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IN THE
COURT OF APPEALS OF INDIANA

COREY EUGENE BEE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0612-CR-1171
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0604-FC-36

December 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Following a plea of guilty to fraud on a financial institution and possession of marijuana, Corey Eugene Bee ("Bee") contends that the trial court erred in imposing a public defender services fee and that his sentence is inappropriate. Because the trial court did not follow the statutory requirements in imposing the public defender services fee, we remand this case with instructions to vacate the fee. However, in light of Bee's extensive criminal history, which is comprised of substantially similar crimes, we conclude that Bee's eight-year sentence with two years suspended is not inappropriate.

Facts and Procedural History

On approximately January 9, 2006, Bee obtained a check from Purdue University for nearly $4500. Although he knew the school did not owe him any money, he cashed the check at a Chase bank in Lafayette, Indiana. Additionally, on January 21, 2006, Bee possessed marijuana. On October 4, 2006, Bee and the State entered into a plea agreement whereby Bee agreed to plead guilty to fraud on a financial institution as a Class C felony and possession of marijuana as a Class A misdemeanor and the State agreed to dismiss one count of forgery and two counts of theft. According to the terms of the plea agreement, the trial court could "impose whatever sentences it deems appropriate except the total executed portion of the sentences shall not exceed six years." Appellant's App. p. 13.

A sentencing hearing was held on November 30, 2006. In its sentencing order, the trial court identified two aggravators: (1) Bee has a history of criminal or delinquent activity and (2) Bee has a long-term substance abuse history. The court identified as a

mitigator that Bee "has taken responsibility for his actions by entering a plea of guilty." *Id.* at 18. Finding that the aggravators outweighed the mitigator, the court sentenced Bee to seven years for fraud on a financial institution and one year for possession of marijuana, with the sentences to run consecutively. The court ordered Bee to serve six years, with four years in the Indiana Department of Correction followed by two years though Tippecanoe County Community Corrections. The remaining two years were suspended to supervised probation. In addition, the court ordered Bee to "reimburse the Tippecanoe County Public Defender the sum of $200.00 for services rendered." *Id.* at 21. Bee now appeals his sentence.

Discussion and Decision

Bee raises two issues on appeal. First, he contends that the trial court erred in imposing a $200 public defender services fee without determining his ability to pay. Second, he contends that his sentence is inappropriate. We address each issue in turn.

I. Public Defender Services Fee

Bee contends that "the trial court erred in imposing a fee for public defender services without determining that [he] had the ability to pay." Appellant's Br. p. 8. The State responds that Indiana Code § 35-33-7-6 allows a trial court to impose a public defender services fee of $100 regardless of whether the court makes a finding regarding the defendant's ability to pay and therefore at least $100 of Bee's $200 fee is proper. The State is incorrect.

Indiana Code § 35-33-7-6 provides, in pertinent part:

> (c) *If the court finds that the person is able to pay part of the cost of representation by the assigned counsel*, the court shall order the person to pay the following:
>
> (1) For a felony action, a fee of one hundred dollars ($100).
>
> (2) For a misdemeanor action, a fee of fifty dollars ($50).

Ind. Code § 35-33-7-6(c) (emphasis added). This Court clarified in *May v. State* that Indiana Code § 35-33-7-6(c) requires the trial court to make a finding of a defendant's ability to pay the costs of representation before it can order the defendant to pay a $100 public defender services fee for a felony action. 810 N.E.2d 741, 745-46 (Ind. Ct. App. 2004). The trial court made no such finding here, and, therefore, at least $100 of Bee's $200 public defender services fee cannot be upheld on this basis.

In addition, Indiana Code § 33-40-3-6 and Indiana Code § 33-37-2-3 grant trial courts the discretion to impose representation costs against a defendant in excess of the $100 felony action fee. However, Indiana Code § 33-40-3-6 applies only in those situations where the court makes a finding of ability to pay the costs of representation, while Indiana Code § 33-37-2-3 applies only to those defendants that the court deems not indigent. *See Lamonte v. State*, 839 N.E.2d 172, 176 n.1 (Ind. Ct. App. 2005); *May*, 810 N.E.2d at 745-46 (discussing former statutes 33-9-11.5-6 and 33-19-2-3). Neither of these things happened here. Accordingly, we reverse the trial court's imposition of a $200 public defender services fee and remand this case. On remand, if the trial court wishes to impose a public defender services fee, it must follow the statutory requirements. *See May*, 810 N.E.2d at 746.

II. Inappropriate Sentence

Bee contends that his sentence is inappropriate. Indiana Appellate Rule 7(B) provides: "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." "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied*, *cert. denied*, 547 U.S. 1026 (2006). The burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). After due consideration of the trial court's decision, we cannot say that Bee's sentence is inappropriate.

As for the nature of the offense, the factual basis for Bee's plea of guilty to fraud on a financial institution does not tell us much about the specifics of the crime. The same can be said for possession of marijuana. However, we do know that Bee cashed a check from Purdue University for nearly $4500 knowing that the money was not his and that he possessed marijuana on a different occasion. In addition, Bee testified at the sentencing hearing that he spent the money on "drugs and alcohol." Appellant's App. p. 40.

As for his character, twenty-eight-year-old Bee has compiled a lengthy criminal history comprised of substantially similar crimes. According to the Pre-Sentence Investigation Report, Bee has two unrelated 1997 convictions for Class A misdemeanor check deception, a 1997 conviction for Class D felony theft by check deception, and a

1998 conviction for Class C felony fraud on a financial institution. In addition, Bee has a 1997 conviction for Class B misdemeanor failure to stop after an accident resulting in damage to a vehicle, a 2000 conviction for Class B misdemeanor false informing, at least two probation revocations, and juvenile adjudications for assault/battery and theft. The record also shows that Bee has a longstanding drug problem for which he has yet to receive any treatment. Given the similarities of the present offense of fraud on a financial institution to his previous convictions for check deception, theft by check deception, and fraud on a financial institution, Bee's criminal activity in this regard clearly remains undeterred by his previous periods of incarceration and probation. Given the nature of the offenses and his character, Bee has failed to persuade us that his eight-year sentence with two years suspended is inappropriate.

Reversed and remanded in part, affirmed in part.

BAKER, C.J., and BAILEY, J., concur.