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**IN THE
COURT OF APPEALS OF INDIANA**

COREY J. KIRTS,)
)
Appellant-Defendant,)
)
vs.) No. 79A02-1009-CR-1092
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Les A. Meade, Judge
Cause Nos. 79D05-1005-CM-474, 79D05-1006-CM-609 & 79D05-0907-FD-389

May 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Corey J. Kirts appeals his aggregate sentence of two years for two counts of Class A misdemeanor invasion of privacy. He contends that his sentence is inappropriate in light of the nature of the offenses and his character. Finding that Kirts has failed to persuade us that his sentence is inappropriate, we affirm.

Facts and Procedural History

In March 2010, Kirts pled guilty to Class A misdemeanor resisting law enforcement and Class B misdemeanor disorderly conduct in Cause No. 79D05-0907-FD-389 (Cause No. 389). Although Kirts was seventeen years old at the time he committed these offenses, the charges were waived to adult court. The trial court sentenced Kirts to consecutive terms of 365 days for the Class A misdemeanor and 180 days for the Class B misdemeanor. The court ordered Kirts to serve 14 days in the Tippecanoe County Jail and suspended the remaining 531 days to unsupervised probation.

In April 2010, Esperanza Donner obtained a protective order against Kirts on behalf of her daughter Destiny Brown and Brown's son, C.E. Kirts is the father of C.E.

On May 17, 2010, which happened to be Kirts's eighteenth birthday, he violated the protective order by sending Brown text messages which instructed her to answer her phone and said "you're a piece of sh** bit**, snitch a** bit**." Tr. p. 33. The State charged Kirts in Cause No. 79D05-1005-CM-474 (Cause No. 474) with Class A misdemeanor invasion of privacy for this incident.

Then, on June 16, 2010, while Kirts was in jail for the May incident, he sent Brown a letter in violation of the protective order. Kirts had someone send the letter for him in order to evade detection by jail staff. *Id.* at 34-35. The State charged Kirts in Cause No. 79D05-1006-CM-609 (Cause No. 609) with Class A misdemeanor invasion of privacy for this incident.

The State also filed petitions to revoke Kirts's probation based on these offenses.

Kirts eventually pled "straight up" with no plea agreement from the State to the two counts of Class A misdemeanor invasion of privacy in Cause Nos. 404 and 609. *Id.* at 92, 94. He also admitted that by committing these offenses, he violated his probation in Cause No. 389. The trial court accepted Kirts's guilty plea and entered judgment of conviction. The court also found that Kirts violated his probation in Cause No. 389. The court sentenced Kirts to consecutive terms of 365 days in the Tippecanoe County Jail for each count of invasion of privacy. The court also revoked 360 days of Kirts's suspended sentence in Cause No. 389 and ordered him to serve that time on community corrections upon release from jail.

After the trial court pronounced its sentence, Kirts sarcastically said, "Glad everyone is happy." *Id.* at 111. The judge responded, "You know what? The demeanor that you're demonstrating yet again is still exactly opposite of what you're expressing in this letter." Kirts then said:

What? Your honor, I can express all I want in this letter but two years in jail and a year of work release I know I messed up, I'm a kid, I'm eighteen. I am not even given a chance to – change that? I mean you're trying to give me all executed time

Id. The judge and Kirts then engaged in a colorful exchange about Kirts's attitude. *Id.* at 111-12. Essentially, the court told Kirts that he was in charge of his "lousy" attitude and that he better change it. *Id.* at 112. Kirts pled with the judge:

It's a pretty lousy sentence. I can't see my son until he's over a year old—a year and seven months. And I look like the piece of crap. I don't even have the chance to prove myself. . . . Alright I messed up, it was my first love. What am I supposed to do? You want to give me three years all in the county jail, I've been attacked three times. I've been jumped by two thirty-year-old men and you want to give me that much time? Do you see[] [anything] unfair in that? I mean I have a job, I have a family who loves me—I messed up but, I shouldn't have to suffer three years

* * * * *

I committed the misdemeanors. . . . And I'm sure [Brown] even has a problem with me gettin' three years. That's ridiculous, I can't see my son – I mean. My dad's in jail, I don't want to be in there with him. You[re] gonna go home and sleep tonight and I—I'm not the piece of sh** here. I'm not. I'm trying to change myself and every time I try it just keeps getting worse and worse. I've seen people come in here with Domestic Batteries and Strangulation and you let 'em out. And I sent her a text message on my birthday because I love her, it's my first love. I had a child with her and you want to give me this much time? That seems . . .

Id. at 112-14. The judge responded:

The attitude that you are demonstrating is the same attitude with which you have committed these offenses and you continue to take the attitude of entitlement to commit it again when you say, "Hey, this is my first love. All I was doing was – you know I need to see my child." No, you don't need to see your child.

Id. at 114. Kirts's sentencing hearing then ended on this unfortunate, but revealing, note:

BY MR. KIRTS: He needs a father. I'm not gonna – you're the piece of sh**, man.

BY THE COURT: Okay.

BY MR. KIRTS: Fu**, what the fu** am I supposed to do—I mean is everybody happy? Another eight months.

BY THE COURT: Goodbye Mr. Kirts, I think we're done.

BY MR. KIRTS: This is my true colors.

Id. at 114-15.

Kirts now appeals his aggregate sentence of two years for the two counts of invasion of privacy in Cause Nos. 404 and 609. He does not challenge his sentence for violating his probation in Cause No. 389.

Discussion and Decision

Kirts contends that his consecutive one-year sentences for two nearly-identical counts of invasion of privacy are inappropriate. He therefore asks us to order his sentences to run concurrently.

Our rules authorize revision of 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). “[A] defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review.” *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

The principal role of Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We “should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Id.* Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case. *Id.* at 1224.

A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one year. Ind. Code § 35-50-3-2. Here, the trial court sentenced Kirts to one year for each count of invasion of privacy and ordered the sentences to run consecutively.

As for the nature of the offenses, Kirts, who had been on probation for less than two months for misdemeanor resisting law enforcement and disorderly conduct, violated a protective order entered against him by sending text messages to Brown, the mother of his son. One month later, while he was in jail for the earlier offense, Kirts violated the protective order again by sending Brown a letter. These offenses reflect Kirts's flagrant disregard for the conditions imposed upon him by the judicial system.

Regarding Kirts's character, we acknowledge that he was eighteen years old at the time he committed both invasion of privacy offenses and that he pled guilty without the benefit of a plea agreement. However, Kirts's history of juvenile and criminal history and behavior in front of the judge at sentencing easily trumps both of these considerations.

The record reflects that Kirts was adjudicated a juvenile delinquent at age fourteen for misdemeanor resisting law enforcement and possession of marijuana and placed on probation. The State later filed two motions for modification based on, among other things, incorrigibility, expulsion, and an arrest for false informing. Kirts was then committed to Indiana Boys School. Kirts had several charges waived to adult court at age seventeen, where he pled guilty to misdemeanor resisting law enforcement and disorderly conduct in Cause No. 389. And at the time of sentencing in this case, Kirts

had pending charges for intimidation and trespass. Despite this significant history, it is Kirts's words to the judge at sentencing that speak volumes about his character and convince us that his sentence is not inappropriate. Specifically, Kirts, calling the judge "a piece of sh**," vigorously and vulgarly protested his sentence. This again reflects a total disregard for authority and proves that Kirts has learned nothing since his first conviction in the adult criminal justice system a little more than a year ago. Kirts has failed to persuade us that his aggregate sentence of two years for two counts of Class A misdemeanor invasion of privacy is inappropriate.

Affirmed.

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