

Appellant-defendant Brandon Lyons appeals the sentence imposed by the trial court after Lyons pleaded guilty to Dealing in Cocaine,¹ a class B felony, arguing that the six-year sentence, with three years suspended to probation, is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm.

On January 29, 2008, the State charged Lyons with three counts of class B felony dealing in cocaine. On May 6, 2008, Lyons pleaded guilty to one count of class B felony dealing in cocaine in exchange for the State's agreement to dismiss the remaining two counts. The plea agreement capped the executed portion of Lyons's sentence at six years, with sentencing otherwise left to the trial court's discretion. Following a June 2, 2008, sentencing hearing, the trial court imposed a six-year sentence, with three years suspended to probation. Lyons now appeals.

Lyons argues that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Our Supreme Court has recently further articulated the role of appellate courts in reviewing a 7(B) challenge:

Ultimately the length of the aggregate sentence and how it is to be served are the issues that matter. . . . And 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

¹ Ind. Code § 35-48-4-1.

a given case. . . . There is thus no right answer as to the proper sentence in any given case. As a result, the role of an appellate court in reviewing a sentence is unlike its role in reviewing an appeal for legal error or sufficiency of evidence. . . .

The principal role of appellate 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. In the case of some crimes, the number of counts that can be charged and proved is virtually entirely at the discretion of the prosecution. For that reason, appellate review should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.

Cardwell v. State, --- N.E.2d ---, 2008 WL 4868299, *5 (Ind. Nov. 12, 2008) (footnotes omitted).

A person who commits a class B felony faces a sentence of six to twenty years, with an advisory sentence of ten years imprisonment. Ind. Code § 35-50-2-5. Here, the aggregate sentence imposed by the trial court was the minimum six-year term, with three years suspended to probation. Thus, Lyons’s executed three-year sentence is half of the minimum term for a class B felony.

As for the nature of Lyons’s offense, he sold less than two grams of cocaine to a confidential informant in a controlled buy. As put by the State, the offense “was ordinary in all respects.” Appellee’s Br. p. 4.

As for Lyon’s character, he has one prior misdemeanor conviction for carrying a handgun without a license. He has a ten-year employment record, had a child who was due to be born in September 2008, and was a full-time college student at the time he was arrested. Lyons was cooperative with law enforcement—though he reaped a substantial

benefit of having two other class B felony charges dismissed by pleading guilty—accepted responsibility for his actions, showed remorse by apologizing to his parents and the judicial system at the sentencing hearing, and requested treatment for his drug addiction. We certainly agree that this evidence establishes the mitigating nature of Lyons’s character, but we do not find that the trial court’s decision to suspend half—rather than all—of Lyons’s six-year sentence is inappropriate in light of the nature of the offense and his character.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.