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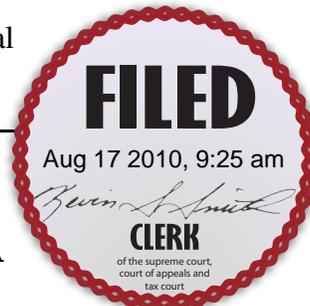
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**IN THE
COURT OF APPEALS OF INDIANA**



TERRY D. McCLINTON, JR.,)

Appellant-Defendant,)

vs.)

No. 45A04-0912-CR-712

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause Nos. 45G01-0902-FA-10, 45G01-0902-FB-22 & 45G01-0903-FA-13

August 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Terry McClinton, Jr., appeals his aggregate sentence of twenty-eight years for two counts of Class B felony robbery and one count of Class B felony dealing in cocaine. He contends that his sentence is inappropriate in light of the unremarkable nature of the offenses. Finding that the character of McClinton alone justifies the trial court's sentence, we affirm.

Facts and Procedural History

The stipulated factual basis indicates that on December 23, 2008, McClinton and accomplice Arvell Greer approached a parked vehicle in Hammond, Indiana. Greer pulled open the driver's side door, pointed a handgun at driver Kurt Krizmanic, and ordered him to exit the vehicle and give Greer money. McClinton pulled Krizmanic down while Greer struck Krizmanic in the head with the handgun. McClinton and Greer then took Krizmanic's wallet, which contained several hundred dollars.

On February 24, 2009, McClinton, along with Romale Williams, Andres Akins, and Zedekiah Goins, went to Deandre Johnson's Hammond residence to rob Johnson of drugs and/or money. At the residence, Williams pointed a handgun at Johnson while McClinton went through Johnson's pockets to take money and drugs.

On February 26, 2009, McClinton and Greer were in a van at a gas station in Hammond for an arranged cocaine sale that took place with a confidential informant from the Hammond Police Department who entered the van and purchased a bag of cocaine weighing approximately 1.4 grams.

The State charged McClinton under three separate cause numbers. Specifically, the State charged him with Class B felony robbery and Class C felony battery for the December 23 incident under Cause Number 45G01-0902-FB-00022 (“Cause No. 22”). In addition, the State charged McClinton with Class A felony burglary, Class B felony burglary, two counts of Class B felony robbery, three counts of Class B felony criminal confinement, and Class C felony battery for the February 24 incident under Cause Number 45G01-0902-FA-00010 (“Cause No. 10”).¹ Finally, the State charged him with Class A felony dealing in cocaine for the February 26 incident under Cause Number 45G01-0903-FA-00013 (“Cause No. 13”). In September 2009 McClinton pled guilty to Class B felony robbery in Cause No. 22, Class B felony robbery in Cause No. 10, and the reduced crime of Class B felony dealing in cocaine in Cause No. 13. McClinton’s plea agreement provides:

[6]c. The parties agree that they are free to fully argue their respective positions as to the sentence to be imposed by the Court, with the agreement that for Dealing in Cocaine, Class B Felony, in Cause FA-00013, there shall be a cap of thirteen (13) years; and for Robbery, Class B Felony, in Cause FA-00010, there shall be a cap of thirteen (13) years, which shall be served concurrently to any sentence imposed in Cause FA-00013; the parties are free to argue whether the concurrent sentences in Causes FA-00013 and FA-00010 should be served concurrently or consecutively with whatever sentence is imposed in Cause FB-00022, therefore, the total sentencing range for the defendant will include a minimum of six (6) years to a maximum of thirty-three (33) years[.]

Appellant’s App. p. 37.

A single sentencing hearing was held for all three cause numbers. The trial court sentenced McClinton to thirteen years for robbery in Cause No. 10, thirteen years for

¹ It appears that Class A felony burglary, Class B felony burglary, and one count of Class B felony robbery were dismissed before the plea agreement. Appellant’s App. p. 4, 36.

dealing in cocaine in Cause No. 13, and fifteen years for robbery in Cause No. 22. The court ordered the sentences in Cause Nos. 10 and 13 to be served concurrently and the sentence in Cause No. 22 to be served consecutively, for an aggregate sentence of twenty-eight years. In support of the sentence, the trial court identified the following aggravating circumstances:

1. The defendant has a history of criminal convictions as follows: juvenile adjudications: 2005- three (3) adjudications.
2. The defendant has a history of criminal convictions as follows: as an adult: [] 2006- Dealing in Cocaine, Case 45G01-0608-FA-00046, wherein the defendant received a split sentence and he failed probation; and 2008- Resisting Law Enforcement, a misdemeanor, Case 45H04-0803-CM-00606, wherein the defendant received a sentence of sixty four (64) days in the Lake County Jail.
3. Prior leniency by criminal courts has had no deterrent effect on the defendant's criminal behavior.
4. The defendant was released from the Lake County Sheriff's Work Release Program on December 15, 2008, only eight (8) days prior to committing the Robbery in Case 45G01-0902-FB-00022.
5. The Court believes the significant aggravating factor of two separate victims, in cases 45G01-0902-FB-00022 and Case 45G01-0903-FA-00013, requires consecutive sentences for those two cases.

The court finds that each aggravating factor, standing alone, outweighs any mitigating factor.

Id. at 44; *see also id.* at 76-77, 113.² The trial court found McClinton's plea of guilty as the sole mitigating factor. *Id.* at 43; *see also id.* at 76, 112. McClinton now appeals his aggregate sentence. This Court consolidated the three cause numbers for purposes of appeal.

² The trial court issued separate sentencing orders for each cause number. Because they are worded identically, we quote only to the one in Cause No. 10.

Discussion and Decision

McClinton contends that his sentence is inappropriate because the nature of the offenses is unremarkable and his participation in the offenses was secondary to the acts of his accomplices. McClinton thus asks that we revise his sentence to an aggregate term not exceeding twenty years.

Sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court "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." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007). The question for us is not whether another sentence is more appropriate but whether the sentence imposed is inappropriate. *Fonner v. State*, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his or her sentence is inappropriate. *Day v. State*, 898 N.E.2d 471, 472 (Ind. Ct. App. 2008).

According to McClinton's plea agreement, the sentencing range for his three Class B felonies was six years to thirty-three years. McClinton's twenty-eight-year sentence is thus within the agreed-upon sentencing range.

As for the character of the offender, McClinton concedes his criminal history is "troublesome." Appellant's Br. p. 4. His criminal history consists of three juvenile

adjudications and, as an adult, Class B felony dealing in cocaine and misdemeanor resisting law enforcement. McClinton also violated his probation for dealing in cocaine and was sentenced to eighteen months in the Lake County Sheriff's Work Release Program. He then committed the first robbery in this case only eight days after his release from the Work Release Program. Thus, previous attempts of leniency and rehabilitation have failed. We find the character of the offender alone justifies the trial court's sentence. McClinton has failed to persuade us that his aggregate sentence of twenty-eight years for three Class B felonies committed within approximately two months of each other is inappropriate in light of the nature of the offenses and his character. We therefore affirm.

Affirmed.

MAY, J., and ROBB, J., concur.