

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Pedro A. Burgos, Jr.,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 22, 2024
Court of Appeals Case No.
23A-CR-1995
Appeal from the LaPorte Circuit Court
The Honorable Thomas J. Alevizos, Judge
Trial Court Cause No.
46C01-2110-F2-1410

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

[1] Pedro A. Burgos, Jr., appeals the sentence imposed by the trial court following his guilty plea to level 2 felony dealing in a Schedule I, II, or III controlled substance. He contends that the trial court abused its discretion during sentencing and that his sentence is inappropriate in light of the nature of the offense and his character. Finding no abuse of discretion and further concluding that he has not met his burden to demonstrate that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] The record indicates that Burgos sold counterfeit oxycodone pills containing fentanyl to a confidential informant during three controlled buys in August and October 2021. A search of his residence revealed 3.4 pounds of marijuana, nine bags of small blue pills weighing 51.5 grams, and 3.8 grams of rectangular yellow pills that appeared to be Alprazolam. Officers also recovered an AR 556 rifle and \$25,550 in currency. The currency included \$400 of prerecorded buy money from the controlled transactions. Following the search, Burgos gave a statement to police wherein he admitted to selling the pills and that he knew that the pills contained fentanyl.

[3] Burgos was arrested and charged with level 2 felony dealing in a Schedule I, II, or III controlled substance, two counts of level 3 felony dealing in a Schedule I, II, or III controlled substance, and level 5 felony dealing in a Schedule I, II, or

III controlled substance. Burgos was then released on bond with supervision by the probation department. Officers were dispatched to Burgos's residence on January 4, 2022, on a report of a possible overdose. Burgos admitted to violating the terms of his pretrial release by taking one of his small round blue pills. His pretrial release was revoked on January 6, and a warrant was issued for his arrest. Burgos was arrested but then again released on bond and ordered to engage in substance-abuse counseling. On October 14, 2022, the probation department filed a notice of probation violation alleging that Burgos had failed to enroll in or complete substance-abuse counseling. Burgos failed to appear at a hearing on his violation, and a warrant was issued for his arrest. Burgos also failed to appear at a hearing on January 25, 2023. He was thereafter arrested on a new cause, and his bond in the current case was revoked at his own request.

- [4] On June 16, 2023, Burgos pled guilty, pursuant to a plea agreement, to the level 2 felony charge in exchange for the dismissal of the remaining charges as well as the dismissal of the level 4 felony dealing in a narcotic drug charge in the unrelated cause. The plea agreement provided for a sentencing cap of seventeen and a half years. Following a sentencing hearing on August 28, 2023, the trial court imposed a seventeen-and-a-half-year executed term. This appeal ensued.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion during sentencing.

- [5] Burgos first asserts that the trial court abused its discretion during sentencing. In general, “sentencing decisions are left to the sound discretion of the trial court, and we review the trial court’s decision only for an abuse of this discretion.” *Singh v. State*, 40 N.E.3d 981, 987 (Ind. Ct. App. 2015), *trans. denied* (2016). “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (quotation marks omitted), *clarified on reh’g*, 875 N.E.2d 218. A trial court may abuse its discretion by (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Id.* at 490-91.

- [6] Here, in addition to several aggravating factors, the trial court found Burgos’s guilty plea to be the sole mitigating factor. Burgos contends that the trial court abused its discretion by omitting additional mitigating circumstances advanced by him that were clearly supported by the record, namely, his young age of

twenty-two and his history of substance abuse.¹ A trial court is neither required to find the presence of mitigating factors, *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993), nor obligated to explain why it did not find a factor to be significantly mitigating. *Sherwood v. State*, 749 N.E.2d 36, 38 (Ind. 2001). A court does not err in failing to find mitigation when a mitigation claim is highly disputable in nature, weight, or significance.” *Henderson v. State*, 769 N.E.2d 172, 179 (Ind. 2002). Further, “the trial court is not required to weigh or credit the mitigating evidence the way appellant suggests it should be credited or weighed.” *Fugate*, 608 N.E.2d at 1374.

- [7] It is well established that youth is not automatically a significant mitigating circumstance. *Gross v. State*, 769 N.E.2d 1136, 1141 n.4 (Ind. 2002). Whether a defendant’s age constitutes a significant mitigating circumstance is a decision that lies within the discretion of the trial court. *Id.* The same can be said regarding substance abuse history. *See Scott v. State*, 162 N.E.3d 578, 582 (Ind. Ct. App. 2021) (“A trial court does not abuse its discretion in considering a history of drug abuse to be an aggravator, rather than a mitigator.”); *see also Marley v. State*, 17 N.E.3d 335, 341 (Ind. Ct. App. 2014) (noting that a history of substance abuse may be a mitigating factor but may also be an aggravating factor where the defendant is aware of a substance abuse problem but has not taken appropriate steps to treat it), *trans. denied*. Simply put, the trial court did

¹ The State’s assertion that Burgos has waived this claim for failing to advance these factors for consideration during sentencing is disingenuous and unsupported by the record.

not overlook Burgos's age or his substance abuse history when making its sentencing decision, but specifically declined to find either to be a significant mitigating circumstance. As our supreme court has explained, "This was the trial court's call." *Anglemeyer*, 868 N.E.2d at 493. The trial court's decision is not against the logic and effect of the facts and circumstances before it. We find no abuse of discretion.

Section 2 – Burgos has not met his burden to demonstrate that his sentence is inappropriate.

[8] Burgos also asks us to reduce his sentence pursuant to Indiana Appellate Rule 7(B), which states, "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." When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Burgos bears the burden to show that his sentence is inappropriate. *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g 875 N.E.2d 218.

[9] "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "Such deference should prevail unless overcome by compelling evidence

portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). As we assess the nature of the offense and character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013).

Ultimately, whether a sentence should be deemed inappropriate "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case."

Cardwell, 895 N.E.2d at 1224.

- [10] Regarding the nature of the offense, we observe that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a level 2 felony is between ten and thirty years, with an advisory sentence of seventeen and a half years. Ind. Code § 35-50-2-4.5. The trial court here imposed the advisory sentence. We note that it is well established that "[a] defendant's conscious choice to enter a plea agreement that limits the trial court's discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of sentence reasonableness and appropriateness." *Merriweather v. State*, 151 N.E.3d 1281, 1286 n.2 (Ind. Ct. App. 2020) (quoting *Childress v. State*, 848 N.E.2d 1073, 1081 (Dickson, J., concurring)). Burgos's agreement here is strong and persuasive evidence that the seventeen-and-a-half-year sentence is not inappropriate in light of the nature

of his offense, and he fails to offer us compelling evidence that would persuade us that a sentence reduction is warranted.

[11] As for his character, we assess a defendant's character by engaging in a broad consideration of his qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). An offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). A typical factor we consider when examining a defendant's character is criminal history. *McFarland v. State*, 153 N.E.3d 369, 374 (Ind. Ct. App. 2020), *trans. denied* (2021). Twenty-two-year-old Burgos is no stranger to the criminal justice system. At the time of sentencing, he had been recently arrested twice on drug charges and entered into diversion agreements. Following his arrest in this case, Burgos violated the terms of his pretrial release by both using and selling drugs, and he repeatedly failed to appear for court hearings. He admitted during sentencing that he had been "on the run." Tr. Vol. 2 at 32. Although Burgos argues that his drug addiction entitles him to a lesser sentence, he has squandered prior opportunities offered by the court to obtain treatment. As aptly observed by the trial court, Burgos has shown "a complete disregard for all the conditions of grace" that have been previously offered to him. *Id.* at 38. In short, Burgos has not met his burden to establish that his sentence is inappropriate. Accordingly, we affirm the sentence imposed by the trial court.

[12] Affirmed.

Bailey, J., and Pyle, J., concur.

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