

MEMORANDUM DECISION

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**IN THE
COURT OF APPEALS OF INDIANA**

Joseph A. Kellams,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 13, 2022

Court of Appeals Case No.
22A-CR-200

Appeal from the Orange Circuit
Court

The Honorable Steven L. Owen,
Judge

Trial Court Cause No.
59C01-1505-F2-397

Weissmann, Judge.

[1] Joseph Kellams pleaded guilty to Level 3 felony dealing in methamphetamine and was sentenced to the maximum of 16 years in prison. On appeal, he claims his sentence is inappropriate under Indiana Appellate Rule 7(B). We disagree and affirm.

Facts

[2] In May 2015, the State charged Kellams with Level 2 felony dealing in methamphetamine, alleging he knowingly possessed between 10 and 28 grams with intent to deliver. Pursuant to a plea agreement with the State, Kellams pleaded guilty to the lesser-included offense of Level 3 felony dealing in methamphetamine, admitting that he knowingly possessed between 5 and 10 grams with intent to deliver.

[3] At sentencing, the trial court identified the following mitigating circumstances:

a) That the defendant entered into a plea and thus avoided the time and expense of a jury trial. The Court assigns moderate weight to this factor.

b) That the defendant has a large family support base. The Court assigns moderate weight to this factor.

c) That the defendant has taken positive steps toward helping his addiction, but this case is not about his addiction. The Court assigns low weight to this factor.

App. Vol. II, pp. 88-89.

[4] The trial court also found the following aggravating circumstances:

a) Based on his prior criminal record and his character, this defendant is likely to re-offend. The Court gave low weight to this factor.

b) The defendant committed this offense while on bond or pre-trial release for another offense. According to the pre-sentence report, the Defendant had a pending Auto Theft case in Lawrence County, Indiana and was on Probation under Cause Number: 47D01-1406-FD-000824 when he committed the present offense. The Court gave moderate weight to this factor.

c) That the defendant has a history of criminal and delinquent behavior. Numerous attempts have been made by the system to provide help and opportunities to the defendant. The defendant[,] each and every time, failed and refused to reform. The Court assigns great weight to this factor.

d) That the facts and circumstances in this case show[] that the defendant had 20.4 grams of methamphetamine on his person at the time of his arrest which amount is greater than necessary for the crime. The defendant's addiction issues are separate from his conscious decision to sell and distribute large amounts of methamphetamine in Orange County. The Court assigns great weight to this factor.

App. Vol. II, pp. 89-90.

[5] Ultimately, the trial court sentenced Kellams to 16 years in the Department of Correction. Kellams appeals, arguing that the trial court erred in considering as an aggravating circumstance that he possessed 20.4 grams of methamphetamine and that his sentence is inappropriate under Appellate Rule 7(B).

Discussion and Decision

[6] “[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only 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.* (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)). A trial court may abuse its discretion by failing to enter a sentencing statement explaining the reasons it imposed a particular sentence, by failing to consider reasons that are clearly supported by the record and advanced for consideration, or by considering reasons that are not supported by the record or are improper as a matter of law. *Id.* at 490-91.

[7] Kellams claims the trial court abused its discretion in considering that he possessed 20.4 grams of methamphetamine because, according to Kellams, that aggravator is not supported by the record.¹ But “even 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.” *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (citing *Windhorst v. State*, 868

¹ The parties agree that the only evidence of Kellams’ alleged possession of 20.4 grams of methamphetamine is within a police report that was attached to and incorporated into the probable cause affidavit, which in turn, was referenced in, but not attached to, Kellams’ presentence investigation report. They dispute whether the trial court could rely on information contained in the probable cause affidavit under these circumstances. We need not address this issue to resolve the case. However, we observe that the State specifically requested—without objection—that the trial court take judicial notice of the probable cause affidavit and its attachments at sentencing. The trial court replied: “Okay. Just making a few notes.” Tr. Vol. II, p. 52. But the State, on appeal, does not assert that the trial court took judicial notice of the documents.

N.E.2d 504, 507 (Ind. 2007)), *trans. denied*. We therefore assume error in Kellams' sentencing and dispose of his claim under Appellate Rule 7(B).

[8] Appellate Rule 7(B) permits an appellate court to revise a sentence if, “after due consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.” In reviewing the appropriateness of a sentence, our principal role is to attempt to leaven the outliers, not to achieve a perceived “correct” sentence. *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014). Accordingly, we give “substantial deference” to the trial court’s sentencing decision. *Id.* The trial court’s judgment should prevail unless it is “overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant’s character.” *Stephenson v. State*, 29 N.E.3d 111, 112 (Ind. 2015).

[9] In assessing the appropriateness of a sentence, we first look to the statutory range established for that class of offense. *Anglemyer*, 868 N.E.2d at 494. Kellams pleaded guilty to dealing in methamphetamine as a Level 3 felony, which has a sentencing range of 3 to 16 years and an advisory sentence of 9 years. Ind. Code § 35-50-2-5. The trial court sentenced Kellams to the maximum of 16 years in prison, which we do not find inappropriate.

[10] Because of his guilty plea, the record contains little detail concerning the nature of Kellams’ offense. But he received a substantial benefit from his plea agreement with the State—namely, dismissal of a Level 2 felony dealing charge that carried a possible sentence of between 10 and 30 years with an advisory sentence of 17 ½ years. Ind. Code § 35-50-2-4.5. Although Kellams received the

maximum sentence for a Level 3 felony, 16 years is barely half of what he would have faced had he gone to trial on the original Level 2 felony charge.

- [11] As to his character, the record shows Kellams had significant and repeated contact with the criminal justice system in the 2 ½ years prior to his arrest in this case. In January 2013, Kellams was charged with and pleaded guilty to Class D felony possession of methamphetamine. Ten months later, he was charged with Class D felony theft, pleaded guilty to Class A misdemeanor conversion, and was sentenced to probation. According to Kellams, he used methamphetamine “every day” during this time. Tr. Vol. II, p. 24.
- [12] In June 2014, the State filed a petition to revoke Kellams’ probation after he failed a drug test. Just a week or two later, Kellams was charged with Class D felony fraud and Class D felony receiving stolen property. He pleaded guilty to receiving stolen property and was released to a drug treatment center before sentencing. However, Kellams left the center after only a week and continued to use methamphetamine “regularly.” *Id.*
- [13] In April 2015, Kellams was charged with Level 6 felony auto theft, which remains pending. While out on bond only a month later, Kellams was arrested for Level 2 felony dealing in methamphetamine in this case.
- [14] Kellams claims his criminal history is the result of his methamphetamine addiction, which the evidence shows is at “the disease level.” Tr. Vol. II, p. 46. But, as he acknowledged at sentencing, Kellams did not take advantage of his prior chance at rehabilitation. Despite leniency in his previous prosecutions and

sentencings, Kellams' drug use turned to drug dealing while on release for auto theft. And according to his pre-sentence investigation report, Kellams remains at moderate risk of reoffending.

[15] Kellams has not shown that his 16-year sentence is inappropriate in light of either his character or the nature of the offense. We therefore affirm the trial court's judgment.

Robb, J., and Pyle, J., concur.