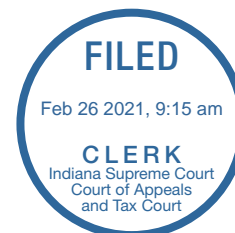


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Candice Valerie Casanova,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 26, 2021

Court of Appeals Case No.
20A-CR-1951

Appeal from the Lake Superior
Court

The Honorable Samuel L. Cappas,
Judge

Trial Court Cause No.
45G04-1912-F4-153

Crone, Judge.

Case Summary

- [1] Candice Valerie Casanova appeals the three-year sentence imposed by the trial court following her guilty plea to level 5 felony carrying a handgun without a license. Casanova contends that her sentence is inappropriate in light of the nature of the offense and her character. Concluding that Casanova has not met her burden to demonstrate that her sentence is inappropriate, we affirm.

Facts and Procedural History

- [2] In November 2019, Casanova was on probation for a felony conviction, and there was an active arrest warrant out for her on a petition to revoke probation. Merrillville Police Department officers received a tip that Casanova was staying at a local motel, and they subsequently located her in a vehicle at the motel. When officers confronted her, she initially gave them a false name and date of birth. As she exited the vehicle, officers observed a bulge in her waistband that turned out to be a loaded handgun. Casanova could not produce a license to carry the handgun, and, upon inquiry, police dispatch confirmed that she did not have an active handgun carry permit. Accordingly, Casanova was arrested at the scene.
- [3] The State charged Casanova with level 4 felony unlawful possession of a firearm by a serious violent felon, level 5 felony carrying a handgun without a license, and level 6 felony synthetic identity deception. Pursuant to a plea agreement, she pled guilty to the single charge of level 5 felony carrying a handgun without a license in exchange for dismissal of the remaining charges.

Further, the agreement provided for a maximum sentence of three years. Following a hearing, the trial court imposed a three-year sentence to be served in the Indiana Department of Correction (DOC) and recommended that Casanova participate in the Purposeful Incarceration Program (PIP). This appeal ensued.

Discussion and Decision

[4] Casanova asks that we reduce her sentence pursuant to Indiana Appellate Rule 7(B), which states that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” “Sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). In conducting our review, our principal role is to leaven the outliers, focusing on the length of the sentence and how it is to be served. *Foutch v. State*, 53 N.E.3d 577, 580 (Ind. Ct. App. 2016). We do “not look to see whether the defendant’s sentence is appropriate or if another sentence might be *more* appropriate; rather, the test is whether the sentence is ‘inappropriate.’” *Id.* at 581 (quoting *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied* (2014)). “Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *McFall v. State*, 71 N.E.3d 383, 390 (Ind. Ct. App. 2017). The defendant bears the burden of persuading this Court that her

sentence meets the inappropriateness standard. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016).

[5] As for the nature of the offense, the advisory sentence is the starting point that the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Here, pursuant to a plea agreement, Casanova pled guilty to level 5 felony carrying a handgun without a license in exchange for dismissal of two additional felony charges. The sentencing range for a level 5 felony is between one and six years, with the advisory sentence being three years. Ind. Code § 35-50-2-6. Staying within the plea agreement sentencing cap, the trial court imposed the three-year advisory term.¹

[6] At the outset, “we are compelled to emphasize that ‘a defendant’s conscious choice to enter a plea agreement that limits the trial court’s discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of sentence reasonableness and appropriateness’ and appellate relief should be granted ‘only in the most rare, exceptional cases.’” *Merriweather v. State*, 151 N.E.3d 1281, 1286 n.2 (Ind. Ct. App. 2020) (quoting *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006) (Dickson, J., concurring)). While Casanova contends that the nature of her offense is “ordinary,” and no more “egregious than any other crime of carrying a

¹ Casanova repeatedly and disingenuously refers to the agreed-to maximum sentence of three years as the “maximum allowable” sentence for her crime. Reply Br. at 4. It is clear that the statutory maximum sentence for her crime is six years. See Ind. Code § 35-50-2-6.

handgun without a license,” Appellant’s Br. at 8-9, she has cited us to nothing in the record to persuade us that this is a rare and exceptional case in which we should disregard her plea agreement as strong and persuasive evidence of the appropriateness of the three-year sentence imposed.²

[7] Regardless, we need look no further than Casanova’s character to affirm the sentence imposed by the trial court. “The character of the offender is found in what we learn of the offender’s life and conduct.” *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). This assessment includes consideration of the defendant’s criminal history. *Johnson v. State*, 986 N.E.2d 852 (Ind. Ct. App. 2013). The record reveals that thirty-one-year-old Casanova has a lengthy and substantial criminal history including eighteen misdemeanor convictions and one felony battery conviction. Her first brush with the criminal justice system was at age fifteen, and as an adult, she has been arrested/charged at least thirty-eight times. It is evident that prior attempts at leniency have wholly failed, as Casanova has had her probation revoked on at least five occasions. As noted by the trial court, unfortunately “nothing that anyone has done to try to help ... has helped her.” *Id.* at 24. Indeed, Casanova was not eligible to participate in community corrections because, at the time of sentencing, she had multiple pending felony charges as well as active arrest warrants. Moreover, while in jail awaiting trial on her multiple pending charges, Casanova amassed numerous

² We do not necessarily agree with Casanova’s characterization of the nature of her offense, but we decline to address it further under the circumstances.

conduct violations including repeated incidents of fighting or threatening others with harm, refusal to obey staff, and sexual misconduct. Casanova clearly demonstrates a disdain for authority and the rule of law. She has failed to persuade us that anything about her character warrants a sentence reduction.

[8] In sum, Casanova has failed to meet her burden of demonstrating that her three-year sentence is inappropriate.³ Accordingly, we affirm.

[9] Affirmed.

Najam, J., and Riley, J., concur.

³ Casanova complains that, due to COVID-19, she has not yet had an opportunity to participate in PIP as recommended by the trial court. We note that her ability, or lack thereof, to participate in PIP has nothing to do with the appropriateness of the trial court's sentencing decision or our 7(B) appellate review of that decision. To be sure, while a trial court can make a recommendation for a defendant to participate in PIP, "[a]ctual participation in the program is left to the discretion of [the] DOC and trial courts have no authority to require [the] DOC to place a defendant into a program." *Sargent v. State*, 158 N.E.3d 783, 786 (Ind. Ct. App. 2020) (citations omitted). Moreover, there is nothing in the record to suggest that the DOC ever approved Casanova as a viable candidate for the therapeutic program, let alone that COVID-19 has prevented her from participation. In short, this is not an issue for this Court to address.