

Derrick Whitson pleaded guilty to possession of cocaine¹ as a Class B felony and, pursuant to his plea agreement, was sentenced to six years executed. He appeals, arguing that his sentence was inappropriate in light of the nature of the offense and character of the offender because his sentence was ordered to be served in the Department of Correction and not through Community Corrections.

We affirm.

FACTS AND PROCEDURAL HISTORY

On November 27, 2007, the police were called to an apartment in Marion County on suspicion of drug activity. When they arrived, they discovered Whitson at the location with cocaine in his possession. The State charged Whitson with possession of cocaine as a Class B felony because he had been within 1,000 feet of a family housing complex. On October 21, 2008, Whitson pleaded guilty to the charge pursuant to a written plea agreement. The plea agreement called for a sentence of six years executed with the placement of such sentence left open to the trial court's discretion. At Whitson's sentencing, the trial court sentenced him to serve his six-year executed sentence in the Department of Correction. Whitson now appeals.

DISCUSSION AND DECISION

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial

¹ See Ind. Code § 35-48-4-6.

court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). The defendant has the burden of persuading the appellate court that his sentence is inappropriate. *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008).

Whitson argues that his sentence was inappropriate in light of the nature of the offense and his character. He specifically contends that the trial court's determination that he serve his sentence in the Department of Correction rather than through Community Corrections was inappropriate. He believes that because he requested placement in Community Corrections, had been accepted into the Community Corrections program, and had employment available, his sentence should be revised to allow for it to be served through the Community Corrections program.

This court has previously noted that, "it will be quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate." *Id.* This is because the question under Indiana Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. *Id.* at 268. A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate. *Id.* As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities. *Id.* For example, a trial court is aware of the availability, costs, and entrance requirements of community corrections placements in a specific locale. *Id.*

Although the nature of the offense in the present case was not especially

egregious, the evidence showed that Whitson was found to be in possession of cocaine within 1,000 feet of a family housing complex. As to Whitson's character, the evidence showed that he had a lengthy criminal history, multiple probation violations, and a history of substance of abuse. Whitson's criminal history consists of eleven prior arrests, a juvenile adjudication, two felony convictions, and three misdemeanor convictions. His juvenile adjudication was for burglary, which would have been a Class B felony if committed by an adult. Whitson's felony convictions were for carrying a handgun without a license as a Class C felony and for attempted theft as a Class D felony. He also had misdemeanor convictions for carrying a handgun without a license, operating a vehicle while never obtaining a license, and resisting law enforcement. Additionally, Whitson had previously been placed on probation four times, and had violated his probation every time; in fact, he was on probation at the time of the instant offense. Whitson has pointed to nothing in the record that would render his placement in the Department of Correction to be inappropriate. We conclude that, based upon the nature of the offense and the character of the offender, the trial court's determination that he should serve his six-year executed sentence in the Department of Correction and not through Community Corrections was not inappropriate.

Affirmed.

RILEY, J., and MATHIAS, J., concur.