

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

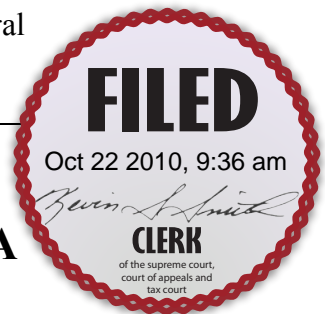
KRISTIN MULHOLLAND
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KELLY A. MIKLOS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



JEREMY NEAL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 45A03-1003-CR-167

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0907-FB-0069

October 22, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jeremy Neal (“Neal”) pleaded guilty to Class B felony dealing in cocaine and was ordered to serve seven years executed in the Department of Correction. Neal appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On July 23, 2009, Neal was charged with three counts of Class B felony dealing in cocaine and four counts of Class A misdemeanor dealing in marijuana. Neal agreed to plead guilty to one count of Class B felony dealing in cocaine in exchange for dismissal of the remaining charges. The open plea agreement imposed only the following condition on Neal’s sentence: “the sentence imposed . . . shall be **executed in its entirety** in the Department of Correction with **no option** for a suspended term of probation[.]” Appellant’s App. p. 26 (emphasis in original).

The trial court accepted Neal’s guilty plea on January 28, 2010, and the sentencing hearing was held on February 26, 2010. The trial court ordered Neal to serve seven years executed in the Department of Correction. Neal now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Neal argues that his seven-year sentence is inappropriate in light of the nature of the offense and the character of the offender. 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 a sentence imposed by the trial court. Alvies v. State, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing

Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007)). This appellate authority is implemented 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.” Anglemyer, 868 N.E.2d at 491.

However, “we must and should exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires us to give ‘due consideration’ to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions.” 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. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007).

Neal committed Class B felony dealing in cocaine, for which the sentence range is six to twenty years, with an advisory sentence of ten years. Ind. Code § 35-50-2-5 (2004 & Supp. 2009). The trial court sentenced Neal to seven years, just one year more than the minimum six-year sentence.

Concerning the nature of the offense, Neal sold cocaine weighing less than .2 gram to a confidential informant. We do not disagree with Neal’s characterization of the crime as “not particularly egregious.”

Concerning the character of the offender, Neal accepted responsibility for his actions by pleading guilty and apologizing to the court for his actions. However, he also received a significant benefit from his guilty plea as two Class B felony dealing in

cocaine charges and four Class A misdemeanor dealing in marijuana charges were dismissed.

In addition, the following facts are indicative of Neal's poor character. Neal has not established paternity to his seven biological children, and does not pay child support. Neal has a juvenile adjudication for criminal trespass, and he violated his probation for that offense. As a twenty-four-year old adult, Neal has three misdemeanor convictions for theft, possession of marijuana, and false informing. Neal also entered into deferred prosecution agreements for the following charges: criminal trespass, invasion of privacy, and battery. There is an outstanding arrest warrant for Neal in Georgia because he violated his probation on the Georgia theft conviction. Neal was also released on his own recognizance on a false informing charge when he committed the instant offense. Finally, Neal was a member of the Vice Lords gang until he was seventeen-years-old.

Neal's seven-year sentence is only one year more than the minimum sentence for Class B felony dealing in cocaine. Under the facts and circumstances before us, this sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.