

Appellant-defendant Justin Brooks appeals the ten-year sentence imposed by the trial court after he pleaded guilty to Arson,¹ a class B felony. Specifically, Brooks argues that the sentence is inappropriate in light of the nature of the offense and his character. Finding that the nature of Brooks's offense and his character do not justify a significantly aggravated sentence, we conclude that his sentence is inappropriate and remand to the trial court with instructions that it impose a term of six years imprisonment with two years suspended to probation.

FACTS

On April 24, 2007, South Bend Police officers were sent to investigate a fire that had taken place in the hallway of Park Jefferson Apartments. Investigators determined that Brooks and two other co-defendants had set the fire with lighted towels that had been set on fire and placed underneath a smoke detector. The fire did not result in any injuries and caused only minimal damage to the hallway of the apartment building.

On June 19, 2007, the State charged eighteen-year-old Brooks with three counts of arson. On November 26, 2007, Brooks entered into a plea agreement pursuant to which he pleaded guilty to one count of arson in exchange for the State's agreement to dismiss the remaining two counts.² The plea agreement placed an eight-year cap on the executed portion of the sentence but otherwise left the sentencing to the trial court's discretion. On

¹ Ind. Code § 35-43-1-1.

² Brooks has consistently maintained that he was not involved in the other two fires that were set and has disputed any criminal liability.

March 5, 2008, the trial court sentenced Brooks to a ten-year period of incarceration with two years suspended, for an executed sentence of eight years. Brooks now appeals.

DISCUSSION AND DECISION

Brooks argues that his sentence is inappropriate in light of the nature of the offense and his character.³ We review challenges to the trial court’s sentencing process for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). When reviewing a sentence imposed by the trial court, we “may revise a sentence authorized by statute 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). In conducting an appropriateness review, we must examine both the nature of the offense and the defendant’s character. Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004). We may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied.

Regarding the nature of the offense, Brooks was playing a “prank” on his Army recruiter Captain Kavadias who lived in the apartment building. Appellant’s App. p. 33, 34. The fire resulted in minimal property damage to the carpet and no one was injured. The fire was set near a smoke detector and “[Brooks] never even thought about burning anything or endangering someone’s life.” PSI p. 14. Brooks admits, and we agree, that

³ Brooks also argues on appeal that the trial court failed to identify certain mitigating factors. Assuming for the sake of argument that the trial court erred in not finding these proffered mitigators, we need not address this issue because we ultimately find Brooks’s sentence to be inappropriate pursuant to Indiana Appellate Rule 7(B) as discussed herein.

this was a “stupid prank.” Id. As a result, we cannot say that the circumstances here justified an eight-year executed sentence when considering the nature of the offense.

Turning to his character, we note that Brooks has accepted responsibility for the mistake that he has made and has admitted that his actions were “stupid and possible [sic] dangerous.” Id. Brooks was eighteen years old at the time of the offense and had no adult or juvenile criminal history. Brooks graduated high school in June 2007 and has been taking online college courses through Indiana University while maintaining full-time employment at Martin’s Supermarket. After the incident, Captain Kavadias stated in a letter to the court that he hopes that “[his] son emulates some of the many fine qualities of Justin Brooks.” Appellant’s App. p. 63. Kavadias further stated that Brooks could have received a waiver to enlist in the Army immediately because he has “an unfillable demand for Soldiers with the makeup of Justin.” Id. at 67. Kavadias describes Brooks as “reliable and trustworthy . . . [and] a pleasure to be around.” Id. at 63.

Prior to sentencing, Brooks was evaluated by the St. Joseph County Probation Department and the St. Joseph County Community Corrections Agency (SJCCC). The probation officer recommended that Brooks serve his executed sentence in home detention in lieu of incarceration and perform community service. PSI p. 7. It was further provided in the record that Brooks could have been placed with the SJCCC. The SJCCC, based upon Brooks’s positive psychological evaluation, determined that Brooks was an appropriate candidate for community corrections and that he could begin a placement in the Day Reporting Program with Electronic Monitoring. Appellant’s App. p. 13.

Although we do not minimize the seriousness of Brooks's offense, we cannot agree that a ten-year sentence is warranted. Brooks pleaded guilty, had no prior criminal history, and his offense resulted in minimal property damage. Thus, we find that the trial court's imposition of a ten-year sentence to be inappropriate and exercise our authority to revise the sentence pursuant to Indiana Appellate Rule 7(B). Accordingly, we remand to the trial court with instructions to impose a sentence of six years incarceration, with two years suspended,⁴ for a total executed sentence of four years.

The judgment of the trial court is reversed and remanded.

RILEY, J., and ROBB, J., concur.

⁴ We agree with the trial court that Brooks is an excellent candidate for a suspended sentence in light of the information from SJCCC, the Probation Department and the evidence submitted at the sentencing hearing.