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# IN THE
# COURT OF APPEALS OF INDIANA

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| KRISTIAN D. DAVIS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 79A02-1009-CR-1155 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0902-FA-6

**May 31, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Kristian Deann Davis appeals from the sentence imposed by the trial court after Davis pleaded guilty to Dealing in Cocaine[1] as a class B felony. Davis presents the following restated issue for review: Is Davis's sentence inappropriate in light of the nature of the offense and the character of the offender?

We affirm.

The facts are that on February 23, 2009, Davis sold cocaine out of her apartment to a confidential informant. Police obtained a search warrant and searched her apartment the next day. They found cocaine, marijuana, and the buy money from the previous day's transaction. Davis was charged with two counts of dealing in cocaine and one count of possession of cocaine, all as class A felonies, one count of maintaining a common nuisance as a class D felony, and possession of marijuana as a class A misdemeanor. Pursuant to a plea deal, Davis agreed to plead guilty to one count of dealing in cocaine, which was reduced to a class B felony, in exchange for the State's agreement to drop the remaining charges. Under the agreement, the parties agreed to an executed sentence of between ten and seventeen years.

At the sentencing hearing, the trial court found three aggravating circumstances, including: (1) Davis's criminal history, which consisted of three juvenile theft adjudications and one adult misdemeanor conviction for conversion; (2) the fact that after Davis bonded out on the instant charge, she was charged with minor in possession of alcohol; and (3) that Davis continued to associate with people involved in criminal activity after she was charged

[1] Ind. Code Ann. § 35-48-4-1 (West, Westlaw through 2011 Pub. Laws approved & effective through 4/6/2011).

in the instant case. The trial court found the following mitigating factors: (1) Davis pled guilty; (2) she completed the Home with Hope program; (3) she was twenty-one years old at the time of sentencing; (4) she had a good work history; and (5) she had a difficult childhood. After noting the above and the fact that Davis was involved in an ongoing criminal enterprise, with her role including traveling to Chicago to get cocaine, the court determined that the aggravators outweighed the mitigators and sentenced Davis to eleven years with ten years executed, including seven years in the Department of Correction and three years in community corrections, with one year suspended to probation.

Davis contends her sentence was inappropriate in light of her character and the nature of her offense. We note that the trial court imposed the minimum sentence within the range to which the parties agreed in the plea agreement. Therefore, Davis's challenge focuses upon the decision that she should serve seven years of her sentence in prison versus community corrections. Article 7, section 4 of the Indiana Constitution grants our Supreme Court the power to review and revise criminal sentences. Pursuant to Ind. Appellate Rule 7, the Supreme Court authorized this court to perform the same task. *Cardwell v. State*, 895 N.E.2d 1219 (Ind. 2008). Per App. R. 7(B), we may 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." *Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009), *cert. denied*, 131 S.Ct. 414 (2010). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d at 1223. Davis bears the burden on appeal of persuading us that her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

Beginning with the nature of the offense, Davis contends "[t]he particulars of [her] offense do not go beyond the inherent nature of the crime of which she was convicted." *Appellant's Brief* at 10. Indeed, Davis seeks to minimize her role in this offense. She claims variously that she "was not the mastermind of dealing drugs or even arranged any drug deals", *id*. at 10-11, "was not known for dealing drugs", *id*. at 11, and "did not have any involvement in arranging this drug buy", *id*. It appears that, at sentencing, Davis also attempted to persuade the trial court to this point of view. In rejecting the claim, the trial court stated:

> I don't think it is accurate to say that you have a minimal role in the crime. I think that there is a criminal enterprise going on. You're involved in it. You're going up to Chicago to get the drugs. You're there with the drugs when a deal is made. You're taking the money, you're laying the drugs out on the table. I mean, you're involved with it. You're not the mastermind and you're probably not even doing anything to make deals happen but you're making it possible for deals to happen. And until you separate yourself from that and understand that that's part of the whole enterprise then you – you're allowing a fairly major enterprise to go on for a fairly lengthy period of time.

*Transcript* at 85-86. We conclude that these remarks are a fair commentary on Davis's argument. Indeed, the evidence showed that drug dealer Greg Holmes stayed at her apartment two or three nights per week. She traveled with Holmes two or three nights per week to Chicago to purchase cocaine for resale in Indiana. She knew Holmes kept cocaine at her apartment and that he sold cocaine from her apartment. Thus, Davis was a willing participant in the drug trade that Holmes directed from her apartment and does not deserve a lesser sentence based upon marginal involvement in the crime of which she was convicted.

With respect to Davis's character, we note that her criminal history consists of four true findings of juvenile delinquency. Each involved a crime of dishonesty, i.e., three for

theft and one for false informing. She has two adult misdemeanor convictions, one for driving while suspended and the other for conversion. Finally, we note that she was arrested for minor in possession of alcohol after bonding out in the instant case. Although this cannot fairly be considered a particularly serious or extensive criminal history, we are mindful that Davis was only twenty-two years old at the time she was sentenced. Clearly, her prior brushes with the law did not deter Davis from continuing to engage in criminal conduct. Indeed, Davis admitted she used marijuana on a regular basis commencing at age sixteen. Although she claims that she stopped using marijuana at the age of twenty, we note that she was found in possession of marijuana when the search warrant was served in the instant case. In short, Davis's history of criminal activity is not such as to mandate that Davis's sentence be served in community corrections.

Davis contends that since she was arrested for this offense, she has worked to sever her relationships with people who engage in criminal behavior. She further claims that she took responsibility for her actions in the instant case by pleading guilty and that she has completed a rehabilitation program at Home with Hope and is currently drug-free. We note, however, that the record reflects she was observed at a crack house after completing the rehabilitation program. In September 2009, she was still associating with a known robber and crack dealer. We note also that in exchange for her guilty plea the State dropped all but one of the charges against her and reduced the remaining charge from a class A to a class B felony. A guilty plea's significance may be diminished in direct proportion to the benefit realized by the defendant in accepting it. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("a guilty plea does not rise to the level of significant mitigation where the

defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one"), *trans. denied*. Neither factor, whether considered separately or together, compels the conclusion that the sentence imposed is inappropriate.

Davis urges this court to conclude that changes she has made in her life identify her as one deserving of a sentence less than the advisory sentence, and indeed indicate "she is the type of person who "'is likely to respond affirmatively to probation or short term imprisonment.'" *Appellant's Brief* at 12 (quoting Ind. Code Ann. § 35-38-1-7.1 (West, Westlaw through 2011 Pub. Laws approved & effective through 4/6/2011)). We commend her for attempting to move in a positive direction in seeking such changes, but are not convinced by the record before us that she made a transformation, or indeed even accepted full responsibility for her actions in the instant case. To the contrary, she has sought to reduce her sentence by down-playing her involvement. Finally, we note that Davis served home detention in 2006 and, as of the date of her guilty plea, she still had not paid home detention fees of $543.10 to community correction.

Considering the foregoing circumstances, and mindful that the trial court was required by the plea agreement to impose a sentence of at least ten years, we cannot agree that the decision to order Davis to serve seven years of her ten-year executed sentence in prison, with three years to be served in community corrections, was an abuse of discretion. The sentence imposed by the trial court is not inappropriate.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.