MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert M. Blum,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 20, 2023

Court of Appeals Case No. 22A-CR-2935

Appeal from the Noble Superior Court

The Honorable Steven T. Clouse, Judge

Trial Court Cause No. 57D01-2106-F6-195

Memorandum Decision by Judge Crone
Judge Brown and Senior Judge Robb concur.

Crone, Judge.

Case Summary

[1] Robert M. Blum appeals the sentence imposed by the trial court following his convictions for level 6 felony possession of methamphetamine and class B misdemeanor possession of marijuana. He contends that the trial court abused its discretion during sentencing. We affirm.

Facts and Procedural History

[2] On May 11, 2021, Melissa Hall went to Rome City to meet with law enforcement to discuss an ongoing civil dispute between herself and Blum. Hall informed Rome City Marshal's Department Chief Deputy Dustin Fike that Blum bragged about hiding methamphetamine in coffee cans in the back of his truck. Blum stated that he did so because it made the drugs undetectable to drug-sniffing dogs. Deputy Fike relayed this information to Noble County Sheriff's Department (NCSD) Officer Tanner Lock, who in turn shared this information with NCSD Officer Jerry Weber.

[3] On June 30, 2021, Officer Weber conducted a traffic stop of Blum's vehicle for a broken rear turn signal. Blum consented to a search of his vehicle. During the search, Officer Weber found a backpack in the backseat that contained coffee grounds and three small baggies. The contents of one of those baggies was later tested and determined to be marijuana. Other officers who arrived at the scene to assist in the search discovered a "cowboy boot shaped tin" in the truck bed that contained coffee grounds and a small baggie containing what was later determined to be methamphetamine. Tr. Vol. 2 at 243.

[4] The State charged Blum with level 6 felony possession of methamphetamine and class B misdemeanor possession of marijuana. Following an October 2022 jury trial, Blum was found guilty as charged. A sentencing hearing was held on November 15, 2022. During sentencing, the trial court noted its concern that Blum continued to insist that "the entire case [was] bullshit" and that he believed he did not receive a fair trial. Tr. Vol. 3 at 66. The court also briefly noted that Blum's Indiana Risk Assessment System (IRAS) score "[came] back as high risk [for] criminal attitude" and that it was troubled by his "criminal attitude and behavior." *Id*. The court went on to discuss Blum's criminal history and recent criminal behavior.

[5] Thereafter, the trial court entered a written sentencing statement finding the following four aggravating factors:

> 1. Defendant's criminal history includes prior misdemeanor convictions.
>
> 2. Defendant was on release from Cause No. 57C01-2006-F5-1 at the time he was arrested in this matter.
>
> 3. Defendant was charged with a subsequent crime in Cause No. 57D02-2209-CM-791, although it is noted Defendant has not been convicted in said matter. Regardless, a Court did find probable cause for the filing of the charge.
>
> 4. Defendant's criminal attitude and behavioral pattern is HIGH risk, as shown by the [IRAS].

Appealed Order at 2. The court found three mitigating factors. The trial court concluded that the aggravating factors outweighed the mitigating factors and

sentenced Blum to 730 days for methamphetamine possession with all but 180 days suspended to probation. *See* Ind. Code § 35-50-2-7(b) (providing that the sentencing range for a level 6 felony is between six months and two and one-half years, with an advisory sentence of one year). The court further sentenced Blum to a concurrent 180-day executed sentence for marijuana possession. *See* Ind. Code § 35-50-3-3 (providing that the sentence for a class B misdemeanor cannot exceed 180 days). This appeal ensued.

Discussion and Decision

[6] Blum asserts that the trial court abused its discretion during sentencing. Sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) *clarified on reh'g* 875 N.E.2d 218. So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Id*. "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 may abuse its discretion in a number of ways, including (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Id*. at 490-91.

[7] Blum's sole contention on appeal is that the trial court "abused its discretion when it found [his] IRAS score to be an aggravating circumstance[.]" Appellant's Br. at 7. Specifically, he directs us to *Morrell v. State*, 118 N.E.3d 793 (Ind. Ct. App. 2019), *clarified on reh'g* 121 N.E.3d 577, *trans. denied,* in which another panel of this Court, relying on supreme court precedent in *Malenchik v. State*, 928 N.E.2d 564 (Ind. 2010), held that the trial court abused its discretion in considering IRAS scores as a separate aggravating circumstance. *Morrell*, 118 N.E.3d at 797; *see Malenchik*, 928 N.E.2d at 575 (holding that IRAS "scores do not in themselves constitute an aggravating or mitigating circumstance because neither the data selection and evaluations upon which a probation officer or other administrator's assessment is made nor the resulting scores are necessarily congruent with a sentencing judge's findings and conclusion regarding relevant sentencing factors.").

[8] Nevertheless, Blum concedes that even assuming the trial court abused its discretion in identifying his IRAS score as a separate aggravating factor, remand for resentencing would be warranted only "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." *Anglemyer*, 868 N.E.2d at 491. Indeed, when we can "identify sufficient aggravating circumstances to persuade us that the trial court would have entered the same sentence even without the impermissible factor" we will "affirm the trial court's decision." *Morrell*, 118 N.E.3d at 796 (citation omitted). Here, the trial court found three additional aggravating factors that Blum does not challenge. In

light of the additional unchallenged aggravating factors, we are persuaded that the trial court would have imposed the same sentence even without Blum's IRAS score. Accordingly, we affirm.

[9] Affirmed.

Brown, J., and Robb, Sr.J., concur.