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**IN THE
COURT OF APPEALS OF INDIANA**

LATOYA DUNCAN,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 22A01-1007-CR-365

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Maria D. Granger, Judge
Cause No. 22D03-0907-FB-1766

June 21, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Latoya Duncan appeals her sentence following a plea of guilty to dealing in cocaine as a class B felony.¹

We reverse and remand.

ISSUE

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

FACTS

On July 20, 2009, a confidential informant (the "CI") arranged to purchase cocaine from Duncan, a resident of Louisville. The CI had purchased drugs from Duncan's boyfriend in the past.

Duncan met the CI at a liquor store in New Albany. After the CI and Duncan completed the transaction, officers with the New Albany Police Department initiated a traffic stop of Duncan's vehicle. Duncan readily admitted to the police that she had given the CI crack cocaine in exchange for \$100.00. Tests revealed that the crack cocaine purchased by the CI weighed less than one gram.

On July 21, 2009, the State charged Duncan with dealing in cocaine as a class B felony. On April 7, 2010, Duncan agreed to plead guilty as charged without the benefit of a plea agreement. The trial court accepted Duncan's guilty plea and ordered a pre-

¹ Ind. Code § 35-48-4-1.

sentence investigation report (“PSI”), which reported that Duncan, who was twenty-one years old when she committed the offense, had no prior criminal history. The PSI also reported that Duncan was employed as a server when she was arrested. According to the probation officer who prepared the PSI, Duncan “appear[ed] appropriate for probation” (App. 73).

The trial court held a sentencing hearing on June 14, 2010. Duncan’s father testified that when Duncan was twelve years old, she was home alone with her mother when her mother had a fatal heart attack. He also testified that he has prostate cancer. Several other relatives testified on Duncan’s behalf.

The trial court found as follows:

[Y]ou have pled guilty . . . instead of taking your case to trial, which would be costly to the State of Indiana. And I view this as a step . . . towards taking responsibility for your actions. . . . I find that as a mitigating factor. . . . I also find that you have no history of any prior criminal convictions, and I find that also as a mitigating factor. I do not find that there are any aggravating factors . . . in your case. . . . [T]he fact that you do not have any history of arrests, or involvement with law enforcement . . . gives the Court an indication . . . that your character . . . reveals in a positive light.

. . . .

I recognize that you have endured a . . . very difficult and painful loss. And I’m aware of that, losing your mother is very difficult. And then . . . facing the illness of your father is very difficult, and I understand that.

(Tr. 75-77). The trial court then sentenced Duncan to eight years, with two years suspended to probation.

DECISION

Duncan asserts that her sentence is inappropriate. We agree.

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). In considering the appropriateness of a sentence, this court is not constricted to considering "only the appropriateness of the aggregate length of the sentence without considering also whether a portion of the sentence is ordered suspended or otherwise crafted using any of the variety of sentencing tools available to the trial judge." *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress*, 848 N.E.2d at 1081. Indiana Code section 35-50-2-5 provides that a person who commits a class B felony "shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years."

Here, it is Duncan's character that is critical to our review of her sentence. Namely, she has acquired no criminal history during her twenty-one years; has

maintained fairly stable employment; and had a difficult past. She also has the support of her family. Thus, she appears to be an excellent candidate for probation.

Furthermore, Duncan accepted responsibility for her crime by pleading guilty as charged. A guilty plea is not automatically a significant mitigating circumstance, particularly where the defendant reaps a benefit from pleading guilty. *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”). In this case, however, Duncan did not reap a significant benefit in return for her plea of guilty.

In light of Duncan’s character, we find that an eight year sentence is inappropriate. We therefore remand this case to the trial court with instructions that it vacate Duncan’s sentence and impose a sentence of six years, with three years suspended under terms of probation with credit for time already served.

Reversed and remanded.

RILEY, J., and BARNES, J., concur.