

STATEMENT OF THE CASE

Marlonda Tigner appeals her sentence following her conviction for class D felony theft¹ and adjudication as an habitual offender.²

We affirm.

ISSUE

Whether Tigner's sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

On April 5, 2010, Sarah Hill was working as an asset protection associate for an Indianapolis Wal-Mart. While Hill was monitoring surveillance cameras, she observed Tigner and James Whitfield concealing several items of clothing under Tigner's coat and in her purse. As Tigner and Whitfield exited the store, another store employee stopped and detained them.

On April 6, 2010, the State charged Tigner with class D felony theft. On June 8, 2010, the State filed an amended information, alleging Tigner to be an habitual offender. The trial court held a jury trial on June 30, 2010. Tigner admitted that she took the items from Wal-Mart. The jury found Tigner guilty as charged. Tigner waived her right to a jury trial on the habitual offender charge, after which the trial court found her to be an habitual offender.

¹ Ind. Code § 35-43-4-2.

² I.C. § 35-50-2-8.

The trial court ordered a pre-sentence investigation report (“PSI”) and held a sentencing hearing on July 21, 2010. According to the PSI, Tigner had been adjudicated a juvenile delinquent twice in 1986 and had been convicted of the following as an adult: driving without a license in 1986; criminal conversion in 1989; criminal conversion in 1990; class C felony forgery and two counts of class D felony theft in 1991; two counts of criminal trespass and class D felony theft in 1999; class D felony theft in 2000; class D felony theft and possession of paraphernalia in 2001; two counts of class D felony theft and two counts of prostitution in 2002; possession of paraphernalia in 2003; criminal conversion in 2004; class D felony theft, escape and auto theft in 2005; and class D felony theft in 2009. The PSI also indicated that from 1990 through 2008, the State had dismissed the following pursuant to plea agreements: seven counts of theft, refusal to identify, prostitution, criminal trespass, and three counts of misdemeanor failure to stop and remain at the scene of an accident. The State dismissed additional charges for criminal conversion and theft because witnesses failed to appear.

The PSI further indicated that the State had revoked Tigner’s probation on eight separate occasions. The State revoked Tigner’s probation in 1997 after she violated her placement in a community corrections placement and again in 2000 after she failed to attend a counseling program. The last revocation was in 2009.

The PSI also reported that Tigner had earned her general education degree in 1992, while incarcerated. Tigner reported that she subsequently earned a certificate in data entry in 1995 and a general studies degree in 2008.

The trial court found Tigner’s criminal history and probation revocations to be aggravating circumstances. The trial court then found the following mitigating circumstances:

[T]hat imposition of [a] jail sentence could impose a hardship on your dependents;^[3] that you have to some degree accepted responsibility for your actions—certainly by testifying and admitting your guilt I’ll also note that even though this is not a legal justification, that you’ve been dealing throughout your life with an addiction to cocaine, and you’ve also had other family issues that have probably made it difficult for you to stay on the right path. . . . [W]hile you’ve been incarcerated for this offense you’ve taken steps to improve your life by getting treatment; that you have entered into a substance abuse therapy group and taken advantage of the therapy that was available there; that you have received a number of merit reports while being incarcerated for being very cooperative and helpful throughout the system. You also have indicated through your attorney that there is a possibility that you could be employed in a very specific situation.

(Tr. 188-89). Given Tigner’s “extensive” criminal history, however, the trial court found that the aggravators outweighed the mitigators. (Tr. 189). Accordingly, the trial court sentenced Tigner to three years and enhanced that sentence by two years based on her habitual offender status. The trial court ordered that the sentence be served in the Department of Correction.

DECISION

Tigner asserts that her sentence is inappropriate. Specifically, she argues that her sentence is inappropriate because “there is no provision to allow for her participation in a work release program.” Tigner’s Br. at 8.

³ We note that, according to the PSI, Tigner’s sixteen-year-old daughter was placed in foster care in 1997. Tigner’s other two children had reached the age of majority as of date of the sentencing hearing. Furthermore, Tigner is not married, and there is no indication that other family members are dependent on her. Thus, it is not clear that Tigner has any dependents.

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

The location where a sentence is to be served is an appropriate focus for application of our review and revise authority. . . . Nonetheless, we note that it will be quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate. This is because 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. As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities. For example, a court is aware of the availability, costs, and entrance requirements of community corrections placements in a specific locale.

King v. State, 894 N.E.2d 265, 267-68 (Ind. Ct. App. 2008) (internal citations omitted).

Here, the record shows that Tigner has an extensive criminal history spanning twenty-four years, with a recent conviction for theft in 2009. She also has violated probation numerous times. While Tigner argues for "a chance at rehabilitation," we note that she has had opportunities in the past. Tigner's Br. at 8. Notably, she was placed in a community corrections program in 1995 and a counseling program in 2000. She violated both placements. In 2004, Tigner failed to comply with court-ordered substance abuse

treatment. Moreover, Tigner has not shown that rehabilitation is unavailable in the Department of Correction.

Given Tigner's criminal history of convictions, charges, arrests, and probation violations, it is clear that she has a disregard for the law. *See, e.g., Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) (finding that a defendant's record of arrests "may be relevant to the trial court's assessment of the defendant's character in terms of the risk that he will commit another crime"). We therefore cannot say that her total sentence of five years in the Department of Correction is inappropriate.

Affirmed.

NAJAM, J., and BAILEY, J., concur.