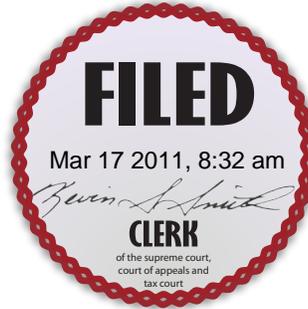


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

NICOLE COOPER,)
)
Appellant- Defendant,)
)
vs.) No. 34A02-1004-CR-507
)
STATE OF INDIANA,)
)
Appellee- Plaintiff,)

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Judge
Cause No. 34D01-0905-FD-477

March 17, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a guilty plea, Nicole Cooper was convicted of unlawful possession of a syringe, a Class D felony, and sentenced to three years in the Indiana Department of Correction. Cooper appeals her sentence, contending the maximum sentence is inappropriate in light of the nature of her offense and her character. Concluding the three-year sentence is not inappropriate, we affirm.

Facts and Procedural History

Because of the plea agreement, the facts in the record before us are sparse.¹ Cooper admitted that on May 11, 2009, she possessed a hypodermic syringe or needle in violation of the Indiana Legend Drug Act, Indiana Code chapter 16-42-19. At her sentencing hearing, the trial court found her criminal history and the fact that she was on probation when she committed this crime to be aggravating factors, and declined to give her guilty plea any mitigating weight because an additional charge of aiding, inducing, or causing invasion of privacy, a Class A misdemeanor, was dismissed in consideration of the plea. The trial court sentenced Cooper to three years at the Indiana Department of Correction. Cooper now appeals her sentence.

Discussion and Decision

I. Standard of Review

Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences. Childress v. State, 848 N.E.2d 1073, 1079-80

¹ At the guilty plea hearing, the State “submit[ted] the facts stated in the Probable Cause Affidavit” and any attachments thereto as the factual basis for the plea. Transcript at 9. The probable cause affidavit, however, is not among the materials provided to us.

(Ind. 2006). This court has authority to 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.” Ind. Appellate Rule 7(B). In determining whether a sentence is inappropriate, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied; see also McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) (“[I]nappropriateness review should not be limited . . . to a simple rundown of the aggravating and mitigating circumstances found by the trial court.”). The burden is on the defendant to demonstrate that his or her sentence is inappropriate. Childress, 848 N.E.2d at 1080. “[W]hether 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.” Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008).

II. Inappropriate Sentence

Cooper entered a plea of guilty to Class D felony unlawful possession of a syringe and received a three-year sentence. The sentencing range for a Class D felony is six months to three years, with an advisory sentence of one and one-half years. Ind. Code § 35-50-2-7. Cooper argues her maximum three-year sentence is inappropriate because this is her first drug conviction, she has a serious substance abuse problem, and she will also be serving time in another case as a result of her probation being revoked because of this case.

Our review of the nature of the offense reveals only that Cooper was found in possession of a syringe and admitted it was in violation of the Indiana Legend Drug Act.

See Ind. Code § 16-42-19-18 (“A person may not possess or have under control with intent to violate this chapter a hypodermic syringe or needle or an instrument adapted for the use of a legend drug by injection in a human being.”). We cannot say Cooper’s offense is anything other than a typical possession offense under these circumstances.

Although the nature of the offense is not egregious, Cooper’s character justifies the three-year sentence. Our review of Cooper’s character reveals she pleaded guilty to this offense, but a second charge of aiding, inducing, or causing invasion of privacy was dismissed in exchange for her plea. Although this is her first drug-related felony conviction, Cooper has a misdemeanor conviction for illegal possession by a minor and several drug-related arrests, including previous arrests for unlawful possession of a syringe, possession of a controlled substance, possession of marijuana, possession of methamphetamine, and possession of a chemical reagent or precursor with intent to manufacture methamphetamine. See Johnson v. State, 837 N.E.2d 209, 216 n.7 (Ind. Ct. App. 2005) (a lengthy record of arrests is a proper consideration when evaluating the character of an offender), trans. denied. She also has misdemeanor convictions for failure to stop after an accident, false informing, and theft. Her contacts with the criminal justice system began when she was fifteen years old, and she was just twenty-four at the time of her sentencing hearing. Prior attempts at leniency (including unsupervised probation and suspended sentences) have not resulted in Cooper reforming her conduct. Cooper’s admitted drug use includes frequent use of marijuana beginning when she was thirteen years old, daily use of methamphetamine for over two years, and injecting herself with methadone and oxycontin up to ten times per month beginning in 2008. She told the probation officer conducting her pre-sentence investigation that “getting her next fix or

high has been her primary focus since early 2007.” Appellant’s Appendix at 7. She was on probation at the time she committed this offense.

Cooper urges us to consider her three-year sentence for this offense in conjunction with the consecutive sentence she will be required to serve as a result of her probation being revoked in a different case, see Ind. Code § 35-50-1-2(d)(1), and the fact that all time is ordered executed, rather than making provision for her to participate in a drug and alcohol program to address her addiction. We note first that the sentence she received upon revocation of her probation is being separately appealed. We also note, as above, that the leniency previously extended to her has not resulted in Cooper successfully managing her addiction. Incarceration for a significant time in which drugs and alcohol are not available to her may be the best way for her to confront and ultimately conquer her addiction.

In sum, although nothing about Cooper’s crime particularly warrants a sentence above the advisory, her character – specifically, her addictive behavior and failure to respond to past lenient treatment – is such that a sentence in excess of the advisory is warranted. Cooper has failed to meet her burden to show the three-year sentence is inappropriate.

Conclusion

Cooper’s three-year sentence is not inappropriate considering the nature of her offense and her character. The sentence is affirmed.

Affirmed.

RILEY, J., and BROWN, J., concur.