Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
Aug 19 2009, 9:03 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

MARK A. BATES
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MELVIN L. SLEDGE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0903-CR-168
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0608-FB-78

August 19, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Melvin Lamel Sledge appeals his four-year sentence to be served in the Department of Correction for Class C felony possession of cocaine. Specifically, he contends that his sentence is inappropriate because he should have been placed in a work-release program operated by the Department of Correction. Concluding that Sledge's sentence is not inappropriate, we affirm.

Facts and Procedural History

On July 28, 2006, Sledge possessed 1.3 grams of cocaine within one thousand feet of the American Conservatory of Music, a school in Hammond, Indiana. The State charged Sledge with Class B felony delivery of cocaine. The State and Sledge later reached a plea agreement wherein the State agreed to file an amended information charging Sledge with both delivery of cocaine as a Class B felony and possession of cocaine as a Class C felony. Appellant's App. p. 25 (plea agreement), 28 (amended information), 41 (corrected amended information). In exchange for Sledge's guilty plea to the Class C felony count, the State agreed to dismiss the Class B felony count. *Id.* at 25. Additionally, the parties agreed that Sledge would be sentenced for the Class C felony to a four-year term in the Department of Correction. *Id.* On February 27, 2008, at a guilty plea hearing, Sledge pled guilty to Class C felony possession of cocaine.[1] The trial court accepted his guilty plea. At the sentencing hearing, Sledge requested that he be able to serve his sentence through a work release program in a local community corrections facility, the Kimbrough Work Program, that was under the auspices of the

[1] Ind. Code § 35-48-4-6.

Department of Correction. Evidence was presented at the sentencing hearing that Sledge sold drugs to support his three children and his girlfriend. Evidence was also presented that although Sledge failed to obtain his GED, he did successfully complete a substance abuse program. But disturbed by Sledge's criminal history, the trial court rejected Sledge's request to be placed in an alternative program and imposed a four-year sentence to be served in the Indiana Department of Correction. Sledge now appeals.

Discussion and Decision

Sledge contends that the trial court abused its discretion by ordering him to serve his four-year sentence in the Department of Correction and not in a local community corrections facility, despite his eligibility.[2] But, in his reply brief, Sledge also claims his sentence is inappropriate under Indiana Appellate Rule 7(B). Inappropriate sentence and abuse of discretion claims are to be analyzed separately. *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)).[3]

In reviewing the imposition of a trial court's decision, 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

[2] Although the prosecutor at sentencing objected to placement in a work-release program, both parties agreed at sentencing and on appeal that the terms of the plea agreement gave the trial court discretion to place Sledge in the program because it was part of the Department of Correction.

[3] The State argues that Sledge has waived this argument for failure to make a cogent argument. Waiver notwithstanding, any inappropriateness claim fails, for the reasons discussed below.

character of the offender." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The burden is on the defendant to persuade us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

The location where a sentence is to be served is a proper focus for application of our review and revise authority. *King*, 894 N.E.2d at 267 (citing *Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007)). It is not, however, subject to review for abuse of discretion; rather, it is reviewed for inappropriateness. *Id.* Nonetheless, we note that it will be quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate. *Id.* (citing *Fonner v. State*, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007)). This is because the question under Appellate Rule 7(B) is not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate. *Id.* at 268. A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate. *Id.* Trial courts know best the feasibility of alternative placements because they are aware of the availability, costs, and entrance requirements of alternative placements in a particular community. *Id.*

Here, we are not convinced that the trial court's imposition of a four-year sentence in the Department of Correction instead of the Kimbrough Program is inappropriate in light of the nature of the offense and the character of the offender. Although there is nothing particularly egregious about the nature of the offense, we conclude that the trial court's placement in the Department of Correction is appropriate because of Sledge's character, as evidenced by his criminal history.

As a juvenile, Sledge was arrested twice in Illinois in 2001. He was first arrested for criminal trespass to a vehicle and theft. Less than two months later he was arrested for possession of a controlled substance and unlawful possession of a firearm. At the time the Presentence Investigation Report was written, the probation officer was awaiting records from the Illinois Juvenile Justice Division, so the outcome of these cases remained unknown.

As an adult, Sledge was arrested in Illinois for criminal trespass to a building in 2002, knowingly damaging property in 2002, criminal trespass to a vehicle in 2003, and domestic battery in 2004. These charges were deemed either "Stricken Off/Leave Reinstated" or "Nolle Prosequi." Appellant's App. p. 68-69. In May 2005 in Indiana, Sledge violated a noise pollution ordinance. Eight days later he was arrested in Illinois for two counts of felony aggravated battery against a peace officer and sentenced in 2006 (after the arrest in the case at hand) to two years probation. *Id.* at 69. The trial court noted that Sledge should have been able to figure out the "difference between right and wrong" at some point in time after his eight previous arrests and before this incident. Mt. to Withdraw and Sent. Hrg. Tr. p. 50. Sledge's criminal activity does not reflect well upon his character. Again, we do not review a defendant's sentence to determine whether a different sentence would be more appropriate; rather, we review to determine whether the sentence imposed is itself inappropriate. Although we applaud Sledge's completion of a substance abuse program, we cannot say in light of his criminal history that his four-year advisory sentence to be served in the Department of Correction and not through

work release is inappropriate. In conclusion, Sledge has failed to persuade us that his placement is inappropriate in light of the nature of his offense and his character.

Affirmed.

BAILEY, J., and BRADFORD, J., conur.