

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Toya Enair Duerson,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

April 25, 2023

Court of Appeals Case No.
22A-CR-2826

Appeal from the Vanderburgh
Circuit Court

The Honorable Wayne S.
Trockman, Judge

Trial Court Cause No.
82C01-2112-F3-6518

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

[1] Toya Enair Duerson (“Duerson”) appeals, following his guilty plea, his aggregate sentence for Level 4 felony dealing in a narcotic drug¹ that was enhanced by his habitual offender adjudication.² Duerson argues that his sentence is inappropriate. Concluding that Duerson has failed to show that his sentence is inappropriate, we affirm his sentence.

[2] We affirm.

Issue

Whether Duerson’s sentence is inappropriate.

Facts

[3] On May 25, 2021, Duerson delivered less than one gram of heroin to an individual while he was within 500 feet of a school property, Culver Family Learning Center in Vanderburgh County. When Duerson delivered the heroin, a person under the age of eighteen was reasonably expected to be present. Specifically, children were outside during recess when Duerson delivered the heroin.

[4] The State charged Duerson with two counts of Level 3 felony dealing in a narcotic drug and two counts of Level 4 felony dealing in a narcotic drug. The

¹ IND. CODE § 35-48-4-1.

² I.C. § 35-50-2-8.

State also alleged that Duerson was an habitual offender. On August 22, 2022, which was the first day of Duerson's jury trial, Duerson entered a guilty plea to one count of Level 4 felony dealing in a narcotic drug and admitted to the habitual offender allegation in exchange for the State's dismissal of the remaining three charges.

[5] At the time of Duerson's October 2022 sentencing hearing, thirty-six-year-old Duerson had pending charges for Level 2 felony dealing in a narcotic drug, Level 5 felony operating a vehicle after forfeiture of license for life, Level 6 felony neglect of a dependent, and Level 6 felony maintaining a common nuisance. In the presentence investigation report ("PSI"), Duerson indicated that he had been a daily marijuana user since age eighteen and that he had used methamphetamine and heroin, with his last use being one week prior to his most recent arrest. During the hearing, Duerson told the trial court that he needed treatment.

[6] When sentencing Duerson, the trial court found Duerson's guilty plea, five children, and past serious injury to be mitigating circumstances. The trial court found Duerson's criminal history to be an aggravating circumstance. The trial court set out the details of Duerson's criminal history and noted that it included the following: felony convictions in 2018 for possession of cocaine and possession of methamphetamine; misdemeanor convictions in 2018 for criminal mischief, possession of marijuana, and resisting law enforcement; a 2013 misdemeanor criminal mischief conviction; a 2012 felony conviction for operating as an habitual traffic violator; convictions in Kentucky in 2011 for

operating under the influence of drugs or alcohol and operating on a suspended revoked sentence; a 2010 misdemeanor disorderly conduct conviction; a 2009 conviction for operating without a license; a felony conviction in 2007 for possession of cocaine; a 2005 misdemeanor visiting a common nuisance conviction; and misdemeanor convictions for possession of marijuana in 2005 and 2004. The trial court also noted that Duerson had some juvenile history, but it stated that it would not give much weight to it or to Duerson's older or less serious offenses.

[7] The trial court imposed a seven (7) year sentence for Duerson's Level 4 felony dealing in a narcotic drug conviction and enhanced that sentence by seven (7) years for his habitual offender adjudication. The trial court also recommended that Duerson receive substance abuse treatment while incarcerated.

[8] Duerson now appeals.

Decision

[9] Duerson argues that his aggregate fourteen-year sentence is inappropriate. Duerson asks this Court to reduce his sentence for his Level 4 felony conviction by one year to six years, to keep his habitual offender enhancement at seven years, and to suspend four years of that aggregate thirteen-year sentence to probation.

[10] 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*.

- [11] 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. Duerson pled guilty and was convicted of Level 4 felony dealing in a narcotic drug and admitted to being an habitual offender. 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.” I.C. § 35-50-2-5.5. A person convicted of a Level 4 felony and found to be an habitual offender faces an additional fixed term that is between six (6) and twenty (20) years. I.C. § 35-50-2-8. Here, the trial court imposed a seven (7) year sentence for Duerson’s Level 4 felony conviction and enhanced that sentence by seven (7) years for his habitual offender adjudication. Thus, the trial court imposed an aggregate term of fourteen (14) years, which is substantially less than the maximum sentence that Duerson potentially faced.

[12] Turning first to the nature of Duerson's offense, we note that Duerson delivered heroin to an individual while he was within 500 feet of a school property and that children were outside during recess when Duerson delivered the heroin. In reviewing Duerson's character, we note that he has a criminal history that spans multiple decades and includes multiple drug-related offenses. As the trial court noted, Duerson has felony convictions for possession of cocaine and possession of methamphetamine and misdemeanor convictions for possession of marijuana. Additionally, Duerson indicated that he had been a daily marijuana user since age eighteen and that he had used methamphetamine and heroin, with his last use being one week prior to his most recent arrest.

[13] After a full review of the record on appeal, we conclude that Duerson has not persuaded us that his fourteen-year sentence for his Level 4 felony dealing in a narcotic drug conviction and his habitual offender adjudication is inappropriate. Therefore, we affirm the sentence imposed by the trial court.

[14] Affirmed.

Altice, C.J., and Riley, J., concur.