

STATEMENT OF THE CASE

Appellant-Defendant, LaJae Jacobs (Jacobs), appeals his placement with the Department of Correction (DOC) following his plea of guilty to dealing in cocaine, as a Class B felony, Ind. Code § 35-48-4-1.

We affirm.

ISSUE

Jacobs presents a single issue for our review: Whether his placement with the DOC, rather than with community corrections, is inappropriate.

FACTS AND PROCEDURAL HISTORY

On December 1, 2007, Officer Lori Phillips (Officer Phillips) of the Indianapolis Metropolitan Police Department pulled Jacobs over for having a faulty license plate light. When Officer Phillips approached Jacobs' vehicle, she smelled marijuana. Officer Phillips alleged that, during a subsequent search, she discovered two small baggies of marijuana, two baggies of crack cocaine, a baggie of powder cocaine, a baggie of white capsules later found to be amoxicillin, and a digital scale. According to Officer Phillips, the marijuana and cocaine were packaged in a way that is consistent with dealing narcotics and were in larger amounts than is consistent with personal use.

On December 3, 2007, the State filed an Information charging Jacobs with Count I, dealing in cocaine, as a Class A felony, I.C. § 35-48-4-1, Count II, possession of cocaine, as a Class C felony, I.C. § 35-48-4-6, and Count III, possession of marijuana, as a Class D felony, I.C. § 35-48-4-11. On July 23, 2008, Jacobs and the State entered into a plea

agreement by which Jacobs would plead guilty to dealing in cocaine as a Class B felony and the State would dismiss the remaining charges. The parties also agreed to a sentence of fifteen years executed, “open to placement.” (Appellant’s App. p. 45). On September 15, 2008, the trial court ordered the entire fifteen-year sentence executed with the DOC.

Jacobs now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

On appeal, Jacobs argues that his placement with the DOC is inappropriate under Indiana Appellate Rule 7(B).¹ Because the duration of Jacobs’ sentence was fixed by his plea agreement, he only challenges the trial court’s decision to order the entire sentence served with the DOC.

Indiana Appellate Rule 7(B) permits us to revise a sentence 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. The location where a sentence is to be served is an appropriate focus of 7(B) review. *See Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007). The burden is on the defendant to persuade the appellate court that his or her placement is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). It is quite difficult for a defendant to prevail on a claim that a given placement is inappropriate. *Id.* at 267. As a practical matter, trial courts know the feasibility of alternative placements in

¹ Jacobs’ appendix includes a plea agreement, not signed by the trial court, that includes the following provision: “Defendant hereby waives the right to appeal any sentence imposed by the Court, including the right to seek appellate review of the sentence pursuant to Indiana Appellate Rule 7(B), so long as the Court sentences the defendant within the terms of this plea agreement.” (Appellant’s App. p. 45). Because the State does not mention this provision, we address the merits of Jacobs’ appeal.

particular counties or communities. *Id.* at 268. For example, a court is aware of the availability, costs, and entrance requirements of community corrections placements in a specific locale. *Id.*

Jacobs contends that he should have been placed with community corrections instead of with the DOC. Given Jacobs' record, we cannot say that the trial court acted inappropriately by placing him with the DOC. In 1994, Jacobs was found guilty of possession of marijuana as a Class A misdemeanor. In 1997 and 1998, Jacobs was found guilty of driving while suspended, both as Class A misdemeanors. In 2001, Jacobs was found guilty of possession of marijuana as a Class D felony but was sentenced pursuant to alternative misdemeanor sentencing. Jacobs was placed on probation, which was terminated after the State filed a petition to revoke. In 2002, he was found guilty of resisting law enforcement as a Class D felony and placed on probation. After violating his probation, Jacobs was committed to the DOC. Jacobs' sentence was then modified, and he was sent to community corrections. Shortly thereafter, Jacobs violated the terms of community corrections and was returned to the Marion County Jail. In 2004, Jacobs was found guilty of resisting law enforcement as a Class A misdemeanor.

In addition to those convictions and violations, Jacobs' pre-sentence investigation report reveals more than ten other arrests that did not result in convictions. A record of arrests does not establish the historical fact that a defendant committed a criminal offense and may not be properly considered as evidence of criminal history, but such a record, particularly a lengthy one, may reveal that a defendant has not been deterred even after

having been subject to the police authority of the State. *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005). “Such information 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.” *Id.*

While Jacobs has not previously been convicted of any major felonies or seriously violent crimes, he has a long history of unlawful behavior and has not responded well to probation. Most importantly, Jacobs has already been sent to community corrections once, and he failed to comply with the terms. As such, the trial court’s decision to place him with the DOC instead of community corrections was not inappropriate.

CONCLUSION

Based on the foregoing, we conclude that Jacobs’ placement with the DOC is not inappropriate.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.