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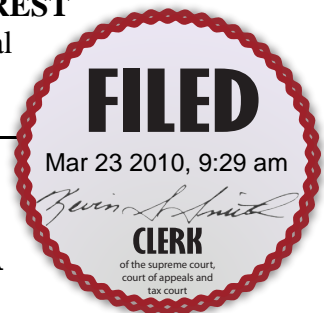
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**IN THE
COURT OF APPEALS OF INDIANA**

KENNETH HARRISON,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0907-CR-695

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael S. Jensen, Magistrate
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G20-0803-FB-62678

March 23, 2010

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Kenneth Harrison appeals the twenty-year sentence that was imposed following his convictions for Dealing in Cocaine,¹ a class B felony; Possession of Marijuana,² a class A misdemeanor; and Resisting Law Enforcement,³ a class A misdemeanor. Specifically, Harrison argues that his sentence is inappropriate in light of the nature of the offenses and his character pursuant to Indiana Appellate Rule 7(B). Finding that the sentence is not inappropriate, we decline to revise it.

FACTS

On March 18, 2008, Officer Ethan McGivern of the Indianapolis-Metropolitan Police Department participated in an undercover drug investigation in downtown Indianapolis. While wearing an audio transmitter/recorder, Officer McGivern approached a group of men and stated that he wanted to buy \$20 worth of crack cocaine. Harrison told Officer McGivern that he could help him purchase crack cocaine.

Officer McGivern gave Harrison \$20 in exchange for two plastic bags of crack cocaine. After the transaction was finished, Officer McGivern walked north on Delaware Street and informed his backup that the deal was done and provided a description of the dealer.

¹ Ind. Code § 35-48-4-1.

² I.C. § 35-48-4-11.

³ Ind. Code § 35-44-3-3.

As two officers in an unmarked vehicle pulled up beside Harrison, he started to run, and the officers ordered him to stop. Eventually, an officer caught up with Harrison, and he surrendered. Police found marijuana and the marked bills Officer McGivern had used to purchase the crack cocaine.

On May 21, 2008, the State filed its amended information⁴ charging Harrison with two counts of dealing in cocaine, one as a class A felony and one as a class B felony; two counts of possession of cocaine, one as a class B felony and one as a class D felony; possession of marijuana, a class A misdemeanor; and resisting law enforcement, a class A misdemeanor. It appears that before trial, the State dismissed two counts: class B felony dealing in cocaine and class D felony possession of cocaine.

Harrison's jury trial commenced on June 8, 2008, and he was found guilty as charged. On June 24, 2008, Harrison was sentenced to forty-five years for class A felony dealing in cocaine and to concurrent one-year terms on each of the remaining counts, for a total executed sentence of forty-five years.

On February 26, 2009, this court reversed Harrison's conviction for dealing in cocaine as a class A felony and remanded with instructions to enter a judgment of conviction for class B felony dealing in cocaine and to resentence accordingly. Harrison v. State, 901 N.E.2d

⁴ The State's original information was filed on March 19, 2008.

635, 645 (Ind. Ct. App. 2009). Additionally, this court vacated Harrison's conviction for possession of cocaine based on double jeopardy principles. Id.

On June 30, 2009, Harrison was sentenced for class B felony dealing in cocaine. The trial court observed that Harrison appeared to be a changed person and concluded that this was a mitigating circumstance. In aggravation, the trial court noted Harrison's "long and lengthy history of criminal delinquent behavior." Tr. p. 16-17. After concluding that "the aggravating greatly outweigh the mitigating factors," the trial court sentenced Harrison to the maximum term of twenty years imprisonment for a class B felony. Id. at 18. Harrison's concurrent one-year terms for possession of marijuana and resisting law enforcement remained unaffected, resulting in a total executed sentence of twenty years. Harrison now appeals.

DISCUSSION AND DECISION

Harrison's sole argument on appeal is that his twenty-year sentence is inappropriate in light of the nature of the offenses and his character pursuant to Indiana Appellate Rule 7(B). Although sentencing decisions are within the trial court's discretion, this court has the constitutional authority to revise an otherwise proper sentence where, after due consideration of the trial court's sentencing determination, we find that the sentence imposed is inappropriate in light of the nature of the offense and the defendant's character. Mishler v. State, 894 N.E.2d 1095, 1103-04 (Ind. Ct. App. 2008) (citing App. R. 7(B)). The defendant carries the burden to convince this court that the sentence imposed is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Indiana Code section 35-50-2-5 states that “[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.” As noted above, Harrison was sentenced to twenty years for class B felony dealing in cocaine, which is the maximum term.

As for the nature of the offense, Harrison sold crack cocaine to an undercover police officer and ran away when he was confronted by police. This created a potentially dangerous situation for both the police officers and civilians when the officers were forced to pursue Harrison.

As for Harrison’s character, he has a significant criminal history. Since 1998, Harrison has amassed eight felony convictions; seven convictions were for theft and the remaining conviction was for possession of paraphernalia. Likewise, since 1991, Harrison has been convicted of nine misdemeanor offenses, including conversion, battery, possession of marijuana, driving while intoxicated, carrying a handgun without a license, resisting law enforcement, and possession of paraphernalia. Additionally, Harrison has had his probation revoked six times and has had multiple conduct violations while incarcerated in the Department of Correction.

Moreover, Harrison has a history of substance abuse. At the time of Harrison’s sentencing hearing, he was thirty-seven years old and had used cocaine since he was twenty-six. And although several of Harrison’s convictions were for drug-related offenses, he had never sought treatment for his substance abuse. Finally, while we commend Harrison for taking his rehabilitation seriously by expressing remorse for his actions and showing a

willingness to change his behavior, his criminal history indicates that his multiple encounters with the courts have failed to deter him from reoffending. Consequently, we cannot say that Harrison's twenty-year sentence is inappropriate, and we affirm the judgment of the trial court.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.