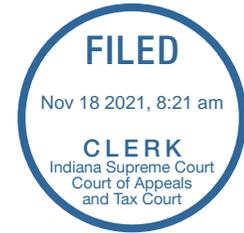


MEMORANDUM DECISION

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

Sean Beebout,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 18, 2021

Court of Appeals Case No.
21A-CR-850

Appeal from the Cass Circuit
Court

The Honorable Stephen R. Kitts,
Judge

Trial Court Cause No.
09C01-1910-F4-12

Mathias, Judge.

[1] Sean Beebout appeals his sentence following his conviction for possession of methamphetamine, as a Level 4 felony, pursuant to a guilty plea. Beebout presents a single issue for our review, namely, whether the trial court abused its discretion when it ordered him to serve six years with two years suspended to probation.

[2] We affirm.

Facts and Procedural History

[3] On October 30, 2019, a Logansport Police Officer conducted a traffic stop of a vehicle after witnessing the driver, Beebout, commit a traffic violation. A subsequent search of the vehicle revealed that Beebout possessed 13.9 grams of methamphetamine. The State charged Beebout with Level 4 felony possession of methamphetamine.

[4] On March 4, 2021, Beebout pleaded guilty as charged. At sentencing, Beebout asked the trial court to impose the probation department's recommended sentence, namely, six years "with purposeful incarceration." Tr. Vol. II p. 61. At the conclusion of the sentencing hearing, the trial court stated:

All right, this was an open plea. Aggravating and mitigating Circumstance[s] are clear here. This is the history of criminal and delinquent behavior that has been addressed in the PSI. Mitigating factors don't include the fact that it is a plea, that's it's an open plea, but it is, in fact, a plea. I also have a note here in prison of the personal result and undue hardship to the person of the dependents [sic] other person, that's listed as a mitigating factor as well. He hasn't been evaluated for community corrections so that's premature.

Id. The trial court sentenced Beebout to the advisory sentence of six years, with two years suspended to probation. The court added that it would “include recovery while incarcerated as part of the language of the order.” *Id.* at 62. This appeal ensued.

Discussion and Decision

[5] Beebout contends that the trial court abused its discretion when it sentenced him. Sentencing decisions lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). 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.” *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citation omitted), *trans. denied*.

[6] A trial court abuses its discretion in sentencing if it does any of the following:

(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. (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490–91 (Ind.), *clarified on reh’g on other grounds*, 875 N.E.2d 218 (Ind. 2007).

[7] The sentencing range for a Level 4 felony is between two years and twelve years, with an advisory sentence of six years. *See Ind. Code § 35-50-2-5.5 (2021)*. Here, at sentencing, the trial court identified as an aggravating factor Beebout’s criminal history, which includes three prior felony convictions and three prior misdemeanor convictions. And the court identified as mitigating factors the fact that Beebout entered an open plea and the undue hardship of his incarceration on his children. The court then imposed the advisory sentence of six years, with two years suspended to probation.

[8] On appeal, Beebout contends that the trial court abused its discretion when it failed to identify his expression of remorse as a mitigating circumstance. It is well settled that the finding of mitigating circumstances is within the discretion of the trial court. *Rascoe v. State*, 736 N.E.2d 246, 248–49 (Ind. 2000). An allegation that the trial court failed to identify or find a mitigating circumstance requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Id.* at 249. The trial court is not obligated to accept the defendant’s contentions as to what constitutes a mitigating circumstance. *Id.*

[9] In support of his contention, Beebout argues that

[t]he trial court here failed to consider Beebout’s remorse at all. At the time of his sentencing, Beebout’s father was incarcerated with Beebout in the local jail. (App. Vol. II p. 56). “[T]hat’s all I know is drugs, and I just want the help, as much help as I can get from whoever.” (Tr. Vol. II p. 56). Beebout expressed that he needed help to avoid such an outcome, not just for himself, but

also for his family and kids. (Tr. Vol. II p. 58). “I just need help and I want help for me and my family. My kids need me.” Id. When arguing sentencing, *Beebout’s counsel* argued that Mr. Beebout “is remorseful. I think finally he’s uh, taking uh, taking it seriously what he is facing.” (Tr. Vol. II p. 60).

Appellant’s Br. pp. 10–11 (emphasis added). Beebout does not direct us to any other evidence in the record to support his assertion that he was remorseful or that his alleged remorse is a significant mitigator.

[10] We cannot agree with Beebout’s characterization of this evidence as showing remorse. Rather, Beebout’s statements to the trial court indicate that he sought sympathy for his difficult circumstances in life and help for his substance abuse. In any event, Beebout has not shown that his alleged remorse was significant. See *Rascoe*, 736 N.E.2d at 249. Our Supreme Court has held that 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, 535 (Ind. 2002). Beebout has not shown that the trial court abused its discretion when it did not find that he had expressed remorse. Accordingly, the trial court did not abuse its discretion when it did not identify his alleged remorse as a mitigating factor.

[11] Affirmed.

Bailey, J., and Altice, J., concur.