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FILED
Oct 11 2011, 9:38 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

DAWON STRONG,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 22A01-1104-CR-143
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Maria D. Granger, Judge
Cause No. 22D03-1001-FA-113

October 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Dawon Strong appeals his fifteen-year sentence with three years suspended for Class B felony dealing in cocaine. He contends that his sentence is inappropriate in light of the nature of the offense and his character. Finding that Strong has failed to persuade us that his sentence is inappropriate, we affirm.

Facts and Procedural History

In January 2010, the State charged Strong with Class A felony dealing in cocaine (three grams or more) and Class A misdemeanor possession of marijuana. In March 2011, Strong and the State entered into an "open" plea agreement in which Strong pled guilty to Class B felony dealing in cocaine as a lesser-included offense of Class A felony dealing in cocaine and the State dismissed the marijuana charge. At the guilty plea hearing, the factual basis for Class B felony dealing in cocaine established that Strong knowingly delivered cocaine in Floyd County, Indiana, on January 14, 2010.

At the sentencing hearing, the trial court identified two aggravators: (1) there is a risk that Strong will commit another crime and (2) Strong's "condition and prior criminal record." Appellant's App. p. 55. Specifically, the court noted that Strong

> has been subject to police authority . . . . dating back to 2000. This history is reflective of [Strong's] character. His history of arrests suggests to the Court that [he] poses a risk that he will commit another crime because his prior contacts with police authority and the criminal justice system have not been successful at deterring his unlawful behavior.

Id. The court noted that Strong's prior criminal record included "drug related misdemeanor offense[s], as well as other offenses of a violent nature." Tr. p. 58. The trial court identified one mitigator, Strong "pled guilty taking responsibility for his

actions instead of taking his case to trial which has resulted in saving the State of Indiana the expense of a costly trial. Much of the weight in mitigation has already been reflected in [Strong's] plea of guilty to a lesser included offense." Appellant's App. p. 55. Concluding that the aggravating factors outweighed the mitigating factor, the trial court sentenced Strong to fifteen years with three years suspended to probation. Strong now appeals his sentence.

Discussion and Decision

Strong contends that his fifteen-year sentence with three years suspended to probation is inappropriate. He asks us to revise his sentence to the advisory term of ten years with three years suspended to probation.

Our rules authorize revision of a sentence "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." Ind. Appellate Rule 7(B). "[A] defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review." *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). In assessing whether a sentence is inappropriate, appellate courts may take into account whether a portion of the sentence is ordered suspended or is otherwise crafted using any of the variety of sentencing tools available to the trial judge. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

The principal role of Rule 7(B) review "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case."

Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). We "should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Id.* Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case. *Id.* at 1224.

A person who commits a Class B felony shall be imprisoned for a fixed term of between six and twenty years, with the advisory sentence being ten years. Ind. Code § 35-50-2-5. Here, the trial court sentenced Strong to fifteen years with three years suspended to probation.

As Strong points out, there is nothing particularly egregious about the offense. Strong delivered over three grams of cocaine to an informant. Appellant's App. p. 77, 89-90 (PSI); Tr. p. 21 (Strong does not dispute contents of PSI). Strong testified at the sentencing hearing that he had been dealing drugs for about two months before his arrest in this case because he had "two weeks to pay" and one exam to take on his work-from-home GED program but had no money to pay for it. Tr. p. 25-27. In hindsight, Strong said that this was a bad idea.

Strong's character tells a different story. It is true that Strong, who turned thirty years old on the day of his sentencing hearing, has six children and took an active role in caring for them before his arrest in this case. Nevertheless, Strong has had numerous contacts with the criminal justice system. Specifically, Strong has a 2000 conviction for criminal mischief, a 2000 conviction for terroristic threatening, a 2002 conviction for

terroristic threatening, a 2002 conviction for aggravated assault, a 2005 conviction for possession of marijuana, and a 2009 conviction for possession of marijuana—all from Kentucky. It appears that all of these convictions are misdemeanors. Strong also has ordinance violations and equipment violations—also from Kentucky. In addition, he has numerous arrests which resulted in dropped charges. Strong's prior misdemeanor convictions and other contacts with the criminal justice system have not convinced him to reform his behavior. Rather than following a pathway of reform, Strong tried to obtain his GED by selling cocaine to others for at least two months before eventually getting caught. This put the very family he says he was trying to care for at risk. Nevertheless, Strong argues his attempt to seek his GED should reflect positively on his character. However, this attempt to better himself came at the expense of others by selling them illegal, addictive drugs when he could have borrowed money from his own family instead. *See* Tr. p. 23, 29-30.

Like the trial court, we recognize that Strong pled guilty in this case, but we note the substantial benefit that Strong received from his plea agreement, particularly the Class A felony was reduced to a Class B felony and the Class A misdemeanor was dismissed. In addition, although Strong apologized at sentencing because he "kn[e]w better than [to] put myself in a situation like this," *id.* at 23, in light of the evidence against him, his criminal record, and the incredible family support Strong had before this crime, the remorse Strong expressed does not seem to carry much weight.

In sum, Strong has failed to persuade us that his twelve-year executed sentence for Class B felony dealing in cocaine is inappropriate in light of the nature of the offense and his character. We therefore affirm the trial court.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.