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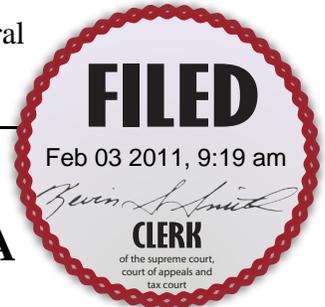
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**IN THE
COURT OF APPEALS OF INDIANA**

ANTHONIA R. McWHORTER,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 45A03-1006-CR-334

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0905-FB-00050

February 3, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Anthonia R. McWhorter (“McWhorter”) appeals from a twelve-year sentence imposed pursuant to a plea agreement for conviction of Dealing in Cocaine, as a Class B Felony.¹ He raises for our review the sole issue of whether his sentence is inappropriate under Indiana Appellate Rule 7(B). We affirm.

Facts and Procedural History

Pursuant to stipulated facts, on May 20, 2009, McWhorter arranged for the sale of crack cocaine worth \$200.00 and then sold it to a confidential informant (“CI”) assisting the Lake Station Police Department. The sale occurred at the TA Truck Stop at 1201 Ripley Street in Lake Station. When McWhorter attempted to leave the parking lot, police officers turned on their emergency lights. As officers approached his vehicle, McWhorter shifted the car into reverse and, attempting to flee the scene, backed into the front of a car driven by the Chief of the Lake Station Police Department.

On May 21, 2009, the State charged McWhorter with Dealing in Cocaine, as a Class B felony, and Resisting Law Enforcement, as a Class D felony.² On July 24, 2009, the State filed an Amended Information, alleging McWhorter to be a Habitual Substance Offender as a result of two prior felony convictions related to possession of a narcotic or cocaine.³

On April 30, 2010, the trial court accepted McWhorter’s plea agreement with the State, in which he agreed to plead guilty to Dealing in Cocaine, as a Class B felony, in

¹ Ind. Code § 35-48-4-1.

² I.C. § 35-44-3-3.

³ I.C. § 35-50-2-10.

exchange for which the State agreed to dismiss the charge for Resisting Law Enforcement and the Habitual Substance Offender allegation. The plea agreement provided for a limited sentencing range, capping the maximum sentence for McWhorter at twelve years.

On May 24, 2010, the trial court entered a judgment of conviction against McWhorter for Dealing in Cocaine and granted the State's motion to dismiss. The trial court also sentenced McWhorter to twelve years imprisonment.

This appeal followed.

Discussion and Decision

McWhorter argues that the twelve-year sentence imposed by the trial court—the maximum allowable under the plea agreement—is inappropriate in light of the nature of his offense and his character. See App. R. 7(B). In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a 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. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that “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). Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to “leaven the outliers.” Id. at 1225. “Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Id. at 1224.

The sentencing range for Dealing in Cocaine, as a Class B felony, is between six and twenty years imprisonment with an advisory sentence of ten years. I.C. § 35-50-2-5. Here, McWhorter entered into a plea agreement that capped his sentence at a maximum of twelve years, and was sentenced to the twelve-year maximum; he requests a downward revision.

McWhorter engaged in the sale of \$200.00 worth of crack cocaine after numerous calls between himself and the CI to arrange the sale. He and the CI agreed to conduct the sale at a TA Truck Stop where drug buys often occur, bringing with it the risks inherent in drug activity as well as prostitution and robberies. Though McWhorter insists in his brief that the use of the truck stop for the sale was the CI’s idea, not his own, McWhorter need not have engaged in the drug deal at all, and we therefore find his objection of no moment.

As to McWhorter’s character, we note that he has twice been convicted of drug-related offenses, once for possession of cocaine and once for possession of a narcotic drug, each as a Class C felony. He has also been found guilty of driving with a suspended license, and has been arrested for multiple additional drug and vehicular offenses. Though McWhorter acknowledges he has a drug abuse problem, has sought treatment since his arrest

in May 2009, and will continue to seek treatment while incarcerated, we observe with the trial court below that using drugs does not necessarily lead to the dealing conviction here. McWhorter has an uneven employment history, though he was approved for work release by the Lake County Sheriff's Department. McWhorter apologized for his offense, directing this to the Lake Station Police Department because he was not a resident of Lake County at the time of the offense, and to his family.

In light of the nature of McWhorter's offense, which involved activities that placed the police and public at risk, and his character as a repeat offender, we cannot agree with him that the trial court's sentence was inappropriate.

Affirmed.

NAJAM, J., and DARDEN, J., concur.