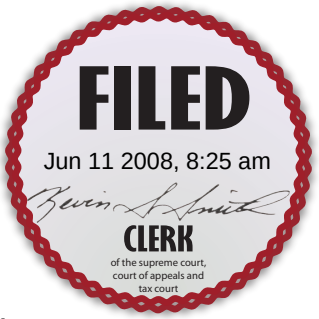

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IN THE
COURT OF APPEALS OF INDIANA

VICTOR HOPKINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0712-CR-1018
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick Murphy, Commissioner
Cause No. 49G23-0703-FA-053138

June 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Following Victor Hopkins's plea of guilty to Class A felony dealing in cocaine, the trial court sentenced him to twenty years, with only two years executed and two years of probation. On appeal, he argues that his executed sentence is inappropriate in light of the nature of the offense and his character. Finding the sentence appropriate, we affirm.

Facts and Procedural History

On January 22, 2007, Hopkins sold cocaine to a confidential police informant. The residence where the transaction took place, which was "fortified and . . . outfitted with a surveillance camera and a steel door," was located within 1000 feet of Washington City Park in Indianapolis, Indiana. Tr. p. 11.

The State charged Hopkins with one count of Class A felony dealing in cocaine[1] and one count of Class A felony possession of cocaine.[2] Hopkins pled guilty to the first count, and the State agreed to forego prosecution on the second Class A felony charge. Appellant's App. p. 39.[3] The plea agreement also provided that Hopkins's sentence would be twenty years, but it capped the executed portion of his sentence at three years and provided that Hopkins would serve two years on probation. *Id.*

After a sentencing hearing, the trial court sentenced Hopkins in accordance with the terms of his plea agreement. Specifically, the trial court sentenced him to twenty

[1] Ind. Code § 35-48-4-1(b)(3)(B)(ii).

[2] Ind. Code § 35-48-4-6(b)(3)(B)(ii).

[3] The State correctly points out that the plea agreement purports to forego prosecution of possession of cocaine as a *Class C* felony. However, Hopkins was charged with two *Class A* felonies. The discrepancy between the charging information and the plea agreement is of no moment because the State dismissed the possession charge and neither party argues error in this regard.

years, with only two years executed and two years served on probation. Tr. p. 23. Of those two years executed, the trial court ordered that Hopkins serve only 530 days in the Department of Correction and the remainder of that time on home detention. Appellant's App. p. 15. In fashioning this sentence, the trial court observed:

> [T]here have been no real mitigating factors established nor any real aggravating factors. This is a serious offense however. It's an A felony. I think that to merely place a person or to place Mr. Hopkins specifically on probation for the commission of an A felony would be to undermine the seriousness of this offense. That being said, I also recognize he does not have any prior convictions but there's no other place to go. You can't go up much further than an A felony.

Tr. p. 22. Hopkins now belatedly appeals, challenging the appropriateness of his two-year executed sentence.

Discussion and Decision

Hopkins's sole argument on appeal is that his two-year executed sentence is inappropriate. The Indiana Constitution authorizes us to conduct independent appellate review and sentence revision, pursuant to the paradigm set forth by Indiana Appellate Rule 7(B). *Anglemyer v. State,* 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Indiana Appellate Rule 7(B) provides: "The 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." The burden rests with the defendant to persuade us that his or her sentence is inappropriate. *Childress v. State,* 848 N.E.2d 1073, 1080 (Ind. 2006).

Hopkins first contends that his two-year executed sentence is inappropriate in light of his offense. When evaluating the appropriateness of a sentence in light of the nature of

the offense, we bear in mind that "the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Anglemyer*, 868 N.E.2d at 494 (citing *Childress*, 848 N.E.2d at 1081). Hopkins was convicted of a Class A felony, the advisory sentence for which is thirty years. Ind. Code § 35-50-2-4. Pursuant to the terms of his plea agreement, Hopkins received the minimum possible sentence for a Class A felony, twenty years. *Id.* Of these twenty years, the trial court suspended eighteen years, leaving Hopkins with a two-year executed sentence, and, of these two years executed, Hopkins is only required to serve 530 days in the Department of Correction. Hopkins emphasizes that he sold only a small amount of cocaine to the confidential informant and that "[t]he offense was elevated to an A felony because [the location of the sale] happened to be located near a public park." Appellant's Br. p. 3. This rationale completely ignores the fact that our Legislature has determined that drug dealing activities that occur in the vicinity of public parks are serious offenses. Further, Hopkins's argument that the facts surrounding his offense "were not heinous or outrageous" is unavailing. *Id.* No one contends that the circumstances of his offense are heinous; in fact, Hopkins's plea agreement, which the trial court accepted, required the trial court to impose the minimum statutory sentence for a Class A felony and to order Hopkins to serve no more than three years of a possible twenty-year sentence. Hopkins's two-year executed sentence is not inappropriate in light of the nature of his offense.

Hopkins next argues that his sentence is inappropriate in light of his character. In support of his claim, he points to his employment history, educational endeavors, family ties, and lack of criminal history. Despite Hopkins's claim in his appellate brief that at

the date of sentencing he "had strong family ties, a work history and was attending school," the evidence of such in the record is scant. Appellant's Br. p. 3. As for Hopkins's employment history, he notified the trial court at sentencing that he was "no longer employed" because he had started school. Tr. p. 13. The only evidence in the record of an employment history is found in the Presentence Investigation Report (PSI),[4] which indicates that he commenced employment as a general laborer for a specified company in August 2007[5] and previously worked part-time for a security company beginning in November 2006, when he was twenty years old. There is no evidence of prior employment. To the extent that Hopkins may have had other previous employment, he failed to present any evidence of such to the trial court. Similarly, Hopkins informed the trial court that he was attending night school to obtain his General Educational Development diploma and a separate program at the Professional Careers Academy to learn a trade. He did not, however, provide the trial court with documentation of his participation in these programs. *Id.* at 16. Regarding his alleged "strong family ties," Hopkins did not testify to these at all at his sentencing hearing. The only information to which he testified regarding his family was that he resided for several months before the sentencing hearing with his mother, stepfather, and sister and that his sister was in attendance at his sentencing hearing. *Id.* at 20. Although he reported to the preparer of his PSI that his family is "close-knit" and "supportive," he presented no evidence in support of the claim that he now advances. We observe that it was actually inside of a

[4] Hopkins informed the sentencing court that the PSI was accurate but for its reference to his employment status. The PSI indicated that Hopkins was employed.

[5] The sentencing hearing in this case was held on August 28, 2007, at which point Hopkins reported being unemployed.

family member's home that Hopkins sold cocaine to the confidential informant. *Id.* at 21-22. Finally, we also note that, although the instant offense constitutes Hopkins's first criminal conviction, the record reflects that he has been arrested for offenses unrelated to this offense.[6] Appellant's Br. p. 3. "Although an arrest record is not evidence of prior criminal history, '[t]his information is relevant to the court's assessment of the defendant's character and the risk that he will commit another crime and is therefore properly considered by a court in determining sentence.'" *Miller v. State*, 709 N.E.2d 48, 49 (Ind. Ct. App. 1999) (quoting *Tunstill v. State*, 568 N.E.2d 539, 545 (Ind. 1991)). All of these considerations lead us to conclude that Hopkins's character does not render his two-year executed sentence inappropriate.

Having found nothing inappropriate about Hopkins's two-year executed sentence for Class A felony dealing in cocaine, we affirm.

MAY, J., and MATHIAS, J., concur.

[6] In fact, it appears from the transcript of the sentencing hearing that the State dismissed an unrelated pending Resisting Law Enforcement charge upon Hopkins's guilty plea in this case. Tr. p. 4-5.