

Clara Combs appeals her sentence for dealing in a schedule II controlled substance as a class B felony. Combs raises one issue which we revise and restate as whether her sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. Confidential Informant Number 6114 (“C.I. 6114”) informed an undercover detective with the Indiana State Police Drug Enforcement Section that Combs was dealing oxycontin out of her apartment in Austin, Indiana. On February 7, 2008, C.I. 6114 went to Combs’s apartment, and Combs sold an “Oxycontin 80, which had been cut in half” or forty milligrams of oxycontin packaged in cellophane to C.I. 6114 for forty dollars. Transcript at 51. Combs retrieved the oxycontin from “her bedroom underneath her air conditioner.” *Id.* at 121.

On May 8, 2008, the State charged Combs with two counts of dealing in a schedule II controlled substance as class B felonies. The allegations in the second count related to events occurring on February 18, 2008. Prior to trial, Combs’s attorney filed a motion in limine regarding money found in Combs’s apartment.¹ Combs’s attorney argued that when Combs was arrested and consented to a search of her residence, the police recovered \$23,750 under a stove, that Combs claimed the money did not belong to her and then stated that it belonged to her brother who was also arrested for dealing in a controlled substance, and that her brother admitted that the money belonged to him. The attorney argued that this evidence was irrelevant because it was her brother’s money and

¹ The record does not contain a copy of Combs’s motion in limine.

that it was highly prejudicial. The court later granted the motion in limine stating: “I think the remoteness issues under 40 whatever conclude as I stated that if part of the buy money had been in there it clearly would have been admissible but I’m gonna grant the motion otherwise.” Id. at 170. After the two-day jury trial in November 2010, the jury found Combs guilty of the first count and not guilty of the second count.

At sentencing, Combs’s son testified that Combs worked as the apartment manager for her niece, who owned the apartment building, in exchange for a free apartment, \$100 a month to buy groceries, and free utilities. Combs’s son testified that Combs “preached to [his children] all the time and she always told them about drugs.” Id. at 258. Combs’s son later indicated that one of Combs’s grandchildren sent her a letter stating: “how am I supposed to tell my kids that grandma sold drugs?” Id. at 273.

The State requested and the probation department recommended that Combs receive an executed sentence of twelve years. The court found Combs’s criminal history and the money found in her apartment to be aggravating factors.² The court found as a mitigator “that imprisonment will result in undue hardship to the person or the dependents of the person.” Id. at 284. The court found Combs’s age to be a mitigator but also stated: “I cannot allow you to hide behind your age in what has been committed

² Regarding the money found in Combs’s apartment, the court stated:

There is a non-statutory aggravating circumstance and while I suppressed the twenty three thousand nine hundred and some dollars that was found at her apartment at the time of her arrest[,] I think it is appropriate for consideration here because, excepting [sic] everything that’s been argued that this was her brother’s money, the location of that money in her household is at the very least an acknowledgement and an acquiescence on her part to be a part of a much larger drug enterprise.

Transcript at 284-285.

here,” and “[a]ll of us in our lives whether we’re 15 or 16, or 18 or 19 or 78 have opportunities to change our life and make it for the better. [Combs] did not take that opportunity.” Id. at 283. The court found that the aggravating and mitigating factors balanced each other and sentenced Combs to ten years in the Department of Correction.

The issue is whether Combs’s sentence is inappropriate in light of the nature of the offense and the character of the offender.³ Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Combs argues that “this is a case of a 78 year old lady of very limited means selling a half of an 8mg. [sic] oxycontin pill for \$40.00.” Appellant’s Brief at 6. Without citation to the record, Combs argues that “[t]aking into consideration her age, physical condition of arthritis causing sleep to be difficult, and ever increasing blindness, her record is not the type that indicates a person who is not likely to be deterred after having

³ Combs cites Article 1, Section 18 of the Indiana Constitution and argues that “[s]entencing this defendant to a 10 year sentence provides no real opportunity for rehabilitation.” Appellant’s Brief at 7. To the extent that Combs suggests that her sentence violates Article 1, Section 18 of the Indiana Constitution, which provides that “[t]he penal code shall be founded on the principles of reformation, and not of vindictive justice,” we note that the Indiana Supreme Court has held that “particularized, individual applications are not reviewable under Article 1, Section 18 because Section 18 applies to the penal code *as a whole* and does not protect fact-specific challenges.” Ratliff v. Cohn, 693 N.E.2d 530, 542 (Ind. 1998), reh’g denied.

been subject to police authority.” Id. at 7. Combs requests that this court suspend four years of her ten-year sentence.⁴

The State argues that Combs “may not look like a typical drug dealer, but what she did is typical drug dealing.” Appellee’s Brief at 4. The State argues that she “was the manager of an apartment complex that, at trial, was described as a ‘McDonald’s’ of drug dealing.”⁵ Id. The State also points to Combs’s criminal history and prior arrests.

⁴ At the sentencing hearing, during the questioning of Combs’s son, Combs’s attorney observed that Combs had to receive a minimum executed sentence of six years. See also Ind. Code § 35-50-2-2 (providing that “the court may suspend only that part of the sentence that is in excess of the minimum sentence” when “[t]he crime committed was a Class A felony or Class B felony and the person has a prior unrelated felony conviction”).

⁵ During the direct examination of the confidential informant, the following exchange occurred:

Q Were you ever approached on either date as you left the apartment . . .

A Yes.

Q . . . by individuals? What was the purpose of those individuals approaching you?

A I’m not sure, probably to try to get me to buy drugs from another apartment that’s there.

Q Would you do that?’ [sic]

A On. [sic]

Q Did you do that?

A No.

Q Is that pretty typical to be encountered by people trying to . . .

A Yes, it’s like McDonald’s there.

Q Okay. A lot of traffic coming in and out?

A A lot of traffic.

Our review of the nature of the offense reveals that Combs sold forty milligrams of oxycontin packaged in cellophane to a confidential informant for forty dollars. Our review of the character of the offender reveals that Combs is seventy-eight years old. To the extent that Combs relies upon her physical condition, we observe that the presentence investigation report states:

[Combs] described [her] present physical condition as “not bad.” She also said that “I need to go to the doctor, but I don’t go.” She said she smokes cigarettes and suffers from arthritis at night, which causes her legs to hurt as she tries to sleep. Additionally, she said that she is losing her sight, and can barely read written words any longer without the aide [sic] of a magnifying glass. She reported taking no medications other than Ibuprofen and Tylenol.

Appellant’s Appendix at 34.

In 2001, Combs was charged with two counts of dealing in a schedule II controlled substance as class B felonies and maintaining a common nuisance as a class D felony. Combs was convicted of one count of dealing in a schedule II controlled substance as a class B felony. Combs was sentenced to eight years with fourteen days executed and the remainder of her sentence suspended. On December 10, 2004, a petition to revoke probation was filed. Combs admitted the probation violation, and the court revoked Combs’s suspended sentence and sentenced Combs to sixty days of “home incarceration.” Transcript at 245. In 2004, Combs was charged with dealing in a schedule II controlled substance as a class B felony, two counts of maintaining a common nuisance as class D felonies, possession of a legend drug as a class D felony, and possession of a controlled substance as a class D felony. These charges were dismissed.

After due consideration, we cannot say that the advisory sentence of ten years is inappropriate in light of the nature of the offense and the character of the offender.

For the foregoing reasons, we affirm Combs's sentence for dealing in a schedule II controlled substance as a class B felony.

Affirmed.

MAY, J., and CRONE, J., concur.