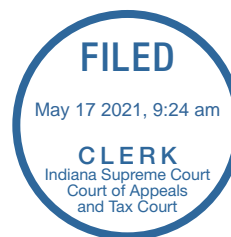


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Daniel C. Frazzini,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 17, 2021

Court of Appeals Case No.
20A-CR-2234

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2001-F4-7

Bailey, Judge.

Case Summary

- [1] Daniel C. Frazzini (“Frazzini”) received an aggregate sentence of eight years executed for two counts of Level 4 felony Dealing in Cocaine¹ and one count of Class A misdemeanor Dealing in Marijuana.² He appeals, alleging that the trial court abused its sentencing discretion and imposed an inappropriate sentence.
- [2] We affirm.

Facts and Procedural History

- [3] On two occasions in 2018, Frazzini sold drugs to an undercover officer. On April 12, Frazzini sold between one and five grams of cocaine and less than thirty grams of marijuana. On May 3, he again sold between one and five grams of cocaine. In connection with these transactions, in January 2020, the State charged Frazzini with two counts of Dealing in Cocaine, each as a Level 4 felony, and one count of Dealing in Marijuana, as a Class A misdemeanor.
- [4] Frazzini reached an agreement with the State whereby he would plead guilty as charged and participate in the Allen County drug court program. If Frazzini complied with the terms of his participation, the charges would be dismissed.

¹ Ind. Code § 35-48-4-1.

² I.C. § 35-48-4-10.

[5] Pursuant to the agreement, Frazzini pleaded guilty in August 2020. The trial court took the plea under advisement and placed Frazzini in the drug court program. In September 2020, the State filed a petition to terminate Frazzini's participation, alleging that Frazzini violated the terms of participation by being arrested for Interfering with a Drug or Alcohol Screening Test and Possession of a Device or Substance Used to Interfere with a Drug or Alcohol Screen.

[6] Frazzini admitted to the allegations in the petition, which led to the revocation of his participation in the drug court program. Thereafter, the court obtained a Pre-Sentence Investigation Report and held a sentencing hearing in November 2020. At the hearing, the trial court identified two mitigators: that Frazzini pleaded guilty and expressed remorse. The trial court identified one aggravator: Frazzini's criminal history, which includes four felony convictions and five misdemeanor convictions, with prior "failed efforts at rehabilitation." Tr. at 20. The trial court entered its judgment of conviction and ultimately sentenced Frazzini to an aggregate term of eight years in the Indiana Department of Correction, composed of eight years on each Level 4 felony count and one year on the Class A misdemeanor count, with the sentences to run concurrently.

[7] Frazzini appeals.

Discussion and Decision

Sentencing Discretion

- [8] “Generally, trial courts have broad discretion in formulating . . . sentences for criminal convictions.” *Jackson v. State*, 105 N.E.3d 1081, 1084 (Ind. 2018). On appeal, we review a sentencing decision for an abuse of that discretion. *McCain v. State*, 148 N.E.3d 977, 981 (Ind. 2020). “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) (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)), *clar’d on reh’g*.
- [9] Here, the trial court issued a sentencing statement pursuant to Chapter 35-38-1 as interpreted and applied in *Anglemyer*. A sentencing statement must include “reasonably detailed reasons or circumstances for imposing a particular sentence.” *Anglemyer*, 868 N.E.2d at 491. Moreover, if the trial court identifies mitigating or aggravating circumstances, it must “identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating.” *Id.* at 490. On appeal, “[t]he reasons given, and the omission of reasons arguably supported by the record, . . . are reviewable . . . for abuse of discretion.” *Id.* at 491.
- [10] Frazzini contends that the court abused its sentencing discretion by failing to identify as mitigating factors his (1) acceptance of responsibility, (2) good character, and (3) history of addiction, including treatment delays attributable

to the COVID-19 pandemic. To show an abuse of discretion, Frazzini must “establish that the mitigating evidence is both significant and clearly supported by the record.” *Id.* at 493. Importantly, however, if the court “does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist.” *Id.* (quoting *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993)). Furthermore, “[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse.” *Id.* at 491.

Acceptance of Responsibility

[11] At the sentencing hearing, Frazzini asked the trial court to consider his acceptance of responsibility as a mitigating factor. Frazzini asserted that his criminal conduct was connected to his addiction. He also asserted that he had tried fighting his addiction and had ultimately “failed the battle[.]” Tr. at 19. Although the trial court identified Frazzini’s plea of guilty as a mitigating factor, the court “decline[d] to find that [Frazzini] accepted responsibility,” stating that he appeared to “deflect” and blame others for his addiction. *Id.* at 20. The court noted that, although Frazzini had participated in some degree of prior programming related to alcohol abuse, Frazzini nevertheless “sat in a bar drinking and sold cocaine,” actions that led to the instant convictions. *Id.*

[12] Frazzini argues that the evidence of his acceptance of responsibility was significant. He directs us to favorable evidence indicating that he “admitted his own failings[.]” Br. of Appellant at 16. Frazzini asserts that, contrary to the

statement of the trial court, he “did not attempt to blame others.” *Id.* Frazzini also points out that the trial court determined that his plea of guilty was a mitigating circumstance. Frazzini argues that acceptance of responsibility “typically goes hand-in-hand with someone’s guilty plea.” *Id.* Frazzini seems to suggest that, because the trial court determined that Frazzini’s decision to plead guilty was a mitigating factor, the trial court also should have determined that Frazzini’s acceptance of responsibility was a mitigating factor.

[13] In response, the State asserts that an evaluation of acceptance of responsibility involves a credibility determination, and “the trial court was in the best position to judge the demeanor and credibility” of Frazzini. Br. of Appellee at 11. The State also notes that the court “is not required to give the same weight to proffered mitigating factors as the defendant does.” *Id.* at 12. According to the State, the court “considered both [Frazzini’s] guilty plea and his claimed expression of acceptance of responsibility[.]” *Id.* at 11-12. The State asserts that there was no abuse of discretion because the court considered the potential mitigator “and rejected it, which was the . . . court’s prerogative.” *Id.* at 12.

[14] A plea of guilty benefits the State, and “a defendant who pleads guilty deserves ‘some’ mitigating weight be given to the plea in return.” *Anglemyer*, 875 N.E.2d 218, 220 (Ind. 2007) (*Anglemyer II*); see *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005). Moreover, the act of pleading guilty—coupled with the surrounding circumstances—might also show that the defendant is personally remorseful and has accepted responsibility for his actions. See, e.g., *Cloum v. State*, 779 N.E.2d 84, 90 (Ind. Ct. App. 2002) (“[A]lthough a guilty plea does not by itself

necessarily demonstrate remorse on the defendant's part, it can show an acceptance of responsibility for one's actions where it is at least partially confirmed by other mitigating evidence of the defendant's character."'). Yet, just because a defendant has pleaded guilty and is entitled to some mitigating weight in return, that does not automatically mean that a court must find that the defendant has accepted responsibility. *See, e.g., McElroy v. State*, 865 N.E.2d 584, 591-92 (Ind. 2007) (involving the entry of a plea of guilty with "testimony at the sentencing hearing indicat[ing] equivocal acceptance of responsibility").

[15] In this case, it appears that the trial court determined that the act of pleading guilty was a mitigator. However, the court declined to determine that the act itself reflected an underlying acceptance of responsibility for the circumstances that led to the convictions. Notably, although there were statements at the sentencing hearing indicating that Frazzini took ownership of his criminal conduct, there was also an assertion that the undercover officer "preyed on [him] at his weakest moment sitting at the bar, drinking, asking him to find some cocaine." Tr. at 15. When rejecting acceptance of responsibility as a mitigating factor, the court seemed to respond to this latter assertion, noting that it was Frazzini who "sat in a bar drinking and sold cocaine[.]" *Id.* at 20.

[16] Because the trial court apparently did not believe that the plea of guilty represented a complete acceptance of responsibility, it was not obligated to identify the plea as a significant mitigating factor. *See Anglemyer II*, 875 N.E.2d at 221 ("[A] guilty plea may not be significantly mitigating when it does not demonstrate the defendant's acceptance of responsibility[.]"). Nevertheless, the

court seemingly chose to separately consider the act of pleading guilty, which the court identified as mitigating, and Frazzini's claim of what the act internally represented, which the court did not. In light of a court's broad discretion in identifying aggravators and mitigators, we cannot say that the court abused its discretion in doing so. *See* I.C. § 35-38-1-7.1(c) (specifying that, although our legislature has listed potential aggravators and mitigators, those lists "do not limit the matters that the court may consider in determining the sentence").³

Good Character

[17] Frazzini argues that the trial court abused its discretion by failing to identify his good character as a significant mitigating factor. In so arguing, Frazzini largely focuses on letters submitted to the trial court on his behalf. Although Frazzini directs us to favorable evidence regarding his character, we note that there was other evidence in the record reflecting upon his character—namely, evidence showing that Frazzini has a fairly extensive criminal history. In light of the unfavorable evidence regarding Frazzini's character, we cannot say that the trial court abused its discretion by declining to identify this proffered mitigator.

³ Moreover, even assuming *arguendo* that the trial court erred in its treatment of the proffered mitigator of acceptance of responsibility, Frazzini is not entitled to relief because—as later discussed herein—we have independently determined that his sentence is not inappropriate. *See, e.g., Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (“[E]ven if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate.”), *trans. denied*.

Addiction

- [18] Frazzini argues that the trial court abused its discretion by declining to mention Frazzini’s “long history of substance abuse or his delays in getting treatment due to COVID-19.” Br. of Appellant at 17. Frazzini asserts that he “could not start any medication to help his cravings for thirty (30) days after starting the [drug court] program” due to delays related to the COVID-19 pandemic. *Id.* He also asserts that he “had difficulty getting online to do his AA/NA classes.” *Id.* According to Frazzini, the trial court “abused its discretion when it failed to give his situation any weight in determining an appropriate sentence.” *Id.*
- [19] To the extent Frazzini is arguing about the relative weight assignable to this proffered mitigating factor, that argument is not available on appeal. *See Anglemeyer*, 868 N.E.2d at 491. As to the proffered mitigating factor, it appears that the court declined to identify Frazzini’s addiction and delays in treatment as significantly mitigating because Frazzini had opportunities to obtain treatment in the past. Indeed, the trial court specifically identified as an aggravating circumstance Frazzini’s “criminal record with failed efforts at rehabilitation[.]” Tr. at 20; App. Vol. 2 at 49. We therefore cannot say that the trial court abused its discretion in declining to identify Frazzini’s history of addiction with recent treatment delays as a significant mitigating circumstance.

[20] All in all, Frazzini has not demonstrated an abuse of sentencing discretion.⁴

Inappropriate Sentence

[21] Even if a court has not abused its sentencing discretion, we may independently review a sentence pursuant to Appellate Rule 7(B). Under this rule, 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.” Ind. Appellate Rule 7(B). Moreover, because sentencing is “principally a discretionary function” of the trial court, with its judgment warranting considerable deference, *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008), that 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). Ultimately, the defendant bears the burden of persuading us that the sentence imposed is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

⁴ Frazzini focuses on the identification of mitigators. In doing so, he argues that the trial court would have imposed a more lenient sentence if it had properly identified mitigators. Frazzini then cursorily asserts that, “[a]t a minimum, the trial court should have considered a sentence that would allow Mr. Frazzini to receive additional treatment at Park Center’s inpatient program.” Br. of Appellant at 17. Frazzini has not developed this contention. Nevertheless, to the extent Frazzini is arguing that the trial court abused its discretion in placing him in the Department of Correction, it is not as though Frazzini has shown that his placement offers no options to address addiction. *See generally Madden v. State*, 25 N.E.3d 791, 795 (Ind. Ct. App. 2015) (noting that placement outside of the Department of Correction is a matter of grace and a favor, not a right), *trans. denied*. Ultimately, Frazzini has not demonstrated an abuse of discretion as to his placement.

[22] Before discussing the nature of the offense and Frazzini’s character, we will first address Frazzini’s assertion that the State at one point offered a plea deal that would have called for a more lenient sentence. Frazzini contends that the offer reflects what the State “felt . . . [was] the appropriate sentence in this case, at least during plea negotiations[.]” Br. of Appellant at 19. As to the State’s offer, our role in conducting a 7(B) analysis “is not to determine ‘whether another sentence is more appropriate’ but rather ‘whether the sentence imposed is inappropriate.’” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (quoting *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008)). Thus, we are unpersuaded that Frazzini’s sentence is inappropriate merely because of the State’s offer.

[23] Regarding the sentence, the sentencing range for a Level 4 felony is between two years and twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. Here, the trial court imposed concurrent sentences of eight years upon each Level 4 felony, *i.e.*, two years longer than the advisory sentence. *See id.* As to the Class A misdemeanor, the trial court was authorized to impose a sentence not longer than one year. *See* I.C. § 35-50-3-2. Here, the trial court imposed a one-year sentence, which is within the authorized range. *See id.*

[24] Turning to the nature of the offenses, Frazzini sold drugs to an undercover officer on two occasions. Although Frazzini asserts that he sold a relatively small amount of drugs and that he did so only to feed his addiction, “not for his own profit,” Br. of Appellant at 19, we ultimately discern nothing compelling about the nature of the offenses that portrays Frazzini in a positive light.

[25] As to the character of the offender, Frazzini’s criminal history extends back to the early 1990s. He has been convicted of four felonies and five misdemeanors, and he faces pending charges. Despite his criminal history, Frazzini argues that he has good character, as shown through letters and through his ability to maintain a steady income through running his own business. Frazzini asserts that he “felt so strongly that he needed help with his drug addiction” that he decided to plead guilty and participate in the drug court program. Br. of Appellant at 19. He also asserts that he wanted to make a change in his life by participating in the program, but that he “did not have the opportunity to really take advantage of the drug court program” in part because of treatment delays related to the COVID-19 pandemic. *Id.* According to Frazzini, he also expressed remorse and requested that the court consider additional treatment.

[26] Although Frazzini focuses on favorable evidence regarding his character, the record does not disclose compelling evidence showing persistent examples of good character or substantial virtuous traits. Indeed, although Frazzini argues that he is committed to making a change, he recently failed to take advantage of the opportunities afforded to him through the drug court program by violating the conditions of his participation. Moreover, Frazzini contends that his recovery was impeded because of delays in being able to obtain medication to help reduce cravings. Notably, however, Frazzini was not fully honest about his struggles. Rather, the violation involved deceit in that Frazzini attempted to tamper with a chemical test. Frazzini also faces pending charges. All in all,

although there is some positive evidence regarding Frazzini's character, the evidence is not so compelling as to warrant disturbing the sentence imposed.

[27] Having considered the nature of the offenses and the character of Frazzini, we are not persuaded that the instant sentence warrants appellate revision.

Conclusion

[28] The trial court did not abuse its sentencing discretion. The sentence is not inappropriate.

[29] Affirmed.

May, J., and Robb, J., concur.