MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jay D. Lovins,
Appellant-Defendant,

v.

State of Indiana
Appellee-Plaintiff.

April 14, 2022

Court of Appeals Case No. 21A-CR-1566

Appeal from the Orange Circuit Court

The Honorable Steven L. Owen, Judge

Trial Court Cause No. 59C01-1704-F2-426

Bradford, Chief Judge.

Case Summary

[1] In April of 2017, law enforcement, operating on a tip, stopped a vehicle driven by Jay Lovins in Paoli and found almost twenty-four grams of methamphetamine inside. Lovins pled guilty to, and the trial court entered a judgment of conviction for, a single charge of Level 2 felony dealing in methamphetamine. The Orange County Probation Department prepared a presentence-investigation report ("PSI") on Lovins, which revealed Lovins's lengthy, multi-state criminal history. Lovins was sentenced to twenty years of incarceration. Lovins argues that the trial court abused its discretion in overlooking certain mitigating circumstances the trial court abused its discretion by relying on improper aggravating circumstances, and his sentence is inappropriate. Because the trial court did not abuse its discretion in weighing the mitigating circumstances in determining his sentence, the trial court did not rely on improper aggravating circumstances, and his sentence was not inappropriate, we affirm.

Facts and Procedural History

[2] In April of 2017, the Orange County Sherriff's Department received information indicating that Lovins planned to bring methamphetamine into Paoli. Eventually, Chief Randy Sanders of the Paoli Police Department located a vehicle matching the description of Lovins's vehicle, initiated a traffic stop, and executed a lawful search of the vehicle. Law enforcement officers recovered 23.97 grams of crystal-like powder, which was sent to the Indiana

State Police Laboratory for testing, where it was confirmed to be methamphetamine.

[3] Lovins was initially charged with Level 2 felony dealing in methamphetamine, Level 4 felony possession of methamphetamine, and Level 6 felony maintaining a common nuisance. Lovins agreed to plead guilty to the Level 2 felony charge and, in exchange, the State agreed to drop the two remaining charges. As to sentencing, the plea agreement was "open" and did not contain any sentencing recommendation. The Probation Department prepared a PSI on Lovins that detailed his lengthy, multi-state criminal history. Lovins and his counsel had the opportunity to review the PSI and confirmed that it was accurate and that they had no significant additions, corrections[1], or modifications for the report.

[4] The trial court reviewed the PSI at sentencing. Ultimately, the trial court concluded that Lovins had an extensive criminal history consisting of misdemeanor and/or felony convictions in Kentucky, California, and Indiana. In summation, the trial court noted that the amount of criminal activity documented in the report was "as you first look at it a bit over whelming[,]" Tr. p. 13, and that "there's just tons of these." Tr. p. 15. Further, Probation Officer Jeff Holland informed the court at sentencing that during the pendency of this case Lovins had pled guilty to additional offenses in Lawrence County.

[1] Lovins's counsel only reported that "[Lovins's] Mother's phone number was incorrect, everything else was fine." Tr. p. 5–6.

[5] After the presentation of evidence, trial court concluded that the hardship Lovins's incarceration would pose on his family members and his decision to plead guilty were mitigating. The trial court found that Lovins's extensive criminal history and the fact that he had reoffended while out on bond were aggravating factors. The trial court also rejected Lovins's argument that he was unlikely to reoffend because his "prior conduct had proven" that he was a substantial risk to reoffend. Appellant's App. Vol. II p. 64. The trial court sentenced Lovins to twenty years of incarceration.

Discussion and Decision

I. Abuse of Discretion

[6] Sentencing decisions "rest within the sound discretion of the trial court" therefore, we look "only for an abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). A trial court abuses its discretion when it makes a decision that 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" from those facts and circumstances. *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006). Notably, a trial court abuses its discretion when it (1) fails to enter a sentencing statement; (2) enters a sentencing statement that explains the reasons for the sentence, but the record fails to support those reasons; (3) omits reasons that are clearly supported by the record and advanced

for consideration; or (4) gives reasons that are improper as a matter of law. *Anglemyer*, 868 N.E.2d at 490–91.

[7] Importantly, the trial court must provide a statement of reasons for a sentence if it finds aggravating or mitigating circumstances. Ind. Code § 35-38-1-3. However, a trial court is not required to find mitigating circumstances or explain why it did not find a circumstance to be significantly mitigating. *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993); *Sherwood v. State*, 749 N.E.2d 36, 38 (Ind. 2001). When trial courts find aggravating and mitigating circumstances, they cannot be said to abuse their "discretion in failing to 'properly weigh' such factors." *Anglemyer*, 868 N.E.2d at 491 (quoting *Jackson v. State*, 728 N.E.2d 147, 155 (Ind. 2000)).

A. Mitigating Circumstances

[8] Lovins argues that the trial court abused its discretion by failing to assign any weight to his two offered mitigators and by failing to acknowledge another mitigator he advanced. Specifically, Lovins contends that the trial court abused its discretion by failing to award mitigating weight to the following offered mitigators: (1) the crime was a result of circumstances unlikely to reoccur and (2) the character and attitudes of the person indicate that he is unlikely to commit another crime. The trial court considered the offered mitigators, stating "the Court chose not to consider these as […] mitigating factors." Appellant's App. Vol. II p. 65. Again, a trial court is not required to find mitigating circumstances or explain why it did not find a circumstance to be significantly

mitigating. *Fugate,* 608 N.E.2d at 1374. However, it is clear from the transcript of the sentencing hearing and the trial court's order that the offered mitigators were carefully considered and weighed in this case. The trial court reviewed those mitigators and acknowledged Lovins's arguments and efforts toward improvement but concluded that Lovins's "prior conduct had proven" that it could not give much weight to those mitigators in light of Lovins's substantial criminal history. Appellant's App. Vol. II p. 64. After all, Lovins is a multi-state offender, with an extensive criminal history, who pled guilty to two counts of Level 6 felony maintaining a common nuisance and one count of Level 6 felony possession of methamphetamine while out on bond in the case below.

[9] Lovins also argues that the trial court failed to consider a third offered mitigator, i.e., that he was likely to respond affirmatively to probation or a short term of imprisonment. The trial court's order acknowledges in its sentencing order that "[t]estimony was heard that the defendant has made improvements in his life, such as his consistent and reliable employment in the last year." Appellant's App. Vol. II p. However, the trial court also heard testimony that Lovins had previously violated probation in a Kentucky case and that he had reoffended by committing two additional felonies while out on bond in this case. We disagree that the trial court failed to consider this factor or that there was an abuse of discretion. *See Fugate*, 608 N.E.2d at 1374.

B. Aggravating Circumstances

[10] Lovins also argues that the trial court improperly considered and mischaracterized his history of arrests in determining his sentence, abusing its

discretion in classifying his history of arrests as an aggravating circumstance. Lovins contends that the trial court's sentencing order references "multiple charges that span[] over two decades, from multiple jurisdictions, and including a wide range of criminal offenses" to explain its findings and sentence. The version of Indiana Code section 35-38-1-7.1(c) in effect at the time of Lovins's offense "gives a sentencing court the flexibility to consider any factor which reflects on the defendant's character, good or bad." *Tunstill v. State*, 568 N.E.2d 539, 545 (Ind. 1991). While it is true that a "record of arrests cannot be considered as an aggravator[,]" *Id.*, under Indiana Code section 35-38-1-7.1(a)(2), a record of arrests may be used to determine a defendant's character under Indiana Code section 35-38-1-7.1(c), which states that "the criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence." The trial court was free to consider Lovins's history of arrests as it relates to his character when determining his sentence.

[11] Further, this was far from the only evidence of Lovins's criminal history that the trial court considered. "When a trial court imposes an enhanced sentence, the trial judge must find at least one aggravator." *Catt v. State*, 749 N.E.2d 633, 641 (Ind. Ct. App. 2001) (citing *Morgan v. State*, 675 N.E.2d 1067, 1073 (Ind. 1996)). Lovins does not dispute that he has a criminal record that consists of convictions in multiple states, which the trial court considered to be an aggravating circumstance. *See* Ind. Code § 35-38-1-7.1(a)(2). The trial court also gave "great weight," Appellant's App. Vol. II p. 65, to the fact that Lovins had violated probation by reoffending while out on bond in this case, a

permissible aggravator for the court to consider. *See* Ind. Code § 35-38-1-7.1(a)(6).

[12] Lovins also argues that, though he does have a criminal history, the trial court referenced additional convictions in its sentencing order that are unsupported by the record. However, Lovins only references a single misdemeanor burglary conviction from California, which charge he contends the trial court "potentially drew a false equivalency to burglary in Indiana, which is at a minimum a Level 5 felony offense." Appellant's Br. p. 21. We found no evidence in the record to support that speculation, and Lovins makes no additional argument that the trial court operated under such a misunderstanding when making its sentencing decision. Lovins has failed to establish that the trial court abused its discretion in sentencing him.

II. Ind. App. R. 7(B)

[13] We "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." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted). "[W]hether we regard a sentence as appropriate

at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). In addition to the "due consideration" we are required to give to the trial court's sentencing decision, "we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[14] Lovins pled guilty and ultimately received a twenty-year sentence for his Level 2 felony conviction, only two and one-half years above the advisory sentence. Lovins was found in possession of 23.97 grams of methamphetamine, more than twice the amount necessary to support his conviction. Ind. Code § 35-48-4-1.1(e)(1) ("The offense is a Level 2 felony if: (1) the amount of the drug involved is at least ten (10) grams[.]"). "[W]hen determining the appropriateness of a deviation from the advisory sentence" we consider "whether there is anything more or less egregious about the offense committed by the defendant that makes it different from the 'typical' offense accounted for by the legislature." *Holloway v. State*, 950 N.E.2d 803, 806–07 (Ind. Ct. App. 2011) (citing *Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008)). Further, Lovins admitted that he possessed the methamphetamine with the intent to distribute it. Given the amount of methamphetamine found, and Lovins's admitted intent to deal it, we consider his offense somewhat egregious.

[15] As for his character, Lovins, argues that

> Although the changes in his life were recent, he had indicated a true desire to avoid any future contact with the criminal justice system and a willingness to stay sober through community support and with the tools he received during treatment at the Indiana Department of Corrections. For these reasons, [Lovins's] recent character demonstrates a changed circumstance that should form the basis for a revised sentence in this case.

Appellant's Br. p. 23. While the trial court acknowledged that there was evidence that Lovins had "made improvements in his life, such as his consistent and reliable employment, in the past year[,]" it also noted that Lovins had only been going "in the right direction […] for a short time." Appellant's App. Vol. II p. 64. However, Lovins contacts with the criminal justice system are myriad, and this was not his first chance to reform, which reflects poorly on his character. *See Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) ("A record of arrest, particularly a lengthy one, may reveal that defendant has not been deterred even after having been subject to the police authority of the state.").

[16] "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Johnson v. State,* 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). "The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Rutherford v. State*, 866 N.E.2d 867, 875 (Ind. Ct. App. 2007). Even a minor criminal history is a poor reflection of a defendant's character. *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*. As it happens, Lovins's criminal history is far from minor. Lovins is a multi-state offender with multiple felonies and

misdemeanors spanning over two decades. Further, he pled guilty to two counts of Level 6 felony maintaining a common nuisance and one count of Level 6 felony possession of methamphetamine while out on bond in this case. Due to the serious nature of Lovins's offense, which he failed to contest on appeal, and his character, we are unconvinced that Lovins's sentence is inappropriate. *See Sanchez,* 891 N.E.2d at 176 ("The defendant bears the burden of persuading us that his sentence is inappropriate.").

[17] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.