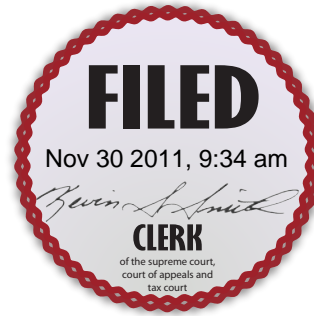


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY TINGLE,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-1104-CR-308

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
The Honorable Peggy R. Hart, Commissioner
Cause No. 49G20-0912-FA-095888

November 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Timothy Tingle (“Tingle”) pled guilty to three counts of Dealing in Cocaine, as Class A felonies¹, one count of Resisting Law Enforcement, as a Class D felony², and one count of Resisting Law Enforcement, as a Class A misdemeanor³. He now appeals, raising for our review the question of whether his sentence is inappropriate.

We affirm.

Facts and Procedural History⁴

On July 21, 2009, and again on August 5, 2009, Tingle sold cocaine to undercover police officers in controlled buys conducted within 1000 feet of a hotel in Indianapolis.

On August 20, 2009, Tingle was driving in Indianapolis when police officers determined that he was driving with a suspended license and attempted to initiate a traffic stop. Tingle did not stop because at that time he had in his possession a baggie of cocaine that he had purchased earlier that day. Tingle led police on a chase, during which he put the cocaine in a cup and threw it out of his Dodge Durango while driving on White River Parkway.

The chase ended when Tingle collided with another vehicle. When the pursuing officers attempted to remove him from the car, Tingle forcibly resisted their efforts until he was struck with a Taser.

¹ Ind. Code § 35-48-4-1.

² I.C. § 35-44-3-3(a) & (b).

³ I.C. § 35-44-3-3(a).

⁴ We base the facts on the stipulated factual basis introduced during Tingle’s guilty plea hearing and evidence introduced without objection during his sentencing hearing.

On December 3, 2009, Tingle was charged with three counts of Dealing in Cocaine, as Class A felonies; one count of Conspiracy to Commit Dealing in Cocaine, as a Class A felony⁵; two counts of Possession of Cocaine, as Class B felonies⁶; one count of Possession of Cocaine, as a Class C felony⁷; one count of Resisting Law Enforcement, as a Class D felony; and one count of Resisting Law Enforcement, as a Class A misdemeanor.

Tingle's case was set for trial on February 8, 2011. That day, the State filed its amended charging information, which withdrew the charge of Conspiracy to Commit Dealing in Cocaine. A jury had been selected when, just before trial, Tingle informed the trial court that he wished to plead guilty to the charges against him. The trial court accepted Tingle's plea.

On March 16, 2011, a sentencing hearing was conducted. During the hearing, the trial court entered judgment against Tingle for three counts of Dealing in Cocaine, as Class A felonies, with the three lesser included offenses of Possession of Cocaine merged into these; one count of Resisting Law Enforcement, as a Class D felony; and one count of Resisting Law Enforcement, as a Class A misdemeanor. The State introduced into evidence at this hearing a video recording of Tingle's sale of cocaine to police officers and an audio recording of his Mirandized statements to a police officer, where he admitted to possessing cocaine and fleeing police in order to discard the drugs.

The trial court sentenced Tingle to thirty-two years imprisonment for each of the three

⁵ I.C. § 35-41-5-2(a) & (b); I.C. § 35-48-4-1.

⁶ I.C. § 35-48-4-6.

⁷ Id.

counts of Dealing in Cocaine; three years imprisonment for Resisting Law Enforcement, as a Class D felony; and one year of imprisonment for Resisting Law Enforcement, as a Class A misdemeanor. All of the sentences were run concurrent with one another, resulting in an aggregate sentence of thirty-two years imprisonment.

This appeal followed.

Discussion and Decision

Tingle contends under Appellate Rule 7(B) that his sentence is inappropriate in light of the nature of his offenses and his character. In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

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 through Indiana Appellate Rule 7(B), which provides that a 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 is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that “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. One purpose of appellate review is to attempt to “leaven the outliers.” Id. at 1225. “Whether 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.” Id. at 1224.

Each of Tingle’s three convictions for Dealing in Cocaine, as Class A felonies, carried a sentencing range of twenty to fifty years imprisonment, with an advisory sentence of thirty years. I.C. § 35-50-2-4. Tingle’s conviction for Resisting Law Enforcement, as a Class D felony, carried a sentencing range of six months to three years imprisonment, with an advisory sentence of one and one-half years. I.C. § 35-50-2-7(a). Tingle’s conviction for Resisting Law Enforcement, as a Class A misdemeanor, carried a maximum sentence of one year of imprisonment. I.C. § 35-50-3-2. Tingle was sentenced to thirty-two years imprisonment for each of the convictions for Dealing in Cocaine, three years imprisonment for the Class D felony conviction for Resisting Law Enforcement, and one year of imprisonment for the Class A misdemeanor conviction for Resisting Law Enforcement.

With respect to the nature of Tingle’s offenses, there is nothing outstanding in Tingle’s actions leading to the convictions for Dealing in Cocaine. Tingle’s commission of Class D felony Resisting Law Enforcement was the result of Tingle’s attempt to flee from police in order to dump the cocaine from his car, and ended with Tingle colliding into another vehicle. Tingle’s commission of Class A misdemeanor Resisting Law Enforcement required a police officer to use a Taser in order to subdue him.

With respect to his character, Tingle has a long criminal history. He admitted in his Mirandized statement that he had been involved in drug dealing activities since age fifteen.

The presentence investigation report revealed that Tingle was adjudicated a juvenile delinquent once for Burglary, which would have been a Class B felony if committed by an adult, and twice for Possession of Marijuana, which would have been a Class A misdemeanor if committed by an adult. As an adult, he has been convicted of four felonies, three of which were drug-related, and four misdemeanors, all of which were drug- or alcohol-related. Prior to his most recent offenses, Tingle had been most recently imprisoned for Dealing in Cocaine or Narcotic, as a Class B felony. He has also violated probation in the past.

Tingle draws our attention to his guilty plea and his professed desire to reform as reasons to find his sentence inappropriate. As to Tingle's guilty plea, the trial court found this as the sole mitigating factor and gave it consideration when it determined his sentences. The trial court stated that before taking the guilty plea into account, it was considering a sentence of "[f]orty (40), forty-five (45) [years] because of all [the aggravating factors]" (Tr. 90), but after taking into account Tingle's guilty plea the court sentenced Tingle to thirty-two years, only two years above the advisory level. As to Tingle's desire to reform, Tingle had prior opportunities for rehabilitation during probation and prior prison sentences, but nevertheless reoffended.

Thus we cannot conclude that Tingle's aggregate thirty-two year sentence was inappropriate in light of the nature of his offenses and his character.

Affirmed.

MATHIAS, J., and CRONE, J., concur.