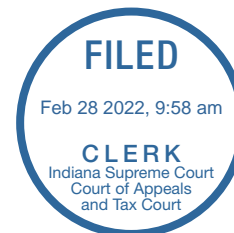


## MEMORANDUM DECISION

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

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Rebecca K. Stuart,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 28, 2022

Court of Appeals Case No.  
21A-CR-2100

Appeal from the Decatur Superior  
Court

The Honorable Matthew D.  
Bailey, Judge

Trial Court Cause No.  
16D01-2008-F2-967

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellant-Defendant, Rebecca K. Stuart (Stuart), appeals her sentence for two Counts of dealing in methamphetamine, Level 2 felonies, Ind. Code § 35-48-3-1.1(e), following a plea agreement.
- [2] We affirm.

## ISSUES

- [3] Stuart presents us with two issues on appeal, which we restate as:
- (1) Whether the trial court improperly considered the presence of a child during a drug deal as an aggravating circumstance because it was also a material element of the charge; and
  - (2) Whether Stuart's sentence is appropriate in light of the nature of her offenses and her character.

## FACTS AND PROCEDURAL HISTORY

- [4] On October 9, 2019, a Confidential Source (CS) working with the Greensburg Police Department, conducted a controlled buy of seven grams of methamphetamine from Stuart for \$250. During this controlled buy, Stuart brought a five-year-old child, who spoke with the adults present and sang along to cartoons. On October 29, 2019, the CS conducted a second controlled buy of ten-and-a-half grams of methamphetamine from Stuart for \$375.
- [5] On August 17, 2020, the State filed an Information, charging Stuart with two Counts of dealing in methamphetamine, as Level 2 felonies. The State included

as an enhancing circumstance for the first Count that the offense was committed in the physical presence of a child less than eighteen years of age, and for the second Count that the amount of methamphetamine exceeded ten grams. On July 9, 2021, Stuart entered into a plea agreement with the State in which she would plead guilty to both Counts for a sentence on each Count of thirty years, with the executed portion not to exceed twenty-three years, in exchange for the State dismissing the charges under a separate Cause number.

[6] On August 26, 2021, the trial court conducted a sentencing hearing. At the conclusion of the hearing, the trial court found as aggravating factors: Stuart's criminal history, her uncharged criminal conduct of dealing and using illegal drugs dating back to the 1980s, and the offense was committed in the presence of a child under the age of five. As mitigating factors, the trial court noted Stuart's remorse, and her family support. The trial court sentenced Stuart to thirty years in the Department of Correction, with twenty-three years executed and seven years suspended to probation for each Count, with sentences to be served concurrently.

[7] Stuart now appeals. Additional facts will be provided if necessary.

## DISCUSSION AND DECISION

### I. *Aggravating Circumstance*

[8] 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 (Ind. 2007). 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 will be found where 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.

[9] Stuart contends that the trial court abused its discretion at sentencing by finding as an aggravating circumstance that Stuart committed the offense in the presence of a child while that same circumstance was also an enhancement to the charge of dealing in methamphetamine as a Level 2 felony. Because the trial court relied on an aggravating circumstance that is a material element of the offense, Stuart maintains that the trial court abused its discretion and requests this court to revise her sentence.

[10] “A fact which comprises a material element of a crime may not also constitute an aggravating circumstance to support an enhanced sentence [.]” *Manns v. State*, 637 N.E.2d 842, 844 (Ind. Ct. App. 1994). However, “the trial court may properly consider the particularized circumstances of the material elements of the crime” to be an aggravating factor. *Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). Nevertheless, without having to consider whether the

presence of the child in this Cause was used as an improper aggravator or merely as a particularized circumstance, we are mindful that “[w]hen a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld.” *Baumholser v. State*, 62 N.E.3d 411, 417 (Ind. Ct. App. 2016). As such, “[a] single aggravating circumstance may be sufficient to enhance a sentence.” *Id.* Here, the trial court found two additional, significant aggravating factors, which are not challenged by Stuart: Stuart’s criminal history and her involvement in an ongoing enterprise which led to ongoing uncharged misconduct. Accordingly, as the trial court noted other proper aggravating circumstances, Stuart’s enhanced sentence is not an abuse of discretion.

## II. *Inappropriateness of Sentence*

[11] Stuart asks us to revise her sentence pursuant to Indiana Appellate Rule 7(B), which states, “[t]he 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.” Stuart has the burden to show that her sentence is inappropriate. *Anglemyer*, 868 N.E.2d at 490. When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We review sentences in their entirety to avoid overlooking the forest by focusing on the trees. *Id.* “We do not look to determine if the sentence was appropriate; instead, we look to make sure the sentence was not inappropriate.”

*Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “[S]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell*, 895 N.E.2d at 1222. “Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant’s character (such as substantial virtuous traits or persistent examples of good character).” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). As we assess the nature of the offenses and character of the offender, “we may look to any factors appearing in the record.” *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013). Ultimately, whether a sentence should be deemed inappropriate “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*, 895 N.E.2d at 1224.

[12] Turning first to the nature of the offenses, we observe that despite the two occurrences of dealing Stuart was charged with, she readily admitted that this has been a continuous, premeditated operation, in which, besides the presence of the minor, she even involved her own adult daughter. Her dealing was not minor and involved amounts that enhanced the charge.

[13] Reflecting on Stuart’s character, we note that her life has been dominated by her drug and alcohol addiction, which is clearly translated in her criminal history. Stuart’s criminal history dates back to 1989 and consists of six misdemeanor convictions for driving under the influence and two Class D

felony convictions for possession of cocaine in 2001 and 2005. During the sentencing hearing, Stuart admitted that she started using drugs in the 1980s and continued until the current proceedings, for a timespan of approximately forty years. At the time of her arrest, she was using methamphetamine daily and did not think she could survive without it. Even though Stuart participated in a substance abuse program in 1992, she has yet to reform her behavior. Stuart now attempts to minimize her conduct as “a consequence of her longtime addiction” and argues that her addiction demonstrates that her sentence is inappropriate. (Appellant’s Br. p. 9). However, Stuart had more than forty years to realize the dangers of her addiction; yet, instead of seeking help, she exacerbated her conduct and graduated to dealing and to involving her own daughter. Mindful of the evidence before us, we cannot conclude that Stuart’s sentence is inappropriate in light of the nature of the offenses and her character.

## CONCLUSION

- [14] Based on the foregoing, we hold that the trial court properly sentenced Stuart.
- [15] Affirmed.
- [16] Robb, J. and Molter, J. concur