MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Anthony C. Lawrence
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert M. Yoke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jason B. Noble,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 20, 2022

Court of Appeals Case No. 21A-CR-2441

Appeal from the Henry Circuit Court

The Honorable Kit C. Dean Crane, Judge

Trial Court Cause No. 33C02-2102-F2-15

Brown, Judge.

[1] Jason B. Noble appeals his sentence for dealing in methamphetamine as a level 2 felony and asserts the trial court abused its discretion in sentencing him and his sentence is inappropriate in light of the nature of the offense and his character. We affirm.

Facts and Procedural History

[2] On February 21, 2021, Noble knowingly or intentionally possessed fifty-six grams of methamphetamine with the intent to deliver. On February 23, 2021, the State charged Noble under cause number 33C02-2102-F2-15 ("Cause No. 15") with: Count I, dealing in methamphetamine as a level 2 felony; Count II, unlawful possession of a firearm by a serious violent felon as a level 4 felony; Count III, possession of cocaine as a level 6 felony; Count IV, unlawful possession of a syringe as a level 6 felony; Count V, possession of a controlled substance as a class A misdemeanor; Count VI, resisting law enforcement as a class A misdemeanor; and Count VII, possession of paraphernalia as a class C misdemeanor.

[3] On August 12, 2021, Noble and the State filed a plea agreement which provided that Noble agreed to plead guilty to Count I, dealing in methamphetamine as a level 2 felony, the sentence shall be served consecutive to cause number 33C01-1901-F4-2 ("Cause No. 2") and subject to a cap of eighteen years in the Department of Correction ("DOC"), and the State would dismiss Counts II

through VII in Cause No. 15 as well as cause number 33C02-2104-F3-3 ("Cause No. 3").[1]

[4] On October 6, 2021, the court held a hearing for Cause Nos. 15 and 3. The court found Noble guilty of Count I and dismissed the remaining counts in Cause No. 15 and Cause No. 3 pursuant to the plea agreement. Noble stated:

> I want to take full responsibility. I put somebody I care about – I mean, people I – I really do care about, put their lives in jeopardy. I caused people to lose their kids. I lost my kids. Going through a divorce.
>
> But through all that, I believe I'm exactly where I'm supposed to be. I've been trying to find exactly why, and that's going to be a journey in itself, but I – in the last seven, eight months, I've – I've talked to people I grew up with, and it's like they're not even there anymore. It's – it's just got to stop. And I'm sorry for [indiscernible], I just – I deserve punishment.
>
> But I hope that it's not too late to get help and maybe make up for what I did, you know?

Transcript Volume II at 22. When asked by his counsel if he would be interested in "some outpatient programming that would be available to" him, Noble answered: "I have a permanent bed waiting on me, and whether it be today or twenty years down the road, at a three-year D.O.C. rehab, and no matter what happened here today, when I leave that prison, that's where I'm

[1] According to Indiana's Odyssey Case Management System, Noble was charged under Cause No. 3 with dealing in methamphetamine as a level 3 felony.

going." *Id.* at 23. Noble described the program as a Christian-based program on a farm that teaches about substance abuse and indicated that after eighteen months he would move to a bigger house where he would pay rent and work. He indicated he was asking the court to "include in the sentencing abstract the – the recovery while incarcerated" program. *Id.* at 25-26. When asked if he successfully completed that program once, he answered: "Yes, I did, and I – I was given a chance. I admit I messed that up. I dropped the ball on that. But when I was in there, I accomplished everything that they offered me, plus, like I said, I became a licensed recovery coach. I was a mentor." *Id.* at 26. Noble's trial counsel asked him what some of the tools were that he could have applied in this situation, and Noble stated that he became complacent, "let everyday stress that everybody deals with get to" him, did not reach out for help, failed to obtain an evaluation, and "gave up." *Id.* He indicated he had family supportive of him making a turnaround.

[5] On cross-examination, the prosecutor stated: "[A]t least with regard to the case that we are dismissing as part of this plea agreement, isn't it true that you sold to a – a confidential informant December 29 of 2020, about three months after you got your sentence modification?" *Id.* at 29. Noble answered affirmatively. When asked if the officers serving the search warrant on February 21, 2021, found that he had fifty-six grams of methamphetamine and a nine-millimeter handgun, he answered affirmatively. He answered affirmatively when asked if he had previously been offered in other criminal cases "everything from agreements to withhold prosecution, informal adjustments, juvenile placements

with substance abuse evaluation, community service," probation, parole, "Meridian Services for treatment," "inpatient at Mirage," "inpatient treatment at Richmond State Hospital," and "the recovery while incarcerated program." *Id.* at 30. The prosecutor recommended a sentence of eighteen years in the DOC.

[6] The court stated: "When I hear all the efforts, Mr. Noble, toward your rehabilitation, it's very exhausting. I don't think there's anything that hasn't been offered or provided or available to you that you haven't tried to do. [A]nd yet, here we are." *Id.* at 34. It stated:

> When we talk about a mitigating circumstance that somebody accepted responsibility, to me somebody accepts – and I've had this happen occasionally – somebody accepts responsibility, they come in at the initial hearing, the arraignment, I read them the charges, they don't have counsel, and they enter a guilty plea. "I – I take responsibility." To me, that's what taking responsibility is, and that's what would be considered a mitigating circumstance by this Court.

Id. at 34-35.

[7] With respect to Noble's guilty plea, the court stated:

> In this case, as we discussed earlier, Mr. Noble, [your counsel] capped your exposure by twelve less years, if – if the matter had gone to trial and you'd been convicted. Capped it at eighteen years. You got the benefit of that bargain, so I don't find that as a mitigating circumstance.

Id. at 35. The court sentenced Noble to eighteen years and ordered the sentence be served consecutive to the sentence in Cause No. 2.

Discussion

I.

[8] The first issue is whether the trial court abused its discretion in sentencing Noble. We review the sentence for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. 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." *Id.* A trial court abuses its discretion if it: (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law." *Id.* at 490-491. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Id.* at 491. The relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. *Id.*

[9] Noble argues the trial court abused its discretion by failing to recognize the mitigating factors of remorse and acceptance of responsibility with a plea of guilty.

[10] The determination of mitigating circumstances is within the discretion of the trial court. *Rogers v. State*, 878 N.E.2d 269, 272 (Ind. Ct. App. 2007), *trans. denied*. The court is not obligated to accept the defendant's argument as to what constitutes a mitigating factor, and the court is not required to give the same weight to proffered mitigating factors as does a defendant. *Id.* An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Anglemyer*, 868 N.E.2d at 493. If the court does not find the existence of a mitigating factor after it has been argued by counsel, it is not obligated to explain why it has found that the factor does not exist. *Id.*

[11] A defendant who pleads guilty deserves some mitigating weight be given to the plea in return. *Anglemyer*, 875 N.E.2d at 220. "But an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant." *Id.* at 220-221. The significance of a guilty plea as a mitigating factor varies from case to case. *Id.* For example, a guilty plea may not be significantly mitigating when it does not demonstrate the defendant's acceptance of responsibility or when the defendant receives a substantial benefit in return for the plea. *Id.* A trial court's determination of a defendant's remorse is similar to a determination of

credibility. *Pickens v. State*, 767 N.E.2d 530, 534-535 (Ind. 2002). Without evidence of some impermissible consideration by the court, we accept its determination of credibility. *Id.* The trial court is in the best position to judge the sincerity of a defendant's remorseful statements. *Stout v. State*, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005), *trans. denied*.

[12] The plea agreement here was more likely the result of pragmatism than acceptance of responsibility and remorse. The State dismissed charges of unlawful possession of a firearm by a serious violent felon as a level 4 felony, possession of cocaine as a level 6 felony, unlawful possession of a syringe as a level 6 felony, possession of a controlled substance as a class A misdemeanor, resisting law enforcement as a class A misdemeanor, and possession of paraphernalia as a class C misdemeanor. The State also dismissed Cause No. 3, and the plea agreement limited the sentence to eighteen years. In light of this benefit and the record, we cannot say that Noble demonstrated that his guilty plea and remorse were significant mitigating circumstances or that the trial court abused its discretion.

II.

[13] The next issue is whether Noble's sentence is inappropriate in light of the nature of the offense and his character. Noble argues that the offense resulted from the execution of a search warrant, he cooperated fully after the entry by law enforcement, and the conviction is a result of his long struggle with

substances.[2] With respect to his character, he argues that he expressed remorse and a desire for further help and his criminal history was inextricably linked to substance abuse.

[14] Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[15] Ind. Code § 35-50-2-4.5 provides that a person who commits a level 2 felony shall be imprisoned for a fixed term of between ten and thirty years, with the advisory sentence being seventeen and one-half years.

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[2] Noble cites to the affidavit for probable cause for his assertion that he cooperated fully after the entry by law enforcement. The affidavit states in part:

> SWAT Team Commander (Assistant NCPD Chief) Wardlow advised myself that when he knocked and announced at the main entrance facing to the east it came open and he observed Jason Noble move in a fast motion towards the bedroom reported to be his where all indication that the weapons and drugs were kept during our investigation. Wardlow advised entry was then made to secure Noble and he was taken down near the bedroom door and handcuffed when he started complaining of pain to his right shoulder. Medic Unit had been called to the scene to look at Noble's shoulder and the handcuffs were moved to the front to try a [sic] take some pressure off of the shoulder. During this time we advised Noble why we were there and asked where the drugs were kept in the residence and he advised he would fully cooperate with Investigators and advised us that the drugs were kept under his bed in a black lock box and that there should be approximately 2 ounces (56 grams) inside . . . .

Appellant's Appendix Volume II at 19-20.

[16] Our review of the nature of the offense reveals that Noble knowingly or intentionally possessed with intent to deliver fifty-six grams of methamphetamine. Our review of the character of the offender reveals that Noble pled guilty to Count I, dealing in methamphetamine as a level 2 felony, the State agreed to dismiss the remaining charges including three felonies and three misdemeanors as well as Cause No. 3, and the plea agreement limited the sentence to eighteen years.

[17] As a juvenile, Noble had allegations of operating a motor vehicle without ever receiving a license, resisting law enforcement, curfew violation, and consumption of alcohol. In 1998, he was found to be a delinquent for committing acts that would constitute burglary as a class B felony and theft as a class D felony if committed by an adult. He was ordered to obtain a substance abuse evaluation and complete the CORE Adventure Program, and the sentence was later modified to require placement at Mirage Treatment Facility.

[18] As an adult, Noble has convictions for illegal consumption in 1998 and 2001; battery and neglect of a dependent under one cause number and domestic battery under a separate cause number in 2003; theft as a class D felony and receiving/possessing stolen property in 2004[3]; operating a vehicle while intoxicated and endangering a person and operating a vehicle without proof of

[3] The presentence investigation report indicates that Noble was charged with invasion of privacy as a class A misdemeanor and public intoxication as a class B misdemeanor in 2004 and was "[s]entenced to 45 days Henry County Jail," but it does not reveal which offense resulted in a conviction. Appellant's Appendix Volume II at 59.

financial responsibility in 2007; auto theft, residential entry, and criminal mischief as well as being an habitual offender in 2008; domestic battery in 2011; and battery resulting in bodily injury, dealing in methamphetamine as a class B felony, possession of two or more chemical reagents with intent to manufacture a controlled substance as a class D felony, and maintaining a common nuisance as a class D felony in 2013. With respect to Cause No. 2, the prosecutor stated at the hearing that the presentence investigation report ("PSI") omitted Cause No. 2, "which would have been a dealing in methamphetamine level four conviction and enhanced by the habitual offender finding on April 25 of 2019 . . . [a]nd then, following that, a sentence modification in that same court cause number September 16, 2021." Transcript Volume II at 20. Noble's counsel stated he had no objection to taking judicial notice of that cause.[4] The PSI states that Noble has been on probation and parole, he has had his sentence revoked, he was on parole when he was arrested for the offenses in Madison County, and his parole was revoked.

[19] The PSI indicates that Noble began using drugs when he was sixteen years old, he would drink alcohol and use marijuana daily, and his drug of choice is methamphetamine. It states that he completed a ninety-day inpatient treatment at Mirage Retreat and a ninety-day program at Richmond State Hospital. Noble stated that he "has no problem completing a program, but he finds himself in old habits easily." Appellant's Appendix Volume II at 63. He

[4] Noble testified that his early special release date in Cause No. 2 would be August 21, 2025.

reported completing Recovery While Incarcerated and becoming a licensed Recovery Coach while in prison in 2020. He reported maintaining sobriety for a few months following his release but relapsed on methamphetamine in December 2020. He also stated that he had been in prison "off and on for so long" that when he is released he does not know how to function in society. *Id.* The PSI states that Noble's overall risk assessment score using the Indiana Risk Assessment System places him in the very high risk to reoffend category.

[20] After due consideration, we conclude that Noble has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offense and his character.

[21] For the foregoing reasons, we affirm Noble's sentence.

[22] Affirmed.

May, J., and Pyle, J., concur.