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IN THE COURT OF APPEALS OF INDIANA

WESLEY J. MARTIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A05-0910-CR-601
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0903-FA-8

April 21, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After being charged with five drug-related offenses, three of which were Class A felonies, and with being a habitual substance offender, Wesley J. Martin pled guilty to Class B felony possession of a narcotic drug and being a habitual substance offender. The plea agreement provided for an executed sentence of between fourteen and seventeen years, and the trial court sentenced Martin to an executed sentence of sixteen years plus two years of probation. Martin now contends that his sentence is inappropriate and asks us to reduce the executed portion of his sentence to fourteen years. Concluding that Martin has failed to persuade us that his sentence is inappropriate, we affirm.

Facts and Procedural History

In March 2009 the State charged Martin with Class A felony conspiracy to deal in a narcotic drug, two counts of Class A felony dealing in a narcotic drug, Class B felony possession of a narcotic drug, and Class B felony dealing in a narcotic drug. The State later added a habitual substance offender allegation. In July 2009 Martin and the State entered into a plea agreement in which Martin agreed to plead guilty to Class B felony possession of a narcotic drug and being a habitual substance offender, and the State agreed to dismiss the remaining counts. The plea agreement provided that Martin "shall receive such sentence as [the court] deems appropriate after hearing any evidence or argument of counsel. [However, the] executed portion of his sentence shall be no less than fourteen (14) years but no more than seventeen (17) years executed in the Department of Correction[]." Appellant's App. p. 25.

At the guilty plea hearing, the following factual basis was laid. On March 9, 2009, Martin knowingly and intentionally possessed heroin within 1000 feet of a church school and family housing complex. In addition, Martin has accumulated two prior unrelated substance offenses: misdemeanor possession of marijuana in 2003 and felony possession of cocaine and marijuana in 2005.

At the sentencing hearing, defense counsel conceded that Martin, a "serious" heroin addict, has a "pretty extensive record." Tr. p. 22, 23, 24. Specifically, Martin has juvenile adjudications for truancy, theft, conspiracy to commit theft, and minor consumption of alcohol. The rehabilitative efforts by the juvenile system include warnings and releases, informal adjustment, treatment programs, counseling, probation, and Boys School. Martin then violated his juvenile probation by testing positive for marijuana. As an adult, Martin has the following convictions: Class B felony burglary, Class A misdemeanor possession of marijuana, Class D felony possession of cocaine, Class D felony possession of marijuana, and Class B misdemeanor public intoxication. Martin also had his adult probation revoked once and had two petitions to revoke his probation pending at the time of the sentencing hearing in this case. However, defense counsel argued that "[e]verything [Martin's] done is centered around substance abuse." *Id.* at 22. Defense counsel also noted Martin's strong support system. The trial court stated:

> The Court finds as a mitigating circumstance that the defendant has taken responsibility for his actions by entering a plea of guilty. A second mitigating circumstance is the fact that the defendant has a minor child. A third mitigating circumstance is the defendant's history of mental health issues and a fourth mitigating circumstance is the letters received by the Court and the family support shown by the large number of people here

> today. An aggravating circumstance is your criminal history Mr. Martin. It's really significant. You've had two juvenile adjudications, one motion for modif[ication] as a juvenile was granted and there were a couple of other juvenile contacts. You've already got two felony convictions and one misdemeanor conviction as an adult. One petition to revoke probation has been found true, two other petitions to revoke are pending and two other cases against you have been dismissed. At age twenty-two Mr. Martin it's hard to imagine a much worse criminal history th[a]n that. A second aggravating circumstance is your history of illegal alcohol and drug use. A third aggravating circumstance is that prior attempts at rehabilitation have not been successful. The Court notes that you were on probation on two other charges, two other convictions at the time of this crime and that this is a minimum non suspend[i]ble case. The Court sentences the defendant on [possession of a narcotic drug] to thirteen years and on [being a habitual substance offender] to five years to run consecutively for a total of eighteen years.

Id. at 30-31. The court ordered sixteen of the eighteen years to be executed in the Department of Correction with two years suspended to probation.[1] Martin now appeals his sentence.

Discussion and Decision

Martin contends that this Court "should lower [his] sixteen (16) year executed sentence [to fourteen years] in light of the nature of the offense and [his] character." Appellant's Br. p. 7. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences 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." *Reid*

[1] Originally, the trial court ordered fourteen years to be executed in the DOC and two years in community corrections with the caveat that if community corrections rejected Martin, those two years would have to be served in the DOC. Because community corrections rejected Martin, he was required to serve sixteen years in the DOC.

v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The defendant has the burden of persuading us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Martin pled guilty to a Class B felony and being a habitual substance offender. The plea agreement established that Martin's executed sentence had to be at least fourteen but no more than seventeen years. "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." Ind. Code § 35-50-2-5. In addition, "[t]he court shall sentence a person found to be a habitual substance offender to an additional fixed term of at least three (3) years but not more than eight (8) years imprisonment . . . ." Ind. Code § 35-50-2-10(f). The trial court sentenced Martin to thirteen years for the Class B felony and five years for being a habitual substance offender, for a total of eighteen years. The court then ordered sixteen years to be executed and two years to be served on probation.

As for the nature of the offense, the factual basis established that Martin possessed heroin within 1000 feet of a school and family housing complex.

As for the character of the offender, Martin, who was a mere twenty-two years old at the time of sentencing, is a serious heroin addict with an extensive juvenile and adult record. To no surprise, many of his prior convictions are drug related. In addition, his probation has been revoked once, and at the time of his sentencing in this case, two probation revocations were pending. Martin has also been arrested several times,

although these arrests did not result in convictions. Martin also underwent several rounds of substance abuse treatment, but he has nevertheless returned to a life of drugs. Although Martin pled guilty in the instant matter, he received the substantial benefit of several Class A felony drug charges being dismissed. After a review of the above, it is apparent that (1) he will continue to commit crimes unless incarcerated and (2) all prior attempts at rehabilitation have failed.

Continuing with Martin's character, according to Martin he has been diagnosed with manic depression and bipolar disorder and is currently taking medications for these disorders. Consequently, the trial court found his history of mental health issues mitigating. Although Martin has a strong family support system, which showed up at his sentencing hearing, we point out that this same support system has been present in his life during his commission of the above litany of crimes and therefore has had little, if any, effect on him. It is true that Martin has a young daughter whom he sees frequently and for whom he pays support, but she is in the custody of her mother. Martin, who failed to keep his daughter's needs at heart when he persisted in abusing drugs, now asks us to reduce the executed portion of his sentence from sixteen to fourteen years. However, he fails to convince us how these extra two years creates an additional hardship on his daughter. Given the character of this offender, we conclude that Martin has failed to convince us that his sentence is inappropriate. We therefore affirm the trial court.

Affirmed.

NAJAM, J., and BROWN, J., concur.