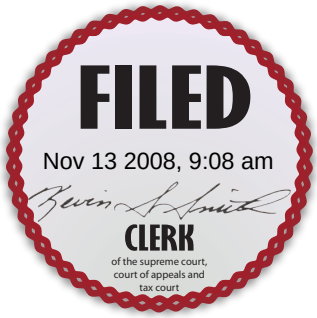

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IN THE
COURT OF APPEALS OF INDIANA

MARY E. OOTEN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0805-CR-295
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Stanley Kroh, Commissioner
Cause No. 49F15-0709-FD-197474
49F15-0707-FD-141672

NOVEMBER 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Mary Ooten appeals her sentence for her convictions of two counts of prostitution, as Class D felonies, Ind. Code § 35-45-4-2, and public indecency, a Class A misdemeanor, Ind. Code § 35-45-4-1.

We affirm.

ISSUE

Ooten presents one issue for our review, which we restate as: whether her sentence was inappropriate.

FACTS AND PROCEDURAL HISTORY

On July 17, 2007, Ooten was picked up in Indianapolis by an undercover police officer and agreed to perform a sexual act with him in exchange for money. Ooten also fondled the officer's genitals and revealed her bare breast. Ooten was picked up again in Indianapolis on September 21, 2007, by another undercover police officer and agreed to perform a sex act with him in exchange for money.

Based upon these two incidents, Ooten was charged with two counts of prostitution, both as Class D felonies, and one count of public indecency, as a Class A misdemeanor. On April 14, 2008, Ooten pleaded guilty to all charges without a plea agreement. The trial court sentenced Ooten to two years with one year suspended to probation. This appeal ensued.

DISCUSSION AND DECISION

As her sole issue on appeal, Ooten contends that her sentence is inappropriate in light of the nature of the offenses and her character. Specifically, Ooten argues that the sentencing court erred because her sentence does not properly take into account the victimless nature of her offenses as well as her bi-polar condition.

We have the authority to revise a sentence if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the appellate court that his or her sentence has met the inappropriateness standard of review. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). The offenses we are concerned with here are Ooten's conviction of two counts of prostitution, both as Class D felonies. The advisory sentence for a Class D felony is one and one-half (1 ½) years. Ind. Code § 35-50-2-7. Ooten received a sentence of one year on each of the two Class D felony convictions, which is below the advisory sentence for an offense of that class. Further, the trial court suspended one year to probation.

In addition, Ooten's behavior is an offense against the community. Two women from the community testified as to their participation in a community group that focuses on cleaning up the east side of the city of Indianapolis. They indicated they have "been

dealing with Ms. Ooten for a long time" and that what Ooten "does is not acceptable in the neighborhood." Tr. 29 and 31. One of the women testified that "[a]s soon as [Ooten] gets a chance, she's right back on the street . . ." Tr. 32. In considering the testimony of these women, the court acknowledged that women who engage in prostitution are victims, but it made clear that prostitution is a crime and its effect on the community must be considered. Thus, although Ooten claims her sentence is inappropriate due to what she terms "the victimless nature of her offense," we conclude, as did the trial court, that not only is Ooten a victim of her own crime but her community is a victim as well.

As to Ooten's character, we note that the trial court considered Ooten's open plea a mitigating circumstance because "it signifie[d] her decision to take responsibility for her actions." Tr. 50-51. On the other hand, the trial court found Ooten's criminal history to be an aggravating circumstance. Ooten's criminal history includes a felony theft conviction many years ago, and prostitution convictions in February 2004, April 2004, and May 2007. In the present case, just two months after her most recent conviction for prostitution, Ooten was arrested for prostitution in July 2007 and again in September 2007.

Ooten claims that in gauging her character, the court did not give appropriate consideration to her mental illness. There are several considerations that bear on the weight, if any, that should be given to mental illness in sentencing. These factors include: (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and

the commission of the crime. *Biehl v. State*, 738 N.E.2d 337, 340 (Ind. Ct. App. 2000), *trans. denied*, 753 N.E.2d 3 (2001). In the instant case, the trial court was presented with no evidence regarding these factors. The evidence in the record regarding Ooten's mental illness consists of defense counsel's statement during the sentencing hearing that Ooten had been taking her prescriptions while incarcerated, which had impacted the way Ooten was thinking and behaving. In addition, the Pre-Sentence Investigation Report (PSI) states that Ooten asserts she is bi-polar and lists the medications she has been prescribed, but there is no information linking Ooten's illness to these offenses, indicating the duration of her illness, or explaining how her illness affects her. Thus, there is no indication that Ooten's mental problems rendered her unable to control her behavior, limited her functioning, or played a role in her commission of these offenses.

Ooten also briefly mentions her troubled childhood in her Appellant's brief. This issue was not referred to at the sentencing hearing, but there is mention of it in the "Family/Personal Background" section of the PSI. Ooten's allegedly troubled childhood does not merit substantial mitigating weight. *See Coleman v. State*, 741 N.E.2d 697, 700 (Ind. 2000), *cert. denied*, 534 U.S. 1057 (2001) (holding that evidence of difficult childhood warrants little, if any, mitigating weight).

Ooten has not carried her burden of persuading this Court that her sentence has met the inappropriateness standard of review. *See Anglemyer*, 868 N.E.2d at 494. Ooten has been treated with leniency several times, and she has failed to seize the opportunity to become a law-abiding citizen. In light of the nature of the offenses and Ooten's character, the sentence is not inappropriate.

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that Ooten's sentence is not inappropriate.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.