was expired. Shortly after Officer Chapman initiated the stop, Officer Austin Schutter and his K-9 partner, Rocky, arrived. Officer Chapman asked Reynolds to exit the vehicle and asked Officer Schutter to have Rocky perform a "free air sniff" around the exterior of the vehicle. Tr. Vol. II p. 127. As Officer Schutter and Rocky approached the vehicle, Rocky immediately alerted to the presence

of illegal drugs. A subsequent search of the vehicle uncovered three packages of marijuana, totaling 8.86 grams. Reynolds acknowledged the presence of the marijuana and claimed that it was all for personal use. Reynolds also consented to a search of his home, during which officers found a handgun. Reynolds subsequently admitted that he had purchased the handgun.

[3] On February 28, 2020, the State charged Reynolds with Level 4 felony unlawful possession of a firearm by an SVF, Class A misdemeanor unlawful possession of a firearm by a domestic batterer, Class A misdemeanor dealing in marijuana, and Class B misdemeanor possession of marijuana. Following a two-part trial, the jury found Reynolds not guilty of the Class A misdemeanor dealing charge and guilty of the Level 4 felony SVF charge, the Class A misdemeanor unlawful possession of a firearm charge, and the Class B misdemeanor marijuana possession charge.

[4] On September 14, 2020, the trial court vacated the Class A misdemeanor unlawful possession of a firearm charge and entered a judgment of conviction on the Level 4 felony SVF charge and the Class B misdemeanor marijuana possession charge. The trial court sentenced Reynolds on the Level 4 felony SVF count to a term of seven years, with two years executed in the DOC, two years executed in community corrections, and three years suspended to probation. The trial court sentenced Reynolds to 180 days on the Class B misdemeanor marijuana charge and ordered that the sentence run concurrent to the sentence imposed in connection to the Level 4 felony SVF charge, for an aggregate sentence of seven years.

Discussion and Decision

[5] Indiana Appellate Rule 7(B) provides that "The Court 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." In analyzing such claims, we "concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted). The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[6] Reynolds contends that his aggregate seven-year sentence is inappropriate. Indiana Code section 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 (2) and twelve (12) years, with the advisory sentence being six (6) years." Furthermore, "[a] person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days." Ind. Code § 35-50-3-3. The trial court sentenced Reynolds to seven years in relation to his Level 4 felony conviction and 180 days in relation to his Class B misdemeanor conviction. The trial court ordered that the sentence for the Class B misdemeanor conviction run concurrent to the sentence for the Level 4 felony

conviction. Thus, in sentencing Reynolds to an aggregate seven-year term, the trial court imposed a slightly aggravated sentence.

[7] With regard to the nature of Reynolds's offenses, Reynolds possessed nearly nine grams of marijuana when stopped by police for an expired license plate and a subsequent search of him home uncovered a handgun, which he admitted to purchasing, despite the fact that he could not lawfully possess the handgun. Reynolds kept the handgun in a cabinet in a home that he shared with a woman and a child. In addition, while Reynolds claimed the marijuana recovered from his vehicle was for personal use, officers found a scale and plastic baggies, which are commonly used to package marijuana for sale, on the floor in Reynolds's home. As for the handgun, Reynolds does not dispute that he qualified as an SVF. He merely argues that his actions do not warrant his seven-year sentence because his actions were "far less egregious than the 'typical' offense for possession of a firearm by a serious violent felon." Appellant's Br. p. 8. Reynolds's actions were serious in that he exposed the individuals he lived with, including a child, to drugs, drug paraphernalia, and a firearm.

[8] Reynolds argues that his character is such that he should have been granted leniency at sentencing. We note that the trial court did grant Reynolds a certain level of leniency, ordering that of his seven-year sentence, only two years were to be served in the DOC, with two years to be served in community corrections and the remaining three years suspended to probation. Further, we are unconvinced by Reynolds's assertion that the trial court should not have

considered his criminal history as a poor reflection of his character due to the limited numbers of convictions and the fact that his lone felony conviction "was the basis for [his] 'SVF' status." Appellant's Br. p. 11. We have previously concluded that a defendant's criminal history is relevant when considering character under Appellate Rule 7(B). *See Garcia v. State*, 47 N.E.3d 1249, 1251 (Ind. Ct. App. 2015) (citing *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013)).

[9] In addition to Reynolds's prior convictions for Level 6 felony criminal confinement and Class A misdemeanor domestic battery, he has amassed a number of felony and misdemeanor domestic battery and drug-related charges. He has also been previously charged with Level 6 felony pointing a firearm at another and Class A misdemeanor resisting arrest. These charges, while not reduced to convictions, may be considered with regard to Reynolds's character. *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.") Reynolds has also had his probation and bond revoked on numerous occasions and continued to commit additional criminal acts while awaiting trial in the instant matter. Further, as of the date that the pre-sentence investigation report was completed, Reynolds also had three unrelated criminal cases pending, which included additional felony and misdemeanor charges for domestic battery and

misdemeanor charges for resisting law enforcement, criminal mischief, dealing in marijuana, possession of a controlled substance, and possession of marijuana.

[10] Reynolds also points to his employment history and untreated substance-abuse issues in support of his assertion that he is of good character and request for leniency. While Reynolds has seemingly previously maintained employment for long stretches of time, he was unemployed as of the date of sentencing. As for his history of substance abuse, Reynolds admitted that he has routinely used marijuana for at least fourteen years. Although aware of the ongoing nature of his drug use, he has never sought any treatment for his claimed substance-abuse issues. We are unconvinced that his failure to receive treatment over a period of fourteen years reflects positively on his character. *See generally, Hape v. State*, 903 N.E.2d 977, 1002 (Ind. Ct. App. 2009) ("[W]hen a defendant is aware of a substance abuse problem but has not taken appropriate steps to treat it, the trial court does not abuse its discretion by rejecting the addiction as a mitigating circumstance.).

[11] Reynolds has repeatedly demonstrated a disdain for the safety of others and an unwillingness to follow the laws of this State. Prior attempts at leniency have been unsuccessfully terminated. Reynolds has also failed to seek help for his substance-abuse issues. These facts, coupled with his troubling history of domestic violence and firearm- and drug-related offenses, reflect poorly on his character. Reynolds has failed to convince us that his seven-year aggregate

sentence is inappropriate. *See Sanchez*, 891 N.E.2d at 176 ("The defendant bears the burden of persuading us that his sentence is inappropriate.").

[12] The judgment of the trial court is affirmed.

Vaidik, J. and Brown, J., concur.