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IN THE
COURT OF APPEALS OF INDIANA

SUSAN MILLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0901-CR-54
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0810-FC-229942
Cause No. 49G06-0810-FD-228263

August 18, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Susan Miller appeals the sentence she received following her conviction of Possession of Paraphernalia,[1] a class D felony, and Criminal Recklessness,[2] also a class D felony, which were entered in cases bearing separate cause numbers upon separate guilty pleas. The trial court consolidated the two cases for purposes of sentencing. Miller presents the following restated issue for review: Did the trial court impose an inappropriate sentence?

We affirm.

Miller admitted at the guilty plea hearing that relative to the criminal recklessness offense, on September 28, 2008, she stabbed George Martinez with a knife. She also admitted, with respect to the paraphernalia offense, that on October 5, 2008, she possessed a pipe intended for use in ingesting a controlled substance. With respect to the former incident, Miller was originally charged with battery as a class C felony. With respect to the latter, she was charged with possession of paraphernalia as a class A misdemeanor, and possession of paraphernalia with a similar, previous conviction, as a class D felony. Thereafter, she entered into a plea agreement whereby she agreed to plead guilty as set out above. In addition, the parties agreed to the following with respect to the sentence: "A cap of one (1) year on the initial executed portion of the sentence, open to placement. The cases shall be concurrent. A civil judgment in the amount of $25,490 to George Martinez." *Appellant's Appendix* at 18. At the sentencing hearing, the trial court imposed concurrent, three-year sentences for each conviction, with one year executed and two years suspended to

[1] Ind. Code Ann. § 35-48-4-8.3 (West, Premise through 2009 Public Laws approved and effective though 4/20/2009).

[2] Ind. Code Ann. § 35-42-2-2 (West, Premise through 2009 Public Laws approved and effective though 4/20/2009).

probation.

Miller contends her sentence is inappropriate. We have the constitutional authority to revise a sentence if, after considering the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Miller bears the burden on appeal of persuading us that her sentence is inappropriate. *See Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

Miller argues that her sentence was inappropriate because the executed sentence prevents her from entering alternative treatment programs that she "needed to be successful," *Appellant's Brief* at 10, and that the court should reduce the term of the suspended sentence because "Ms. Miller has clearly shown an inability to perform well on probation." *Id*. at 9. With respect to the first argument, Miller suggests that what she describes as "an alternative incarceration facility or 'half-way' house" would be a preferred option to incarceration. *Id*. at 10. We understand this to mean a facility in which she would have more freedom of movement and more freedom from control than she does in a traditional penal institution. We believe Miller has identified the weakness inherent in that alternative in noting that she has not historically responded well to the freedom conferred by probation. There is no reason to believe that she would respond in a significantly different way to the sort of freedom she

would enjoy at half-way houses or similar facilities.

With respect to the second argument, Miller seems to suggest that because she has not behaved well on probation, the court should not have given her a probationary sentence because "it would seem to be a clear path back to prison." *Id*. at 10. With laudable candor, counsel has highlighted the dilemma before the trial court: what sentence should it impose to maximize the chance of rehabilitating an individual who has historically shown no ability or inclination to rehabilitate herself? Like the trial court, we can conceive of no viable solution that will essentially force Miller to begin the task of rehabilitation – a task she has heretofore been unwilling or unable to undertake. Thus, we are left to consider an appropriate sentence for someone with Miller's character and considering the offenses to which she pleaded guilty.

We turn to defense counsel for an apt summary of Miller's character, as revealed by past conduct:

> A review of her criminal history demonstrates that Ms. Miller has shown an inability to perform well in society for any appreciable length of time. Since being released in 1994 on parole from her first adult conviction, Ms. Miller has been arrested eighteen (18) times resulting in five (5) convictions. On four (4) of those occasions, Ms. Miller's probation was revoked and she served additional time.

Id. at 9. Moreover, one of the offenses of which Miller was convicted in the instant case involved an attack with a deadly weapon, resulting in the infliction of a serious wound on the victim. This represents a troubling new direction with respect to the unlawful behavior in which she engages. In light of this, the facts that Miller has a history of substance abuse and mental health issues, and that she was sexually abused as a child, although unfortunate, are

not of such mitigating weight as to recommend a more lenient sentence. Miller received a one-year, executed sentence, with two years of probation to follow, which was the maximum executed sentence that could be imposed under the terms of the plea agreement, but nevertheless represents less than the advisory sentence for a class D felony. In view of Miller's character and the nature of the offenses to which she pleaded guilty, this sentence is appropriate.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.