

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Deandre Dwayne Bruce,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 10, 2021

Court of Appeals Case No.
20A-CR-1970

Appeal from the Lake Superior
Court

The Honorable Natalie Bokota,
Magistrate

Trial Court Cause No.
45G04-1708-F2-7

Pyle, Judge.

Statement of the Case

[1] Deandre Dwayne Bruce (“Bruce”) appeals his sentence, following his guilty plea, for Level 4 felony possession of a narcotic drug.¹ Bruce argues that his advisory sentence with time suspended to community corrections is inappropriate. Concluding that Bruce has failed to show that his sentence is inappropriate, we affirm his sentence.

[2] We affirm.

Issue

Whether Bruce’s sentence is inappropriate.

Facts

[3] The facts of this case are set forth in the stipulated factual basis entered between Bruce and the State. On August 5, 2017, Bruce was parked in his car in a vacant lot in Lake County. Officers approached Bruce’s car and “detected the odor of marijuana coming from the vehicle.” (App. Vol. 2 at 29). Bruce gave the officers permission to search his vehicle, and an “officer located a clear plastic bag containing a brown rock-like substance” that “tested positive for Heroin and had a gross weight of 15 grams.” (App. Vol. 2 at 29).

¹ IND. CODE § 35-48-4-6.

[4] The State charged Bruce with Level 2 felony dealing in a narcotic drug, Level 4 felony possession of a narcotic drug, Level 6 felony resisting law enforcement, Class A misdemeanor resisting law enforcement, and Class A misdemeanor false informing. Two years later, in August 2019, Bruce entered a guilty plea to the Level 4 felony possession of a narcotic drug charge in exchange for the State's dismissal of the remaining charges. His plea agreement provided that the parties could argue regarding sentencing but that the sentence would be capped at six (6) years, which is the advisory sentence for a Level 4 felony conviction. Bruce and the State entered a stipulated factual basis, and Bruce admitted that he had possessed fifteen grams of heroin.

[5] During Bruce's sentencing hearing, the State presented the presentence investigation report ("PSI"), which indicated that Bruce had an Illinois felony conviction in 2010.² Specifically, Bruce had an armed robbery conviction, for which he had served four years. Bruce also had a 2016 federal felony conviction for unlawful transportation of firearms. He was placed on supervised release for three years beginning in May 2016. Thus, at the time of Bruce's current possession offense in August 2017, he was still on supervised release from his unlawful transportation of firearms conviction.

² The PSI also showed that Bruce had a felony conviction for home invasion out of Illinois in 2010 and received time served. Bruce disputed this conviction during the sentencing hearing. However, at the end of the sentencing hearing, the State obtained an Illinois State Police printout, which indicated that Bruce had been convicted of home invasion.

[6] The trial court found aggravating circumstances in Bruce’s criminal history, which included prior felonies that were violent in nature, and in his failure to be deterred from criminal activity following prior incarceration and probation. The trial court also noted the nature and circumstances of the offense, including the “insidious” nature of heroin and the large amount of heroin involved. (Tr. Vol. 2 at 24). The trial court found Bruce’s guilty plea and apology for being in court to be mitigating circumstances. The trial court imposed an advisory six (6) year sentence, with four and one-half (4½) years executed and one and one-half (1½) years suspended to community corrections on work release. Bruce now appeals.

Decision

[7] Bruce argues that his advisory sentence with time suspended to community corrections is inappropriate. He does not contend that the advisory sentence itself is inappropriate. Instead, he asks this Court to revise his executed time to two years and revise his suspended time on community corrections to four years.

[8] We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The principal role of a Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.”

Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). “Appellate Rule 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (internal quotation marks and citation omitted), *reh’g denied*.

[9] Appellate review of a defendant’s sentence under Rule 7(B) will include consideration of the length of the sentence as well as consideration of “whether a portion of the sentence is ordered suspended or otherwise crafted using any of the variety of sentencing tools available to the trial judge,” such as placement in community corrections. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010). A defendant may challenge, under Appellate Rule 7(B), the location where a sentence is to be served. *Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007). However, “it will be quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate” because a defendant challenging the placement of a sentence must convince us not that another placement would be more appropriate but that the ordered placement is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008).

[10] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081. Bruce pled guilty and was convicted of Level 4 felony possession of a narcotic drug. A person who commits a Level 4 A felony “shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence

being six (6) years.” I.C. § 35-50-2-5.5. Here, Bruce’s plea agreement capped his sentence at the advisory term of six years. The trial court imposed the advisory six-year sentence but used some of the “sentencing tools” available to it when it ordered four and one-half (4½) years to be executed and one and one-half (1½) years to be suspended to community corrections. *See Davidson*, 926 N.E.2d at 1025.

[11] Turning first to the nature of Bruce’s offenses, we note that Bruce possessed fifteen grams of heroin, which the trial court noted was “insidious.” (Tr. Vol. 2 at 24). In reviewing his character, we note that he has a criminal history that includes felony convictions. Moreover, the fact that he committed this drug offense while he was on supervised release from a federal conviction for unlawful transportation of firearms reflects poorly on his character. Bruce highlights positive aspects of his character, including his employment, his high school diploma, and his son. He also points to his risk assessment that showed he had a low risk to reoffend. He offered these same factors to the trial court, but it declined to consider them as specific mitigating circumstances. The trial court did, however, suspend a portion of Bruce’s sentence and placed him in community corrections. *See Bratcher v. State*, 999 N.E.2d 864, 872 (Ind. Ct. App. 2013) (explaining that risk offender assessment instruments are appropriate supplemental tools for judicial consideration at sentencing and can be used by the trial court in formulating the manner in which a sentence is to be served), *trans. denied*.

[12] As a result, we find that Bruce has not persuaded us that his advisory six-year sentence with four and one-half (4½) years executed and one and one-half (1½) years suspended to community corrections for his Level 4 felony possession of a narcotic drug conviction is inappropriate. Therefore, we affirm the sentence imposed by the trial court.

[13] Affirmed.

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