

Appellant-defendant Marvin Smith appeals the sentence that was imposed following his conviction for Battery to a Law Enforcement Officer,¹ a class D felony. Specifically, Smith claims that a two-year executed sentence is inappropriate when considering the nature of the offense and his character. Concluding that Smith's sentence is not inappropriate, we affirm the judgment of the trial court.

FACTS

On August 16, 2009, Smith was incarcerated in the St. Joseph County Jail. Special Deputy Ronald Szymarek had served dinner to the inmates and was in the process of retrieving the dining trays. When Smith did not respond to Deputy Szymarek's request for his tray, Deputy Szymarek opened the cell door. Smith "bum rushed" Deputy Szymarek and began punching him. Tr. p. 48-49. Smith also jumped on Deputy Szymarek and pushed him against a wall. Although Deputy Szymarek was able to force Smith back into his cell, Deputy Szymarek sustained bruises and lacerations to the head, a black eye, and a loose tooth.

As a result of the incident, Smith was charged with battery to a law enforcement officer, a class D felony. Following a jury trial on May 13, 2010, Smith was found guilty as charged. At a sentencing hearing, the trial court found no mitigating circumstances and determined that Smith's juvenile record and criminal history were aggravating factors. After noting that Smith had been serving a sentence on a probation violation, the

¹ Ind. Code § 35-42-2-1(a).

trial court sentenced Smith to two years of incarceration that was ordered to run consecutively to the sentence that was imposed on the other offense. Smith now appeals.

DISCUSSION AND DECISION

Smith claims that the two-year sentence was inappropriate in light of the nature of the offense and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). 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). The sentencing range for a class D felony is six months to three years, with one and one-half years being the advisory sentence. Ind. Code § 35-50-2-7.

Appellate counsel acknowledges that Smith “was on felony probation at the time of this offense.” Appellant’s Br. p. 4. And, as noted above, Smith has a juvenile history and prior criminal convictions that include possession of cocaine, a class D felony, and criminal trespass. Appellant’s App. p. 3-7. In light of these circumstances, Smith has failed to persuade us that the two-year executed sentence is inappropriate. Thus, we decline to set the sentence aside.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.