

Appellant-defendant Prentiss Huff appeals the sentence imposed by the trial court after Huff pleaded guilty to Unlawful Possession of a Firearm by a Serious Violent Felon,¹ a class B felony. Huff's sole argument on appeal is that the six-year sentence is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm.

FACTS

On May 22, 2008, Huff was found by police with a loaded .45-caliber pistol. He had previously been convicted of aggravated battery. When arrested, Huff admitted that he knew that he was wanted by police because of an outstanding arrest warrant and that he was carrying the handgun for protection. On May 27, 2008, the State charged Huff with class B felony unlawful possession of a firearm by a serious violent felon. At the final pretrial conference on July 31, 2008, Huff agreed to plead guilty as charged in exchange for the State's agreement to a six-year sentence with placement open to argument to the trial court.

At the August 21, 2008, sentencing hearing, the trial court took note of Huff's criminal history, including the fact that he was on parole when he committed the instant offense, and that he had obtained a vocational degree while previously incarcerated. The trial court sentenced Huff to the agreed-upon six years, with placement in the Department of Correction (DOC) for five years and Marion County Community Corrections (Community Corrections) for one year. Huff now appeals.

¹ Ind. Code § 35-47-4-5.

DISCUSSION AND DECISION

Huff frames his argument on appeal as whether the trial court abused its discretion by overlooking a number of mitigating circumstances. The plea agreement provided, however, that Huff would serve a six-year sentence. Furthermore, the minimum sentence imposed for a class B felony is six years, Ind. Code § 35-50-2-5, and Huff was not eligible for a suspended sentence because he had a prior felony conviction, I.C. § 35-50-2-2(b)(1). The only possible argument available to Huff on appeal, therefore, is the manner in which he will serve those six years.

The location where a sentence is to be served is an appropriate focus for application of our review and revise authority pursuant to Indiana Appellate Rule 7(B). Biddinger v. State, 868 N.E.2d 407, 414 (Ind. 2007). Therefore, we will consider whether the trial court's order directing Huff to serve five years in the DOC and one year in Community Corrections is inappropriate in light of the nature of the offense and Huff's character. In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). This court has emphasized the heavy burden borne by a defendant making this argument in this context:

we note that it will be quite difficult for a defendant to prevail on a claim that the placement of his or her sentence is inappropriate. As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities. For example, a trial court is aware of the availability, costs, and entrance

requirements of community corrections placements in a specific locale. Additionally, the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate.

Fonner v. State, 876 N.E.2d 340, 343-44 (Ind. Ct. App. 2007) (emphasis in original).

As for the nature of the offense, Huff, a serious violent felon, knew that the police were looking for him because of an outstanding arrest warrant. When they found him, he was carrying a loaded .45-caliber pistol.

As for Huff's character, we observe that he was adjudicated a delinquent on at least one occasion for theft and was alleged to be a delinquent on multiple other occasions, though the dispositions of those allegations are unknown. As an adult, he has amassed convictions for two counts of class C misdemeanor operating a vehicle having never received a license, class B misdemeanor disorderly conduct, class A misdemeanor possession of marijuana, class A misdemeanor battery, class A misdemeanor criminal conversion, class A misdemeanor resisting law enforcement, class B felony aggravated battery, and class B felony attempted robbery. He violated probation on at least one occasion and was on parole at the time he committed the instant offense.

Huff emphasizes his age, employment, involvement in the life of his twelve-year-old son, and enrollment in school. While all admirable traits, they are overshadowed by his lengthy criminal history that is intensifying in terms of the gravity of the offenses over time. His numerous past contacts with the criminal justice system have not

dissuaded him from continuing to commit crimes, and he has failed to take advantage of the opportunities offered by probation and parole. Had there not been a plea agreement in place, the trial court would have been within its discretion to impose a sentence significantly above the minimum penalty. Furthermore, defense counsel admitted at sentencing that it was unclear that Huff would even be eligible for Community Corrections. Tr. p. 40. Under these circumstances, we do not find the trial court's decision to order Huff to serve five years of his sentence in DOC and one year in Community Corrections to be inappropriate in light of the nature of the offense and Huff's character.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.