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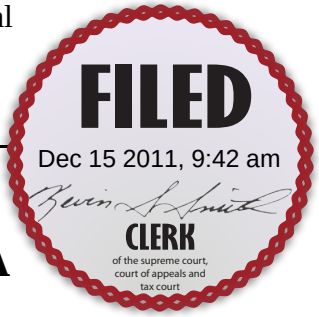

IN THE COURT OF APPEALS OF INDIANA

DONALD S. FORKER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 28A04-1106-CR-364
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GREENE SUPERIOR COURT
The Honorable William G. Sleva, Special Judge
Cause No. 28D01-1102-FA-69

December 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Donald S. Forker appeals his sentence after he pleaded guilty to dealing in a controlled substance, as a Class B felony. Forker raises a single issue for our review, namely, whether his fifteen year sentence, with three years suspended to probation, is inappropriate in light of the nature of the offense and his character. We affirm.

FACTS AND PROCEDURAL HISTORY

On August 4, 2010, Forker sold morphine pills to Kevin Walton. Forker had taken the pills from his wife's prescription. Walton purchased morphine pills from Forker on two later occasions as well.

On February 10, 2011, the State charged Walton with multiple felonies. On March 24, Forker agreed to plead guilty to one Class B felony allegation of dealing in a controlled substance, in exchange for which the State agreed to dismiss the remaining charges against him.

On June 3, the court accepted Forker's guilty plea and held a sentencing hearing. Following that hearing, the court entered its sentencing order, in which it stated in relevant part:

> The Court found as aggravating circumstances the following:
>
> 1. The Defendant has a prior juvenile and criminal history:
>
> a. On August 30, 1999, the Defendant was found to have committed the offense of Illegal Consumption of an Alcoholic Beverage . . . .
>
> b. On June 16, 2000, the Defendant was found to have committed the offense of Illegal Consumption of an Alcoholic Beverage . . . .

c. On March 19, 2001, the Defendant was convicted of Theft, judgment entered as a Class A misdemeanor . . . .

d. On February 12, 2003, the Defendant was convicted of Possession of a Controlled Substance, [as] a Class D felony . . . .

e. On June 6, 2008, the Defendant was convicted of Possession of Marijuana, [as] a Class A misdemeanor . . . .

2. The Defendant has a history of violating the terms of probation. There have been two [petitions to revoke probation] filed against him in the past, both of which resulted in his suspended sentence being revoked.

The Court found as mitigating circumstances the following:

1. The Defendant has entered a plea of guilty and in so doing has accepted responsibility for his actions.

The Court found that the aggravating circumstances outweigh the mitigating circumstances. Therefore, the Court concluded that the sentence of fifteen (15) years is appropriate.

The Court suspends three (3) years of Defendant's sentence . . . .

* * *

The Court recommends the Defendant receive Drug and Alcohol Treatment and Counseling during his incarceration at the Department of Correction.

Appellant's App. at 51-52. This appeal ensued.

DISCUSSION AND DECISION

Forker contends that his sentence is inappropriate. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana

Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offense and her character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration original).

Moreover, "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. The principal role of appellate review is to attempt to "leaven the outliers." Id. at 1225. Whether we regard a sentence as inappropriate 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 facts that come to light in a given case." Id. at 1224.

Forker's fifteen-year sentence for his Class B felony conviction is five years above the advisory sentence and five years below the maximum sentence. See Ind. Code § 35-50-2-5. On appeal, he asserts that his sentence is inappropriate because he has a substance abuse problem, which, in turn, has resulted in his ability to maintain steady employment. "So when his son needed clothes for school," he continues, "Forker agreed

to sell some of his wife's morphine pills to an acquaintance so he could make money." Appellant's Br. at 4.

We cannot say that Forker's fifteen-year sentence, with three years suspended, is inappropriate. Forker sold morphine pills to Walton on multiple occasions, and he has an established criminal history relating to drugs and alcohol, as well as numerous probation violations. Thus, we cannot say Forker's sentence, which includes an executed term that is slightly above the advisory term, is inappropriate in light of the nature of this offense and Forker's character. We affirm Forker's sentence.

Affirmed.

ROBB, C.J., and VAIDIK, J., concur.