MEMORANDUM DECISION

FILED
Nov 16 2021, 8:18 am
CLERK
Indiana Supreme Court
Court of Appeals
and Tax Court

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IN THE COURT OF APPEALS OF INDIANA

Heather Jones,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 16, 2021

Court of Appeals Case No. 21A-CR-1158

Appeal from the Noble Superior Court

The Honorable Steven C. Hagen, Special Judge

Trial Court Cause Nos. 57D02-1909-F6-11
57D02-1909-F6-12

Bradford, Chief Judge.

Case Summary

[1] Heather Jones pled guilty to three Level 6 felonies. While sentencing was initially deferred and she was accepted into the drug-court program, she was eventually terminated from the program after she violated the program rules on at least twenty-three occasions. Jones was thereafter sentenced to an aggregate term of four years, all of which was to be executed in the Department of Correction ("DOC"). On appeal, she contends that her sentence is inappropriate in light of the nature of her offenses and her character. We affirm.

Facts and Procedural History

A. Cause Number 57D02-1909-F6-12 ("Cause No. F6-12")

[2] On the morning of July 11, 2019, Jones knowingly exerted unauthorized control of an unlocked Ford Explorer belonging to Ann Carpenter, with the intent to deprive Carpenter of the vehicle's use or value. The State charged Jones with Level 6 felony auto theft on July 24, 2019.

B. Cause Number 57D02-1909-F6-11 ("Cause No. F6-11")

[3] On July 25, 2019, Kendallville Police Officer Kevin Pegan encountered Jones, whom he recognized as having an active arrest warrant. There was a backpack sitting on the seat next to Jones. Although Jones initially denied owning the backpack, two other individuals with Jones indicated that the backpack belonged to Jones. After placing Jones under arrest, Officer Pegan searched

Jones's purse and backpack, discovering methamphetamine and a syringe in Jones's backpack. On July 26, 2019, the State charged Jones with Level 6 felony possession of methamphetamine and Level 6 felony unlawful possession of a syringe.

C. Guilty Plea & Drug Court Proceedings

[4] On September 16, 2019, Jones pled guilty as charged in both Cause Nos. F6-12 and F6-11. As part of her plea agreement, sentencing was deferred, and Jones was accepted into the drug-court program. While participating in the drug-court program, Jones committed numerous violations of program rules, including missing treatment appointments, providing diluted drug screens, failing to notify her probation officer of changes in her employment, lying to her house manager, obtaining a cell phone, using Facebook, failing to work with her sponsor, becoming involved with an altercation/incident with another, contacting someone in jail, using illegal substances, being unemployed, and failing to appear for court proceedings. On April 8, 2021, Jones was charged with new criminal offenses, i.e., Level 6 felony possession of methamphetamine, Level 6 felony unlawful possession of a syringe, and Class A misdemeanor resisting law enforcement. On April 22, 2021, the probation department filed a drug-court-violation report outlining Jones's non-compliance with the drug-court program and requesting that she be terminated from the program. On May 10, 2021, Jones admitted to violating the terms of drug court and was terminated from the program.

D. Sentencing

[5] Jones's cases were then returned to the trial court for sentencing. At sentencing, the trial court found that Jones had committed multiple drug-court violations, had been charged with new criminal charges, and had absconded from drug court. The trial court sentenced Jones to concurrent terms of one and one-half years each for each conviction in Cause No. F6-11 and two and one-half years for her conviction in Cause No. F6-12. The trial court ordered that the sentences in Cause No. F6-11 be served consecutively to the sentence in Cause No. F6-12, for an aggregate sentence of four years executed in the DOC.

Discussion and Decision

[6] 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), *trans. denied*. 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).

[7] "A person who commits a Level 6 felony … shall be imprisoned for a fixed term of between six (6) months and two and one-half (2½) years, with the advisory being one (1) year." Ind. Code § 35-50-2-7(b). The trial court sentenced Jones to concurrent terms of one and one-half years for her possession of methamphetamine and possession of a syringe convictions. The trial court ordered that this concurrent sentence be served consecutively to the two and one-half-year sentence imposed for her auto theft conviction, for an aggregate four-year term of incarceration. Thus, in sentencing Jones, the trial court imposed an aggravated, but not maximum, sentence.

[8] While Jones argues that the sentence was "inappropriately severe," she does not appear to challenge the length of her sentencing, arguing only that we should "revise her sentence so she can serve the remainder of her sentence on probation or in a Community Corrections Placement rather than in jail." Appellant's Br. p. 12. We have previously concluded that

> it will be quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate. This is because the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate.

King v. State, 894 N.E.2d 265, 267–68 (Ind. Ct. App. 2008) (internal citation omitted).

[9] With regards to the nature of her crimes, Jones argues that her crimes were "non-violent, low-level offenses" that "were tied to her efforts to feed her drug addiction." Appellant's Br. p. 11. While this may be true, Jones admitted that she took an unlocked vehicle from a parking lot without the owner's knowledge or permission. A few days later, she also possessed both methamphetamine and a syringe. Jones has failed to explain what about her crimes renders incarceration inappropriate.

[10] As for her character, Jones points to her struggle with addiction and asserts that she had "never been in trouble with the law" prior to the underlying cases. Appellant's Br. p. 11. Even so, Jones was given the opportunity to seek help for her addiction and avoid incarceration by participating in drug court but squandered this opportunity by committing at least twenty-three separate violations of the drug-court rules. Jones repeatedly violated program rules and was given myriad opportunities to address her addiction and remain in the drug-court program. Eventually, her placement in the program was terminated after she was charged with new criminal offenses. We agree with the State that Jones's failure to refrain from using drugs and inability to comply with the drug-court program rules reasonably suggests that she would also struggle to comply with rules and restrictions connected to placement on probation or in community corrections. Jones has failed to convince us that the trial court's order that she serve her four-year aggregate sentence in the DOC is inappropriate. *See Sanchez*, 891 N.E.2d at 176 ("The defendant bears the burden of persuading us that his sentence is inappropriate.").

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

Robb, J., and Altice., J., concur.