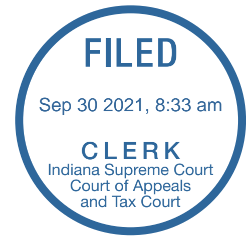

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IN THE
COURT OF APPEALS OF INDIANA

Daniel Paul Grady Snyder,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

September 30, 2021

Court of Appeals Case No. 21A-CR-854

Appeal from the Cass Circuit Court

The Honorable Stephen Roger Kitts, II, Judge

Trial Court Cause No. 09C01-1903-F3-8

Weissmann, Judge.

[1] Without a plea agreement, Daniel Snyder pleaded guilty to three drug-related felonies: dealing in methamphetamine, possession of methamphetamine, and possession of a legend drug. Snyder also pleaded guilty to two misdemeanors and admitted he was an habitual offender. The trial court entered judgments of conviction on all five charges but declined to sentence Snyder for possession of methamphetamine on double jeopardy grounds. Snyder was sentenced to a combined 29 years of imprisonment on the remaining four convictions, including an habitual offender enhancement.

[2] Snyder appeals his sentence, arguing that the trial court abused its discretion by failing to consider his remorse as a mitigating circumstance and by improperly considering the timing of his last-minute guilty plea in assigning it insignificant mitigating weight. Finding no such error, we affirm Snyder's sentences for dealing in methamphetamine, possession of a legend drug, the two misdemeanors, and the habitual offender enhancement. However, the trial court made a clerical error by neglecting to vacate Snyder's conviction for possession of methamphetamine even though all parties agreed this conviction violated double jeopardy. We therefore remand to the trial court with an order to vacate Snyder's conviction for possession of methamphetamine.

Facts

[3] Snyder battered his girlfriend in March 2019 and was subsequently arrested by Logansport police. At the time of his arrest, Snyder possessed 12 small baggies

of methamphetamine, which weighed a total of 5 ½ grams. He also possessed non-prescribed Clonazepam and marijuana.

[4] The State charged Snyder with five crimes:

> Count 1 – dealing in methamphetamine, a Level 3 felony;
>
> Count 2 – possession of methamphetamine, a Level 5 felony;
>
> Count 3 – possession of a legend drug, a Level 6 felony;
>
> Count 4 – domestic battery, a Class A misdemeanor; and
>
> Count 5 – possession of marijuana, a Class B misdemeanor.

The State also alleged Snyder to be an habitual offender based on his prior convictions for Class C felony battery resulting in serious bodily injury and Level 6 felony possession of methamphetamine.

[5] Two business days before his jury trial, Snyder pleaded guilty as charged without a plea agreement. He also admitted to being an habitual offender. At Snyder's plea hearing, his counsel established a factual basis as to each of the five counts, noting that Count 2 "probably goes into Count 1." Tr. Vol. II, p. 13. The trial court accepted Snyder's plea and entered judgments of conviction as to all five counts. App. Vol. II, p. 99; Tr. Vol. II, p. 17.

[6] At sentencing, the trial court found Snyder's criminal history to be an aggravating circumstance. The court further found as follows:

> The mitigating factor in this cause is supposed to be the acceptance of responsibility because technically that did happen

> although, I'm straining to find reasons, words to describe how much thinner that could possibly be given the fact that it happened on a Thursday with a jury convened for a Monday and that the acceptance of guilt includes continued mitigation of the circumstances. I can only say as a technical matter, yes, technically is a guilty plea but the actual acceptance of guilty, I... is thin to the point of transparency . . . .

Tr. Vol. II, p. 45.

[7] On the State's recommendation, the trial court concluded that Snyder's conviction for possession of methamphetamine "merged" with his dealing in methamphetamine conviction. Tr. Vol. II, pp. 23, 46; App. Vol. II, pp. 123, 126. The court therefore declined to sentence Snyder for Count 2 "on double-jeopardy grounds." Appellee's Br. p. 6; *see* Tr. Vol. II, p. 23. In the end, the trial court sentenced Snyder to the following consecutive terms of imprisonment: 13 years for Count 1, enhanced by 14 years for being an habitual offender; 1 year for Count 3; 180 days for Count 4; and 180 days for Count 5. Snyder now appeals these sentences, which total just shy of 29 years.

Discussion and Decision

I. Standard of Review

[8] "[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)). When imposing a sentence for a felony offense, a trial court is required to enter a sentencing statement explaining the reasons it imposed a particular sentence. *Id.* A trial court may abuse its discretion by failing to enter this statement, 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.

II. Remorse

[9] Snyder first claims the trial court abused its discretion by failing to consider his remorse as a mitigating circumstance. It appears to us, however, that the trial court impliedly considered Snyder's remorse in its sentencing statement. In describing Snyder's acceptance of guilt as "thin to the point of transparency," the trial court noted that it "includes continued mitigation of the circumstances." Tr. Vol. II, p. 45. Indeed, after pleading guilty to dealing in methamphetamine, Snyder testified:

> I don't see myself as a drug dealer, I wasn't trying to deal drugs . . . I buy drugs because I use drugs . . . . It was like… if a friend came over, and . . . they wanted something, they would give me money for it . . . . I wasn't doing (sic) out trying to sell drugs to people.

Tr. Vol. II, p. 32. Snyder's attempt to minimize his drug dealing supports a finding that his remorse was not significantly mitigating.

[10] Snyder points to other testimony in which he allegedly expressed remorse at sentencing. Tr. Vol. II, pp. 29-30. But a defendant's "reference to statements articulating [their] remorse is insufficient to establish an abuse of discretion." *Corralez v. State*, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004). "The trial court, which has the ability to directly observe the defendant and listen to the tenor of his or her voice, is in the best position to determine whether the remorse is genuine." *Id.* "[W]ithout evidence of some impermissible consideration by the trial court, we accept its determination." *Hape v. State*, 903 N.E.2d 977, 1002-03 (Ind. Ct. App. 2009) (citing *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002)).

III. Guilty Plea

[11] Snyder next claims the trial court abused its discretion by improperly considering the timing of his guilty plea in assigning it insignificant mitigating weight. We disagree. As this court has observed, "the significance of a guilty plea is lessened if it is made on the eve of trial after the State has expended resources in preparing its case." *Padgett v. State*, 875 N.E.2d 310, 317 (Ind. Ct. App. 2007). That is what happened here. Snyder pleaded guilty just two business days before trial, after a jury had been called and, presumably, after the State had prepared the case against him.

[12] Snyder emphasizes that he was in the Cass County Jail from the date of his arrest until sentencing; thus, his last-minute plea was not calculated to delay his imprisonment. This, however, does not render improper the trial court's consideration of the timing of Snyder's guilty plea. And "[t]he relative weight or

value assignable to reasons properly found . . . is not subject to review for abuse." *Anglemyer*, 868 N.E.2d at 491.

[13] Finding no abuse of discretion, we affirm Snyder's combined 29-year sentence for dealing in methamphetamine (Count 1), possession of a legend drug (Count 3), domestic battery (Count 4), possession of marijuana (Count 5), and the habitual offender enhancement. For the sake of clarity, we reiterate that Snyder was not sentenced for possession of methamphetamine (Count 2).

IV. Conviction for Possession of Methamphetamine

[14] In attempting to correct a double jeopardy violation conceded by all parties, the trial court incorrectly merged the count of possessing methamphetamine with the count of dealing the same drug. Merging the convictions inadvertently left the possession of methamphetamine conviction intact. *See Spry v. State*, 720 N.E.2d 1167, 1170 (Ind. Ct. App. 1999), *trans. denied.* (observing the trial court's proper procedure is to vacate the conviction for the lesser included offense and enter a judgment of conviction and sentence only upon the greater offense. Merger is insufficient.)

[15] In ordering the trial court to vacate Snyder's conviction for possession of methamphetamine, we acknowledge "the long-standing principle that 'a conviction based upon a guilty plea may not be challenged by . . . direct appeal.'" *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996). In *Tumulty*, our Supreme Court observed that postconviction proceedings are "'specifically designed'" to allow an appellant the opportunity to establish factual assertions

concerning their guilty plea. 666 N.E.2d at 396 (quoting *Crain v. State*, 261 Ind. 272, 273, 301 N.E.2d 751, 751-52 (1973)). In *Mapp v. State*, 770 N.E.2d 332 (Ind. 2002), the Court further stated: "The common challenges to the validity of plea agreements—whether there was an adequate factual basis for the plea; whether the plea was knowing, voluntary, and intelligent; whether the defendant was the victim of ineffective assistance of counsel—almost always require factual determinations." *Id.* at 334.

[16] This case does not require us to make a factual determination—the double jeopardy violation was conceded by the parties and determined by the trial court below. The error in Snyder's conviction for possession of methamphetamine is therefore unmistakable on the face of the record. We do not read *Tumulty* as requiring us to ignore such errors.[1] As our Supreme Court has more recently indicated, a defendant who pleads guilty without the benefit of plea agreement can presume the trial court will enter a judgment of conviction in accordance with the law. *Crider v. State*, 984 N.E.2d 618, 625 (Ind. 2013).

[17] Strictly reading *Tumulty* as prohibiting us from correcting glaringly erroneous post-guilty plea convictions would threaten a subset of indigent defendants who rely on the state public defender's office for legal representation. Indiana Code § 33-40-1-2 mandates that the state public defender represent indigent defendants

[1] With slightly different facts, this issue is currently pending before our Supreme Court in *Gravit v. State*, Cause No. 20A-CR-01578.

in postconviction proceedings only while they are incarcerated. Given the state public defender's limited resources, some defendants are released from prison awaiting assignment of a public defender, thereby rendering them ineligible for representation and effectively unable to pursue postconviction relief. Though Snyder may not face this particular obstacle, others undoubtedly will.

[18] When an indisputable error with a post-guilty plea conviction is obvious on the face of the record, justice is best served by correcting the mistake on direct appeal rather than allowing the error to fester through the uncertainty of the postconviction process. Accordingly, we remand this case to the trial court with an order to vacate Snyder's conviction for possession of methamphetamine. *Cf. Walker v. State*, 932 N.E.2d 733, 738-39 (Ind. Ct. App. 2010) ("We may remand the case for correction of clerical errors if the trial court's intent is unambiguous.").

[19] Affirmed in part, reversed in part, and remanded with order.

Mathias, J., concurs.
Tavitas, J., concurs in result.