

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Carlos Rainer,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

January 20, 2022

Court of Appeals Case No.
21A-CR-663

Appeal from the Wayne Superior
Court

The Honorable Gregory A. Horn,
Judge

Trial Court Cause No.
89D02-1804-F4-14

Pyle, Judge.

Statement of the Case

[1] After a jury convicted Carlos Rainer (“Rainer”) of two counts of Level 4 felony dealing in a narcotic drug,¹ the trial court sentenced him to an aggregate sentence of six (6) years in the Department of Correction (“the DOC”). On appeal, Rainer argues that his sentence is inappropriate. Concluding that Rainer has failed to show that his sentence is inappropriate, we affirm the sentence.

[2] We affirm.

Issue

Whether Rainer’s sentence is inappropriate.

Facts

[3] On October 24, 2017, Rainer sold a confidential informant 1.49 grams of heroin laced with fentanyl in a controlled buy. The following day, October 25, 2017, Rainer sold the same confidential informant .17 gram of heroin laced with fentanyl and .15 gram of methamphetamine. This second transaction occurred within 500 feet of a church childcare program while young children were on the premises.

¹ IND. CODE § 35-48-4-1.

[4] In April 2018, the State charged Rainer with two counts of Level 4 felony dealing in a narcotic drug for his two sales of fentanyl-laced heroin to the confidential informant.² At a two-day trial in December 2020, the jury heard the evidence as set forth above. Also at trial, the confidential informant testified that Rainer was her “dealer” and that she had bought drugs from him “[m]ultiple times” in the past. (Tr. Vol. 2 at 194). After hearing the evidence, the jury convicted Rainer of both counts.

[5] At the April 2021 sentencing hearing, Rainer asked the trial court to consider sentencing him to home detention. Thereafter, the trial court reviewed Rainer’s criminal history as included in his pre-sentence investigation report. Specifically, Rainer’s criminal history includes a 1994 Class B felony conviction for attempted robbery and three 1994 misdemeanor convictions for a minor consuming an alcoholic beverage and contributing to the delinquency of a minor. Rainer also has a 2000 conviction for Class C misdemeanor operating a motor vehicle while never licensed. In addition, at the time of the sentencing hearing, Rainer had pending charges for committing Level 5 felony dealing in cocaine in 2016 and Level 5 felony contributing to the delinquency of a minor in 2018.

[6] At the end of the sentencing hearing, the trial court found Rainer’s criminal history to be a nominal and minimal aggravating circumstance based upon the

² The State did not charge Rainer with the sale of the methamphetamine.

remoteness in time of the convictions. The trial court found no mitigating factors and concluded that concurrent advisory sentences were proper. In addition, the trial court declined Rainer’s request to place him on home detention based upon the nature of the two felony drug convictions. Accordingly, the trial court sentenced Rainer to six (6) years for each conviction and ordered the two sentences to run concurrently with each other for an aggregate six-year sentence in the DOC.

[7] Rainer now appeals his sentence.

Decision

[8] Rainer argues that his sentence is inappropriate. He does not challenge the duration of his sentence. Rather, he challenges the trial court’s sentencing decision regarding his placement in the DOC. Rainer specifically “requests a downward departure from the trial court’s sentence by suspending the sentence to transition from incarceration to home detention and then to probation.” (Rainer’s Br. 7).

[9] Indiana 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. The defendant bears the burden of persuading this Court 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).

[10] When determining whether a sentence is inappropriate, 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. Here, Rainer was convicted of two Level 4 felonies. The sentencing range for a Level 4 felony is two (2) to twelve (12) years, and the advisory sentence is six (6) years. IND. CODE § 35-50-2-5.5. The trial court sentenced Rainer to the six-year advisory sentence for each Level 4 felony conviction. The trial court further ordered the sentences to run concurrently with each other, for an aggregate sentence of six years in the DOC.

[11] The location where a sentence is to be served is an appropriate focus for our review and revise authority under Appellate Rule 7(B). *Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007). However, this Court has previously explained that it will be “quite difficult” for a defendant to prevail on a claim that his sentence is inappropriate. *Fonner v. State*, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007). 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.” *Id.* at 344 (emphasis in original). A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate. *Id.*

[12] Turning to the nature of Rainer's character, we note that he has a criminal history that includes remote felony and misdemeanor convictions. Rainer also has pending felony charges for dealing in cocaine that occurred before the offenses in this case and contributing to the delinquency of a minor that occurred after the offenses in this case.

[13] Turning to the nature of Rainer's convictions, we note that Rainer sold heroin laced with fentanyl to a confidential informant during two controlled drug buys. One of the drug transactions took place within 500 feet of a church childcare program while children were on the premises. We further note that the trial court specifically declined to place Rainer on home detention because of the nature of these two felony drug offenses.

[14] Rainer has failed to meet his burden to persuade this Court that placement in the DOC for six years for his two Level 4 felony dealing in a narcotic drug convictions is inappropriate. Accordingly, we affirm the sentence imposed by the trial court.

[15] Affirmed.

May, J., and Brown, J., concur.