MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David V. Woodring,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 27, 2021

Court of Appeals Case No. 20A-CR-915

Appeal from the Johnson Superior Court

The Honorable Peter Nugent, Judge

Trial Court Cause No. 41D02-1810-F4-115

Darden, Senior Judge.

Statement of the Case

[1] David V. Woodring appeals the sentence the trial court imposed after he pleaded guilty to dealing in cocaine, a Level 5 felony.[1] We affirm.

Issues

[2] Woodring raises two issues, which we restate as:

I. Whether the trial court erred in identifying aggravating and mitigating sentencing factors.

II. Whether Woodring's sentence is inappropriate in light of the nature of the offense and his character.[2]

Facts and Procedural History

[3] In March 2018, detectives with the Franklin Police Department monitored a confidential informant who participated in a series of narcotics purchases with Woodring and his accomplice. We focus on the facts relevant to the offense to which Woodring pleaded guilty.

[4] On March 27, 2018, the informant notified detectives that he or she could arrange through Woodring to purchase cocaine from a woman the informant

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[1] Ind. Code § 35-48-4-1 (2017).

[2] The State argues Woodring has waived his sentencing appeal for failure to present a cogent argument. Specifically, the State claims Woodring has inappropriately blurred his two sentencing claims. Although Woodring could have better organized his claims, we conclude he has presented them with sufficient clarity to avoid waiver.

knew as "Kay." Appellee's App. Vol. 2, p. 7. The detectives met with the informant and monitored the informant as he or she had a telephone conversation with Woodring and exchanged text messages with Kay negotiating the terms, time, and place of the transaction.

[5] Next, the detectives searched the informant and the informant's vehicle for contraband. They also gave the informant: (1) a recording device with remote listening capabilities; and (2) $300 of pre-recorded buy money.

[6] The detectives followed the informant to the agreed-upon buy location. Kay drove up and parked next to the informant. Woodring was sitting in Kay's front passenger seat. The detectives recognized Woodring from past encounters. The informant approached Woodring's window and handed him $300, which Woodring gave to Kay. Kay then gave Woodring a clear plastic baggie containing a white rocklike substance.

[7] Woodring handed the baggie to the informant and asked for a share of the rocklike substance in exchange for setting up the deal. The informant returned to his or her vehicle, and Woodring approached the informant's window. The informant removed some of the substance from the baggie and gave it to Woodring. The informant then left the scene and drove to a prearranged spot, where he or she gave the baggie to the detectives. Testing revealed the baggie contained 2.5 grams of cocaine.

[8] On October 30, 2018, the State charged Woodring with dealing in cocaine, a Level 4 felony; conspiracy to commit dealing in a Schedule IV controlled

substance, a Level 5 felony; and dealing in cocaine, a Level 5 felony. The Level 4 felony charge was based on Woodring's acts on March 28, and the other two charges arose from Woodring's alleged criminal conduct on two prior occasions in March.

[9] The State and Woodring subsequently negotiated a plea agreement. Woodring agreed to plead guilty to dealing in cocaine or a narcotic drug, a Level 5 felony, as a lesser included offense of the Level 4 felony charge. In return, the State agreed to dismiss the other two charges. Sentencing for the Level 5 felony conviction would be left to the trial court's discretion.

[10] On July 11, 2019, the trial court held a hearing and accepted Woodring's guilty plea. During a January 30, 2020 sentencing hearing, the trial court determined Woodring's criminal history and an unrelated arrest that occurred while this case was pending were aggravating sentencing factors. The trial court further identified Woodring's guilty plea and his poor health as mitigating sentencing factors. The trial court imposed a sentence of five years, with two and a half years suspended but not served on probation. This appeal followed.

Discussion and Decision

I. Sentencing Discretion

[11] Woodring argues the trial court placed too much weight on his criminal record and failed to recognize several mitigating factors that he claims would have supported a reduced sentence. Sentencing is principally a discretionary function in which the trial court's judgment "should receive considerable

deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). As a result, sentencing decisions rest within the sound discretion of the trial court, and we review only for an abuse of that discretion. *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016), *trans. denied*. 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 drawn therefrom. *Id.*

[12] Woodring's claim that the trial court inappropriately weighed his criminal history must fail because "[w]e review for an abuse of discretion the court's finding of aggravators and mitigators to justify a sentence, but we cannot review the relative weight assigned to those factors." *Id.* As for identifying mitigating sentencing factors, a trial court abuses its sentencing discretion if it overlooks substantial mitigating factors that are clearly supported by the record. *Green v. State*, 65 N.E.3d 620, 636 (Ind. Ct. App. 2016) (quotation omitted), *trans. denied*. A trial court is not required to find mitigating factors. *Johnson v. State*, 855 N.E.2d 1014, 1016 (Ind. Ct. App. 2006), *trans. denied*. Further, a trial court is not required to explain why it does not find proffered factors to be mitigating. *Id.* (quotation omitted).

[13] Woodring argues the trial court erred in failing to recognize that incarceration would pose an undue hardship on him due to his poor physical and mental health. To the contrary, the trial court explicitly determined Woodring's "severe physical and mental health issues" were a mitigating factor. Tr. p. 42.

Woodring is in essence asking us to review the weight the trial court placed on this factor, which we cannot do.

[14] Next, Woodring argues that the trial court should have determined that he would respond affirmatively to a period of probation. We disagree. In a prior criminal matter, Woodring was placed on probation and was later found to have violated the terms of his probation. In addition, while this case was pending, Woodring was arrested on another matter. The record does not support Woodring's claim that he would comply with the terms of probation. *See Cox v. State*, 780 N.E.2d 1150, 1162 (Ind. Ct. App. 2002) (trial court did not err in refusing to find Cox would respond affirmatively to period of probation; Cox had violated the terms of a prior period of probation).

II. Inappropriateness of Sentence

[15] Although a trial court may have acted within its discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a 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." *Bryant v. State*, 984 N.E.2d 240, 252 (Ind. Ct. App. 2013), *trans. denied*.

[16] The principle role of appellate review under Rule 7(B) is to attempt to leaven the outliers, not to achieve a perceived "correct" result in each case. *Threatt v.*

State, 105 N.E.3d 199, 200 (Ind. Ct. App. 2018), *trans. denied*. The defendant has the burden of persuading us that the sentence is inappropriate. *Bryant*, 984 N.E.2d at 252. In making this determination, we may look to any factors appearing in the record. *Id.*

[17] We first look to the statutory range established for the class of the offense. The advisory sentence for a Level 5 felony is 3 years, with a minimum of one year and a maximum of six years. Ind. Code § 35-50-2-6 (2014). Woodring received an aggravated sentence of five years, with two and one-half years suspended. His executed sentence is below the advisory sentence set by statute.

[18] The nature of the offense is troubling. Woodring's March 27, 2018 cocaine transaction with the confidential informant was the last of several interactions with the informant in that same month. He had ample opportunity to change his conduct, but he chose to continue making deals with the informant.

[19] Turning to the character of the offender, Woodring was sixty-seven years old at sentencing. His criminal record consists of a 2012 misdemeanor conviction for possession of cocaine and a 2015 misdemeanor conviction of possession of marijuana. Although his convictions are relatively remote in time and not particularly egregious, it reflects poorly on Woodring that he continues to commit offenses related to controlled substances. Further, he has escalated his misconduct from possession of controlled substances to dealing in them.

[20] We further note that while this case was pending, Woodring was arrested and charged with another offense. A record of arrest is not "properly considered as

evidence of criminal history," but such a record "may reveal that a defendant has not been deterred even after having been subject to the police authority of the State." *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005). Further, as noted, Woodring violated the terms of his placement on probation.

[21] At the time of sentencing, Woodring was recovering from injuries sustained in a fall. In addition, he has a lengthy history of mental illness, including schizophrenia and addictions to controlled substances. There is no evidence in the record establishing that prison medical providers will be unable to treat his conditions. Woodring has failed to establish that his sentence is inappropriate.

Conclusion

[22] For the reasons stated above, we affirm the judgment of the trial court.

[23] Affirmed.

Pyle, J., and Tavitas, J., concur.