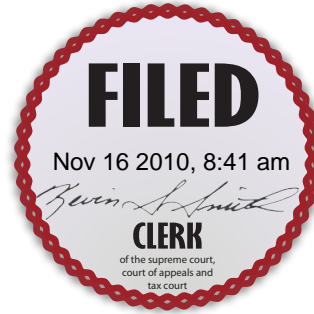


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHRISTINA SMITH,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 15A01-1003-CR-153

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Sally A. Blankenship, Judge
Cause No. 15D02-0906-FB-7

November 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Christina Smith appeals her sentence following her guilty plea to reckless homicide as a Class C felony. For our review, Smith raises the sole issue of whether her four-year executed sentence is inappropriate in light of the nature of the offense and her character. Concluding Smith's sentence is inappropriate, we revise and remand to the trial court to impose a sentence of four years with two years suspended.

Facts and Procedural History

On the morning of March 24, 2009, Rhonda Clift was reported dead at an apartment in Dearborn County, Indiana. Clift was living with Smith and her husband at that apartment and was their family friend. The Smiths' son found Clift on the floor and called for his father, who dialed 911. An officer of the Dearborn County Sheriff's Department arrived at the residence and found Clift lying on the kitchen floor. Smith's husband reported to the officer that he had seen Clift walking around the apartment shortly before she was found on the floor.

Renda Clift, Clift's daughter, lives in another apartment in the same apartment complex. Smith reported to police that Clift had been staying with both her and Renda to help Renda through her pregnancy. Clift had been back and forth between the two apartments the night before she was found dead. Smith reported she had last seen Clift between ten and eleven o'clock that night. Renda reported she had last seen her mother at her apartment at 1:30 a.m. She reported her mother had a prescription drug problem in the past, but had been attending a methadone clinic and had been doing better.

Smith's husband reported that when he went to take his morning medication, he found it was missing. He reported he had just gone to Fort Wayne the previous day with

Clift and Smith to get his prescriptions. He informed officers Smith keeps his medicine in her purse and he is prescribed Hydrocodone, Methadone, and Norvast.

Smith provided officers with medication bottles for Alprazolam, Hydrocodone, and Methadone that had been prescribed on March 23, 2009. The Alprazolam prescription was for sixty pills and there were only two pills left. The Methadone prescription was for 200 pills and there were 142 left. Smith reported the medication was ordinarily in her purse and next to her at all times even when she slept. She informed officers she had given Clift two Xanax and no other medication. She also reported she did not know where the rest of the medication went.

At the emergency room, a cellophane wrap of pills was found inside Clift's bra and the pills matched the type of medications prescribed to Smith's husband. An autopsy was performed on March 25, 2009, and the toxicology report showed positive results for Benzodiazepines, Noradiazepam, Alprazolam, Cannabinoids, THC, Methadone, Opiates, and Hydrocodone. Appendix of Appellant at 58, 91. The cause of death was reported to be a mixed drugs overdose. *Id.* at 58. Most of the drugs found in Clift's body were consistent with those prescribed to Smith's husband and kept in Smith's possession.

The State charged Smith with Class B felony dealing in a schedule IV controlled substance within 1000 feet of a family housing complex and Class C felony reckless homicide. Smith pleaded guilty to reckless homicide pursuant to a plea agreement and the State dismissed the other count. The trial court sentenced Smith to four years with no time suspended. Smith now appeals her sentence.

Discussion and Decision

I. Standard of Review

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. This court has authority to revise a sentence “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.” Ind. Appellate Rule 7(B). In determining whether a sentence is inappropriate, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) (“[I]nappropriateness review should not be limited . . . to a simple rundown of the aggravating and mitigating circumstances found by the trial court.”). The burden is on the defendant to demonstrate that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). “[W]hether 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 a given case.” Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008).

II. Appropriateness of Smith’s Sentence

Smith pled guilty to Class C felony reckless homicide and received a sentence of four years with no time suspended. The advisory sentence for a Class C felony is four years to which four years may be added and from which two years may be subtracted. Ind. Code § 35-50-2-6.

With regard to the character of the offender, we highlight Smith's complete lack of criminal history prior to this incident. Smith was forty years old at the time of her sentencing. A defendant's age is highly relevant in determining the weight to be given to a defendant's criminal history or lack thereof. Rutherford v. State, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Smith also took responsibility for the incident by pleading guilty. "A guilty plea demonstrates a defendant's acceptance of responsibility for the crime and at least partially confirms the mitigating evidence regarding his character." Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). Clift's adult children testified that Smith was a longtime friend of the family and they believed she was remorseful. They also thought Smith was not solely responsible for Clift's death and was unlikely to commit further crimes. They both testified they believed she should receive as low a sentence as possible, perhaps even time already served. Families may properly assist a court in "determining what sentence to impose for a crime." Edgecomb v. State, 673 N.E.2d 1185, 1199 (Ind. 1996) (quoting Ind. Code § 35-38-1-7.1(a)). Smith also testified regarding her remorse for what happened and that she knew of Clift's struggle with drug addiction but did not know how to help her.

Next, we note, as Smith does, she has been steadily employed since 2004. Although this reflects favorably on her character, many persons in our society are gainfully employed. Likewise, Smith, like many other defendants, has two minor children. We do note, however, that Smith's husband is also incarcerated for an unrelated crime, leaving the children in the care of an aunt for the duration of Smith's incarceration.

Turning to the nature of the offense, Smith contends this is an event unlikely to recur. She argues she did not seek out a victim and did not act out of anger or malice. Conversely, the State asserts that while Smith claimed she only gave two Xanax pills to Clift, she could not account for the large quantity of missing pills, even though she was in control of the medication at all times. However, the record does not show how many pills were taken by Clift, how many pills were taken by Smith's husband, and how many pills were in Clift's bra at the hospital. Clift also had THC, cannabis, and opiates in her system which were not in Smith's possession. Smith tried to be responsible for the medications which were not prescribed to her by trying to keep them with her at all times.

Although Smith was reckless in giving Clift two Xanax pills, Smith took responsibility for her actions and based on her complete lack of criminal history, this act was outside of her character. We also find that the nature of the offense, although tragic, was not egregious, especially given the victim's family's feelings that Smith should receive a lesser sentence. Considering the combined effect of Smith's character and her offense, we hold that Smith's advisory sentence of four years executed is inappropriate. In recognition of Smith's character in particular, we revise the sentence to four years with two years suspended.

Conclusion

Smith's four-year executed sentence is inappropriate in light of the nature of her offense and her character. Her sentence is revised to four years with two years suspended and we remand this case to the trial court to amend its sentencing order and the abstract

of judgment in accordance with this opinion.

Revised and remanded.

MAY, J., and VAIDIK, J., concur.