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IN THE
COURT OF APPEALS OF INDIANA

CHARLES SANDERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0603-CR-190
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Scott Devries, Commissioner
Cause No. 49F09-0509-FD-152782

November 20, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Charles Sanders was convicted following a guilty plea of residential entry, a Class D felony, and sentenced to 545 days, with 180 days executed and 365 suspended. He raises three issues on appeal which we consolidate and restate as two: whether the trial court properly imposed certain conditions of probation and whether the trial court imposed an inappropriate sentence. Concluding that the trial court did not violate the terms of the plea agreement by imposing additional terms of probation and that the sentence is not inappropriate, we affirm.

Facts and Procedural History

Sanders was charged with residential entry, a Class D felony, and criminal mischief, a Class A misdemeanor. Although Sanders was seventeen years old when he committed the offense, he was tried as an adult pursuant to a waiver by the juvenile court. Sanders reached a plea agreement with the State pursuant to which Sanders agreed to enter a plea of guilty to residential entry and the State agreed to dismiss the charge of criminal mischief. Sentencing was left open, but capped at 180 days executed. In addition, the plea agreement provided that Sanders would have no contact with the victims of his crime and alternative misdemeanor sentencing ("AMS") was open to argument. The plea agreement form contained several pre-printed terms with a space for marking those that were to be included as part of the specific plea. The pre-printed terms "Defendant shall be subject to all standard conditions of probation" and "Other conditions" were not marked.

At the guilty plea and sentencing hearing, the trial court advised Sanders of the

charges against him, the possible sentences, and the terms of the guilty plea. The trial court also stated:

> Everything is open, but there is a cap of one hundred and eighty (180) days. (inaudible) part of the sentence. If you have probation you will have to abide by the normal terms and conditions of probation, pay the fees and cost[s], [court] fines and cost[s]. Have no contact with [the victims], and AMS is open to argument.

Transcript at 13. Sanders agreed that this was his understanding of the terms of his plea and pleaded guilty. The trial court accepted Sanders' guilty plea, entered judgment of conviction for residential entry, and sentenced Sanders to 545 days, with 365 days suspended, for an executed sentence of 180 days. In addition to the normal terms and conditions of probation, Sanders was specifically ordered to establish paternity and a child support payment plan for his child, work toward obtaining his GED, work full-time, and have no contact with the victims. The written order of probation contains "Standard Conditions," including "support your dependent children, including establishing paternity if not done previously, and abide by any Court order for child support." Appellant's Appendix at 37.

In sentencing Sanders, the trial court noted Sanders' juvenile record, which contained true findings for felony theft, felony burglary, and misdemeanor battery. The trial court noted that "each conviction . . . shows propensity to commit crimes, not abide by the rules of society. Particularly there is a pattern of property related offenses and there is a pattern of breaking into residences. . . . The mitigator is he is accepting responsibility for his actions. Aggravators outweigh the mitigators." Tr. at 31. Sanders now appeals his sentence.

Discussion and Decision

I. Terms of Probation

Sanders contends that the trial court erred in imposing an additional term of probation not found in the plea agreement, namely, that he establish paternity of his child and establish a child support payment plan.

Indiana Code section 35-35-3-3(e) provides that "[i]f the court accepts a plea agreement, it shall be bound by its terms." This statute imposes limits on the trial court's discretion to order conditions of probation not set out in the plea agreement. Freije v. State, 709 N.E.2d 323, 324 (Ind. 1999). "'[A] condition of probation which imposes a substantial obligation of a punitive nature is indeed part of the sentence and penalty and must be specified in the plea agreement.'" Id. (quoting Disney v. State, 441 N.E.2d 489, 494 (Ind. Ct. App. 1982)). However, "trial courts are free to impose administrative or ministerial conditions 'such as reporting to the probation department, notifying the probation officer concerning changes in address or place of employment, supporting dependents, remaining within the jurisdiction of the court, [and] pursuing a course of vocational training[.]'" Id. (quoting Disney, 441 N.E.2d at 494).

In Freije, the court noted that many of the "administrative and ministerial conditions" described in Disney are included as "standard conditions" in the standard Marion County order of probation. "These standard conditions are customarily imposed on probationers, and a defendant who enters into a plea agreement that calls for a probationary sentence should reasonably expect that the county's standard conditions may apply." Id. at 325. Indeed,

Sanders' order of probation includes a section labeled "Standard Conditions." Appellant's Appendix at 37. One of the "standard conditions" is that "You shall . . . support your dependent children, including establishing paternity if not done previously, and abide by any Court order for child support." Id. Sanders was advised that he would be subject to the normal terms and conditions of probation. By ordering that Sanders establish paternity and pay child support for his child, the trial court did not impose any conditions that materially added to his punitive obligation.

II. Inappropriate Sentence[1]

Sanders contends that his sentence is inappropriate in light of the nature of his offense and his character and requests this court to revise his sentence. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence authorized by statute, if after due consideration of the trial court's decision, we conclude that the sentence is inappropriate in light of the nature of the offense and the character of the offender.

Regarding the nature of the offense, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). Pursant to Indiana Code section 35-50-2-7, "[a] person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years."

[1] The State argues in its brief that Sanders has waived his claim that his sentence is inappropriate by entering into a plea that called for a specific sentence of 180 days. In Childress v. State, 848 N.E.2d 1073 (Ind. 2006), the court addressed the State's waiver argument and determined that even where a plea sets forth a sentencing cap, the trial court still has discretion in determining what sentence to impose. Id. at 1078. That is, the trial court must determine whether to impose the maximum sentence allowed by the cap or impose

Ind. Code § 35-50-2-7(a). The trial court imposed the advisory sentence here. Sanders contends, however, that because his plea agreement allowed for the possibility of AMS, and because this was Sanders' first offense as an adult, the advisory sentence is inappropriate.

Indiana Code section 35-50-2-7 also provides that "[n]otwithstanding [the Class D felony sentencing provision], if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly." Ind. Code § 35-50-2-7(b) (emphasis added). AMS is within the trial court's discretion. See McAnalley v. State, 514 N.E.2d 831, 836 (Ind. 1987) (holding that the trial court did not abuse its discretion in failing to utilize the alternative sentencing provision of section 35-50-2-7). The fact that AMS was a possibility does not mean that the trial court's sentencing discretion was in any way restricted. The trial court considered Sanders' juvenile record and acceptance of responsibility for his actions by pleading guilty, and imposed the advisory sentence for a Class D felony. Considering the trial court found the aggravator of Sanders' criminal history to outweigh the mitigator, the trial court would have been within its discretion in imposing an enhanced sentence. That the trial court did not use the AMS provision does not render Sanders' sentence inappropriate.

As Sanders notes, no one was injured and no property was taken in the commission of his crime. Sanders broke a pane of glass in a door, reached through, and unlocked the door to enter a home where he did not have permission to be. He was discovered by a resident of the home. The most likely reason no property was taken was because Sanders was discovered,

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some lesser sentence. Because of this discretion, a defendant does not waive appellate review of his sentence

and although no one was injured, the potential for injury existed. Nonetheless, this is a crime for which the advisory sentence is particularly appropriate.

As for Sanders' character, we acknowledge that this is Sanders' first adult conviction. However, we note, as the trial court did, that although Sanders was only seventeen years old when he committed this offense, he had two previous true findings as a juvenile for theft, and a true finding for burglary, all Class D felonies if committed by an adult. That is a significant criminal history for a seventeen-year-old, and it demonstrates a disregard for the law and, in particular, a disregard for the property rights of others.

Considering the nature of Sanders' offense and his character, we cannot say that a one and one-half year sentence for Class D felony residential entry is inappropriate.

Conclusion

The trial court did not violate the plea agreement by imposing additional terms of probation, and Sanders' one and one-half year sentence is not inappropriate. Accordingly, the sentence is affirmed.

Affirmed.

SULLIVAN, J., and BARNES, J., concur.

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for inappropriateness by entering into a plea with a sentencing cap. Id. at 1080.