

Gregory Withers, Jr., pleaded guilty to Nonsupport of a Child¹ as a class D felony and was subsequently sentenced to three years. On appeal, Withers argues that the sentence imposed is inappropriate.

We affirm.

Withers stipulated to the facts contained in the affidavit for probable cause and attachments thereto. On March 4, 2003, Withers was ordered to pay child support to his child, K.D., in the amount of \$44 per week. As of May 2, 2008, Withers had accrued \$7404.01 in child support arrearages, having made no payments in 2007 and 2008 and only partial payments in the preceding two years.

On May 29, 2008, the State charged Withers with class D felony nonsupport of a child. Withers was arrested on or about August 5, 2008. On September 2, 2008, Withers was released upon his own recognizance, with such release being conditioned upon strict compliance with a plan for the payment of his arrearage and current child support obligations to K.D. and two other children to whom he owed back child support.² After his release, Withers made minimal payments to support his three children. By June 11, 2009, Withers child support arrearage in this cause had grown to over \$10,000. The court revoked his release on recognizance.

On October 1, 2009, Withers was again released upon his own recognizance and, as before, such release was conditioned upon his strict compliance with a plan for payment of

¹ Ind. Code Ann. § 35-46-1-5 (West, Westlaw through 2010 2nd Regular Sess.).

² In addition to failing to support K.D., Withers owed two other children \$5656.50 and \$5622.22, respectively.

his support arrearages and current support obligations. From the time of his release in October until his sentencing hearing in May, Withers made two support payments of \$10 each to K.D. The mothers of Withers's other two children testified that even when Withers is employed, he does not pay child support.

On February 9, 2010, Withers and the State entered into a plea agreement, the terms of which called for Withers to plead guilty as charged and the trial court to exercise its discretion with regard to sentencing. On May 26, 2010, the trial court accepted Withers's guilty plea and thereafter sentenced Withers to three years imprisonment. In its sentencing statement, the trial court explained: "A little late, same old, same old. He had his opportunity in September" *Transcript* at 22.

Withers argues that his three-year sentence is inappropriate. Withers asserts that had the trial court given proper consideration to the fact that he pleaded guilty and the nature of the crime, the court would have imposed a more lenient sentence.

Article 7, section 4 of the Indiana Constitution grants our Supreme Court the power to review and revise criminal sentences. Pursuant to Ind. Appellate Rule 7, the Supreme Court authorized this court to perform the same task. *Cardwell v. State*, 895 N.E.2d 1219 (Ind. 2008). Per App. R. 7(B), we may revise a sentence "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." *Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009), *cert. denied*, 2010 WL 2469998 (2010). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v.*

State, 895 N.E.2d at 1223. Withers bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

With regard to the nature of the offense, we note that Withers has repeatedly failed to provide any meaningful support for K.D., even when court ordered to do so as a condition for release from jail. To be sure, in the years before Withers ceased making any payments, Withers only partially met his financial obligation. For nearly a year and a half before the instant charge was filed, Withers had made absolutely no child support payments, not even partial payments, to K.D. Since the charge was filed Withers has made only minimal payments, all the while his child support arrearage has surpassed the five-digit mark. Out of a four-year timeframe, Withers support arrearage translates into nearly 3.2 years of complete non-payment of child support. “The length of time for nonpayment of child support and the amount of the arrearage go to the severity of the crime and the proper length of the sentence.” *Jones v. State*, 812 N.E.2d 820 (Ind. Ct. App. 2004).

We turn now to the character of the offender. We begin by noting that Withers has failed to support not only K.D., but also two other children he has fathered. Further, from the time of his arrest until the time of sentencing, Withers was incarcerated for a total of thirty-one days, having been released upon his own recognizance. Even though his release was conditioned upon strict compliance with a plan to pay toward his child support arrearage as well as his current support obligation, Withers made only nominal, infrequent payments. Further, we find it telling that in the two years between his arrest and sentencing in this matter, Withers was only able to find employment for the three-week period immediately prior to the sentencing hearing. In light of his history of unemployment and his repeated,

fruitless assurances of potential employment opportunities in the Navy, we place little weight on Withers's claim that his recent employment reflects positively on his character. Withers's conduct in continually failing to support his children, even when his release was contingent upon his paying support, reflects an unwillingness to adhere to the court's orders and evidences a contempt for the justice system. Withers's recent efforts are, as appropriately described by the trial court, "[a] little late." *Transcript* at 22.

In light of the nature of the offense and the character of the offender, we cannot conclude that the three-year sentence is inappropriate.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.