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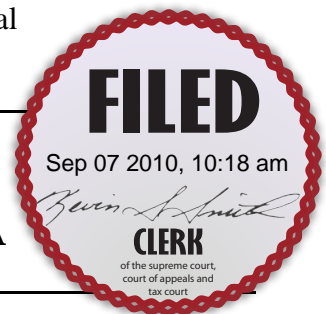
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**IN THE
COURT OF APPEALS OF INDIANA**



DEWAN D. BURNETT,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 45A03-1002-CR-61

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0906-FA-19

September 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Dewan Burnett pleaded guilty to Dealing in Cocaine¹ as a class B felony and was thereafter sentenced to ten years imprisonment. On appeal, Burnett challenges the appropriateness of his sentence.

We affirm.

On May 29, 2009, Burnett went to a restaurant in Gary, Indiana and delivered \$200 worth of cocaine to a confidential informant. Burnett was immediately arrested and additional cocaine was found in his possession.

On June 1, 2009, the State charged Burnett with dealing in cocaine as a class A felony, dealing in cocaine as a class B felony, possession of cocaine as a class C felony, and possession of marijuana as a class A misdemeanor. On December 1, 2009, Burnett entered into a plea agreement, the terms of which called for him to plead guilty to dealing in cocaine as a class B felony and the State would dismiss the remaining charges. The plea agreement left sentencing to the discretion of the trial court but set a cap of ten years imprisonment. On January 5, 2010, the trial court sentenced Burnett to ten years imprisonment.

Burnett argues that his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Ind. Appellate Rule 7(B); *Anglemeyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g* by 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be “extremely” deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867,

¹ Ind. Code Ann. § 35-42-4-2 (West, Westlaw through 2010 2nd Regular Sess.).

873 (Ind. Ct. App. 2007). Moreover, we observe that Burnett bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

We begin by noting that although Burnett received the maximum sentence under the terms of his plea agreement, the ten-year sentence imposed is the advisory sentence for a class B felony.² With regard to the nature of the offense, Burnett notes that “[t]he drug offense here was a routine, mundane (albeit illegal) transfer of a small amount of cocaine, and the nature of that offense would not seem to warrant either an upward or downward departure from the advisory term.” *Appellant’s Appendix* at 3. We agree. We would also note that in addition to the two-hundred-dollars worth of cocaine Burnett sold to the confidential informant, Burnett was found in possession of an additional thirty-three bags of cocaine after his arrest.

In arguing that his sentence is inappropriate, Burnett focuses on his character as justification for a downward revision of his sentence. Burnett acknowledges his criminal history – that he has accumulated one felony and one misdemeanor conviction for drug offenses, plus multiple pending or dismissed charges. The record also reveals that Burnett has nine active bench warrants for offenses such as dealing in marijuana, possession of marijuana, possession of paraphernalia, battery, intimidation, carrying a handgun without a license, resisting law enforcement, and visiting a common nuisance.

Aside from his criminal history, Burnett maintains that his sentence is inappropriate given what the trial court acknowledged to be a “hard upbringing.” *Transcript* at 63. Indeed,

² Ind. Code Ann. § 35-50-2-5 (West, Westlaw through 2010 2nd Regular Sess.) (“[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”).

the trial court indicated that he factored that upbringing into his sentencing decision noting to Burnett that “maybe the things that you have seen during your life are causing you to act in the way that you do.” *Id.* The court continued, however, explaining that Burnett takes “shortcuts,” commits crimes, and then expects breaks. *Id.* In light of Burnett’s criminal history, the court concluded that he had run out of breaks a long time ago. Burnett’s previous incarceration and numerous contacts with the judicial system have not deterred his criminal behavior. In light of his criminal history and his continued anti-social behavior, we cannot say that Burnett’s character is deserving of sentence less than the advisory.

Having considered the nature of the offense and the character of the offender, we conclude that the ten-year sentence imposed by the trial court is not inappropriate.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.