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FILED
Jul 29 2009, 9:00 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

GARNET R. COX,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 41A01-0903-CR-106
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JOHNSON CIRCUIT COURT
The Honorable K. Mark Loyd, Judge
Cause No. 41C01-0708-FC-44

July 29, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Garnet R. Cox (Cox), appeals his sentence for failure to register as a sex offender, Ind. Code § 11-8-8-17.

We affirm.

ISSUE

Cox raises one issue on appeal, which we restate as: Whether his sentence is inappropriate when his character is considered.

FACTS AND PROCEDURAL HISTORY

On January 22, 1993, Cox was convicted of child molesting, as a Class C felony, and was sentenced to three and one-half years executed and three and one-half years suspended to be served concurrently to another sentence for a conviction for forgery, as a Class C felony. After Cox served the executed portion of his sentence, the trial court found on three different occasions that he had violated probation. On January 22, 1998, Cox was convicted of battery causing bodily injury, as a Class A misdemeanor. On February 2, 1999, Cox was convicted of failure to register as a sex offender, as a Class D felony. After serving an executed portion of his sentence for failing to register, his probation was twice revoked due to violations. On July 1, 1999, Cox was convicted of failure to pay child support, as a Class D felony. On January 31, 2001, Cox was convicted of false reporting, a Class A misdemeanor. On June 9, 2002, Cox was convicted of failing to register as a sex offender, as a Class C felony.

On August 27, 2007, the State filed an Information charging Cox with failing to register as a sex offender as a Class C felony, and as a Class D felony. On February 21,

2008, the State and Cox entered into a plea agreement wherein Cox agreed to plead guilty to failing to register as a Class C felony, and the State agreed to dismiss the Class D felony and not to file an habitual offender enhancement. The plea agreement left sentencing entirely to the discretion of the trial court. On November 6, 2008, the trial court conducted a sentencing hearing. Cox testified that he had recently received some treatment at Community North Hospital for depression. In his opinion, he has significant mental health issues and was concerned about the treatment that he would get if he went to prison. Cox blamed his failure to register as a sex offender in large part on his difficulties in securing a long-term residence. He asked the trial court to sentence him to house arrest so that he could receive counseling and stated that the last time that he had been on probation he completed it without violation. Cox's fiancée also testified on his behalf, stating that Cox had been doing much better at the time he was arrested.

The trial court explained that it found certain aspects of Cox's fiancée's testimony incredible and referred to the fact that a criminal proceeding was pending in Brown County, Indiana, against Cox at the time of sentencing for a fight between him and his fiancée.[1] The trial court explained that it did not believe probation to be a viable option because of Cox's history of probation violations. Acknowledging Cox's mental health condition as a mitigating factor, the trial court expressed its concerns that "no medical evidence support[s] what that would be or how that would be best pursued at this point in time or dealt with."

[1] The record before us does not contain any details regarding any charge pending against Cox in Brown County, Indiana, beyond several references to a fight and some sort of pending action during the sentencing hearing.

(Transcript p. 33). The trial court concluded that Cox's criminal history outweighed this mitigating factor and imposed an eight-year sentence to be served in the Department of Correction.

Cox now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Cox contends only that his sentence is inappropriate when his character is considered. Regardless of whether the trial court has sentenced the defendant within its discretion, we have the authority to independently review the appropriateness of a sentence authorized by statute through Appellate Rule 7(B). *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). That rule permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Where a defendant asks us to exercise our appropriateness review, the burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). "Ultimately the length of the aggregate sentence and how it is to be served are the issues that matter." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other considerations that come to light in a given case. *Id*.

Cox's argument relies completely upon his contention that his mental health issues support reducing his executed sentence. While we are sensitive to mental health issues, Cox failed to present any evidence from any mental health expert regarding his mental health status at sentencing. Moreover, as the trial court pointed out, Cox presented no structured plan for addressing any mental health issues which he may be experiencing. Without such evidence, we are unable to determine whether mental health issues contributed to Cox's current offense or whether alternative sentencing would be more appropriate. Furthermore, Cox's extensive criminal history speaks for the appropriateness of his sentence. Altogether, we are not persuaded that Cox's sentence is inappropriate when his character is considered.

CONCLUSION

Based on the foregoing, we conclude that Cox's sentence is not inappropriate.

Affirmed.

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