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IN THE
COURT OF APPEALS OF INDIANA

CHRIS FREEMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 04A05-0906-CR-345
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BENTON CIRCUIT COURT
The Honorable Rex W. Kepner, Judge
Cause No. 04C01-0903-FC-54

September 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Chris Freeman appeals following his conviction, pursuant to a guilty plea, for Class C felony Nonsupport of a Dependent Child[1] and the finding that he is a Habitual Offender,[2] for which he received a maximum eight-year sentence enhanced by twelve years in the Department of Correction, for a total of twenty years, with eighteen years executed and two years suspended to probation. Upon appeal, Freeman challenges the sufficiency of the evidence to establish the factual basis for his plea and claims that his sentence is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual basis entered during the March 12, 2009 plea hearing, Freeman is the father of S.S., born August 21, 1989. On August 13, 1999, the trial court ordered Freeman to pay child support in the amount of $117 per week, which Freeman failed to do. Between April of 2004 and July of 2007, Freeman did not make any child support payments, nor did he provide S.S. with food, shelter, or clothing. At the time of his plea, Freeman's child support arrearage was in excess of $15,000. Since 1999 Freeman paid child support "a few times" when he was on work release but not regularly because he had "problems." Tr. p. 10. Freeman has prior convictions for nonsupport of a dependent child, including a Class D felony conviction in approximately 1999, a Class C

[1] Ind. Code § 35-46-1-5 (2007).

[2] Ind. Code § 35-50-2-8 (2007).

felony conviction in approximately August 2001, and a Class D felony conviction on August 7, 2003.[3]

On March 12, 2009, the State charged Freeman with Class C felony nonsupport of a dependent child and alleged him to be a habitual offender. Following Freeman's March 12 plea hearing, in which he pled guilty to the charge and admitted the offenses underlying the habitual offender allegation, the trial court found an adequate factual basis and accepted Freeman's guilty plea. Following an April 6, 2009 sentencing hearing, the trial court sentenced Freeman to a maximum sentence of eight years, enhanced by twelve years due to his habitual offender status, with eighteen years to be executed in the Department of Correction and two years suspended to probation. This appeal follows.

DISCUSSION AND DECISION

I. Conviction

Upon appeal, Freeman challenges his conviction by claiming that there was insufficient evidence to support the factual basis for his plea. As the State points out, Freeman is precluded from raising this challenge. It is well settled that a person who pleads guilty cannot challenge the propriety of the resulting conviction on direct appeal; he or she is limited on direct appeal to contesting the merits of a trial court's sentencing

[3] Freeman was unrepresented by counsel during the plea and sentencing hearings. There are discrepancies between the facts he admitted for purposes of the factual basis and the record on appeal. At the plea hearing, Freeman admitted that he was convicted of Class D felony nonsupport of a dependent child "around" 1999, that he was convicted of Class C felony nonsupport of a dependent child in August 2001, and that he was convicted of another Class D felony nonsupport of a dependent child on August 7, 2003. Tr. p. 11. The pre-sentence investigation report ("PSI") indicates that Freeman was convicted in August 2000, not 1999, of Class D felony non-support of a dependent child and that in April of 2001, not August, he was convicted of Class C felony non-support of a dependent child. The PSI makes no reference to the August 7, 2003 Class D felony nonsupport conviction to which Freeman admitted.

decision, and then only where the sentence is not fixed in the plea agreement. *Alvey v. State*, 911 N.E.2d 1248, 1249 (Ind. 2009) (citing *Collins v. State*, 817 N.E.2d 230, 231 (Ind. 2004)). It is inconsistent to allow defendants both to plead guilty and to challenge evidence supporting the underlying conviction. *Id.* (citing *Norris v. State*, 896 N.E.2d 1149, 1153 (Ind. 2008)). "'A defendant's plea of guilty is [] not merely a procedural event that forecloses the necessity of trial and triggers the imposition of sentence. It also, and more importantly, conclusively establishes the fact of guilt, a prerequisite in Indiana for the imposition of criminal punishment.'" *Id.* (quoting *Norris*, 896 N.E.2d at 1152). We therefore decline to address Freeman's challenge to his conviction.

II. Sentence

Freeman also challenges the appropriateness of his sentence. Article VII, Sections 4 and 6 of the Indiana Constitution "'authorize[] independent appellate review and revision of a sentence imposed by the trial court.'" *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the "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." We exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires that we give "due consideration" to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the

defendant's burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

Freeman's challenge is premised upon the assumption that he received the maximum sentence. While Freeman received the maximum sentence in terms of years, he received a partially suspended sentence. There is currently a split on this court as to whether a "maximum sentence" measured in terms of years qualifies as a "maximum sentence" if, as in the case here, some or all of those years are suspended. *Compare Bauer v. State*, 875 N.E.2d 744, 749 (Ind. Ct. App. 2007) ("When considering the duration of a sentence, a year is still a year, regardless of whether it is executed or suspended."), *trans. denied, with Beck v. State*, 790 N.E.2d 520, 522 (Ind. Ct. App. 2003) (confirming appropriateness of sentence, which although "maximum sentence" in terms of days, was suspended and therefore not "maximum punishment" of an executed sentence); *see also Jenkins v. State*, 909 N.E.2d 1080, 1084 (Ind. Ct. App. 2009) (disagreeing with view that a fully executed sentence is equivalent to a sentence of equal length but partially suspended to probation), *trans. pending*. Here, even if, as Freeman contends, his sentence is construed as a "maximum sentence," we nevertheless conclude it is appropriate.

With respect to the nature of Freeman's offense of nonsupport of a dependent child, the State's evidence at sentencing demonstrated that he was $74,369.79 in arrears as of that date. This amount is almost five times the $15,000 amount necessary to elevate this offense to a Class C felony. *See* Ind. Code § 35-46-1-5. Freeman has paid only

twelve percent of the amount due for S.S.'s support, and he has made no contribution since April of 2004.

With respect to Freeman's character, his failure to participate in any manner in S.S.'s support, either financially or otherwise, since April of 2004, reflects poorly upon him. Freeman has multiple prior convictions for nonsupport of a dependent child, demonstrating a conscious and gross disregard for his parental obligations. Indeed, during the time in which Freeman was avoiding his child support obligations, he had the resources to support a ten-to-fifteen-dollar-per-day heroin habit, and he currently supports a two-packs-of-cigarettes-per-day smoking habit. In addition, Freeman has prior felony convictions for possession of tools for commission of a crime and escape, and a prior misdemeanor conviction for possession of marijuana. At the time of the instant plea, Freeman also admitted to violating the conditions of his probation and work release on separate occasions. While Freeman's agreement to plead guilty without negotiating a plea agreement shows a superficial acceptance of responsibility, true acceptance of responsibility requires an actual effort to make the required payments for S.S., which Freeman has failed to do. As a consequence, S.S. has been working up to three jobs since she was fifteen years old to support herself. In light of Freeman's significant arrearage, which he has left perpetually unaddressed, and his character, which is colored by a history of criminal convictions reflecting an ongoing disregard for the law and his child's needs, we are persuaded that his twenty-year sentence, with eighteen years executed in the Department of Correction, is appropriate.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.