

Case Summary

Amos L. Stephens challenges the trial court's imposition of a twelve-year sentence following his guilty plea for Class B felony dealing in cocaine. Specifically, Stephens contends that the trial court abused its discretion in failing to find four mitigating circumstances and enhancing his sentence based solely on the aggravating circumstance of his criminal history. Stephens also contends that his sentence is inappropriate in light of the nature of his offense and his character. While we conclude that the trial court abused its discretion in failing to find two of the proffered mitigating circumstances, we conclude that the trial court would have imposed the same sentence even if it had recognized those mitigating factors. We also conclude that Stephens's sentence is not inappropriate. We affirm.

Facts and Procedural History

On May 1, 2008, Stephens "knowingly deliver[ed] cocaine" to a confidential informant. Sent. Tr. p. 6-7. The State charged Stephens with Class B felony dealing in cocaine.¹ Stephens pled guilty as charged. At the sentencing hearing, the trial court explained that Stephens could be sentenced anywhere from a minimum of six years up to a maximum of twenty years for his offense. At the conclusion of the sentencing hearing, the trial court identified Stephens's criminal history as an aggravating circumstance and found no mitigating circumstances. The trial court then sentenced Stephens to twelve years in the Department of Correction. Stephens now appeals.

¹ Ind. Code § 35-48-4-1(a)(1)(C).

Discussion and Decision

On appeal, Stephens contends that the trial court abused its discretion by imposing a twelve-year sentence for Class B felony dealing in cocaine. Stephens also contends that the sentence is inappropriate in light of the nature of the offense and his character.

I. Abuse of Discretion

Stephens contends that the trial court abused its discretion in imposing a twelve-year sentence by failing to find several mitigating circumstances that were supported by the record. Stephens contends that the court failed to identify the following mitigating circumstances: (1) his guilty plea, (2) his remorse, (3) his conduct while in jail, and (4) his drug addiction. Further, Stephens contends that the trial court abused its discretion by imposing a sentence that was two years greater than the advisory sentence “based solely on the [one] aggravating circumstance, that being the defendant’s criminal history.” Appellant’s Br. p. 5.

Sentencing 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 (Ind. 2007). 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.* We review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id.* at 491. When an allegation is made that the trial court failed to find a mitigating factor, the defendant is required to establish that the mitigating evidence is both significant and

clearly supported by the record. *Id.* at 493. However, a trial court is not obligated to accept a defendant's claim as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000).

A. *Guilty Plea*

Stephens contends that the trial court “failed to find as a mitigating circumstance that he entered a plea of guilty, thus [saving] the State of Indiana the time, trouble and expense of trial.” Appellant's Br. p. 8-9. Traditionally, a guilty plea has been deemed to demonstrate a defendant's acceptance of responsibility for the crime and a partial confirmation of mitigating evidence regarding a defendant's character. *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005). We have held that “where the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned.” *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007) (citing *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999)), *trans. denied*. However, a guilty plea may not be significantly mitigating when the defendant receives a substantial benefit in return for it. *McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007).

Here, Stephens pled guilty to Class B felony dealing in cocaine. No additional charges were dismissed in exchange for his guilty plea, nor was his sentence capped. Because Stephens did not receive a substantial benefit from his plea agreement and “a defendant who pleads guilty deserves ‘some’ mitigating weight be given to the plea in return,” *Anglemyer*, 875 N.E.2d at 218, the trial court abused its discretion by failing to recognize Stephens's guilty plea as a mitigating circumstance.

B. *Remorse*

Stephens contends that the trial court abused its discretion by failing to recognize his remorse as a mitigating circumstance. Our Supreme Court has recognized remorse as a valid mitigating circumstance. *Cotto*, 829 N.E.2d at 526. On appeal, however, our review of a trial court's determination of a defendant's remorse is similar to our review of credibility judgments: without evidence of some impermissible consideration by the trial court, we accept its determination. *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002). Further, the trial court is in the best position to judge the sincerity of a defendant's remorseful statements. *Stout v. State*, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005), *trans. denied*.

Here, Stephens accepted responsibility for his actions by pleading guilty. However, throughout the entire sentencing hearing Stephens never expressed any remorse. Instead, he blamed his actions on the circumstances of his life that he felt contributed to his drug addiction. Sent. Tr. p. 10. The trial court had the opportunity to observe any expression of remorse from Stephens. As Stephens did not express any remorse, the trial court did not abuse its discretion in failing to find remorse as a mitigating circumstance.

C. Conduct in Jail

Stephens contends that completing a drug treatment program and earning the status of trustee at the jail while incarcerated awaiting trial on the current offense were "things that should have been considered as mitigating circumstances." Appellant's Br. p. 8.

As our Supreme Court has recognized, good behavior is “expected of persons who are incarcerated.” *Corcoran v. State*, 774 N.E.2d 495, 500 (Ind. 2002). Here, however, Stephens did more than simply behave well while in jail. While incarcerated, Stephens “worked as a trustee.” Sent. Tr. p. 8. On his way to becoming a trustee, in a proactive attempt to address his drug addiction, Stephens first completed a drug treatment program and continued to participate for “about a month and a half after [he] finished the program.” *Id.* Once he completed the treatment program, Stephens then worked as a dishwasher. From there, he “moved up to the second floor man [who] cleaned the hallways” and did whatever officers needed him to do. *Id.* at 9. Stephens also worked his way from third cook to second cook. He testified that when the first cook was off it was his “responsibility to cook for the whole jail.” *Id.*

Stephens’s efforts to combat his drug addiction as well as the roles of responsibility he assumed while awaiting his plea and sentencing hearing are laudable. We conclude that the trial court abused its discretion in failing to identify Stephens’s conduct while in jail as a mitigating circumstance.

D. Drug Addiction

Stephens contends that his drug addiction should have been considered a mitigating circumstance. His presentence investigation report reflects that he had battled a cocaine addiction for nearly eight years before his current offense. At the sentencing hearing Stephens intimated that he sold drugs as means of “supporting a [drug] habit.” Sent. Tr. p. 10.

A trial court is not required to consider as a mitigating circumstance allegations of an appellant's substance abuse. *James v. State*, 643 N.E.2d 321, 323 (Ind. 1994). Further, a history of substance abuse is sometimes found by trial courts to be an aggravator, not a mitigator. *Roney*, 872 N.E.2d at 199. Here, the trial court acknowledged Stephens's "drug problems" at the sentencing hearing and did not assign aggravating or mitigating weight to his addiction. Sent. Tr. p. 17. Stephens knew of his addiction for years and committed crimes to facilitate it. We are not persuaded that the trial court abused its discretion in failing to determine that Stephens's drug addiction was a mitigating circumstance.

E. Sentence Enhancement by Sole Aggravator

Stephens contends that the trial court abused its discretion by imposing a slightly aggravated twelve-year sentence based solely on his criminal history. Here, after reviewing the presentence report, the trial court considered the vast number of offenses in Stephens's criminal history, as set forth below. Stephens's criminal history was a valid aggravating circumstance.

We have held that "a single aggravating circumstance may be sufficient to sustain an enhanced sentence." *Edwards v. State*, 842 N.E.2d 849, 855 (Ind. Ct. App. 2006). Although we have concluded that the trial court abused its discretion by failing to recognize two mitigating circumstances, given the seriousness of Stephens's criminal history, we can say with confidence that the trial court would have imposed the same sentence had it considered those mitigating circumstances. The trial court did not abuse

its discretion in imposing a slightly aggravated twelve-year sentence based solely on this aggravator.

II. Inappropriateness

Finally, Stephens contends that his sentence is inappropriate. In reviewing the imposition of a trial court's sentencing decision, 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." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The burden is on the defendant to persuade us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Stephens contends that the imposition of a twelve-year sentence for Class B felony dealing in cocaine was inappropriate in light of the nature of the offense. Indiana Code § 35-50-2-5 provides that "a person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years." We recognize that the facts underlying Stephens's present conviction are not particularly egregious.

However, Stephens's character is another story. As for the nature of Stephens's character, we recognize that this is his first drug-related conviction. Notwithstanding, Stephens has a serious criminal history, beginning in 1990, which has continued for

nearly eighteen years. In the 1990's, Stephens pled guilty to Class A misdemeanor resisting law enforcement, Class B misdemeanor battery, Class D felony criminal recklessness, criminal conversion, and driving while suspended. As his criminal activity continued in to this decade, Stephens pled guilty to Class A misdemeanor trespass and Class A misdemeanor domestic battery. He also pled guilty to three separate Class D felony domestic battery charges in 2001, 2002, and 2006. At the time of his current offense, Stephens had two Class D felony theft cases pending and had been recently been convicted of two counts of Class A misdemeanor battery and one count of Class B misdemeanor criminal mischief. At the time of the instant offense, Stephens was "on pre trial release for [the pending theft cases] and he was also still on probation from a domestic battery that occurred back in two thousand six (2006)." Sent. Tr. p. 12. Stephens's affinity for criminal activity, as indicated by the record, does not reflect positively upon his character.

Despite his encounters with the criminal justice system, Stephens's criminal activity has remained consistent. While we acknowledge that Stephens has saved the trial court time and money with his plea and has made some positive strides in his life, these factors are overshadowed by his undeterred criminal activity. Stephens has failed to persuade us that his twelve-year sentence is inappropriate in light of the nature of his offense and his character.

In conclusion, the trial court abused its discretion in failing to give consideration to two mitigating circumstances that were supported by the record. However, in light of Stephens's criminal history we are confident that the trial court would have imposed the

same sentence even if it had recognized those two mitigating circumstances. Further, his sentence is not inappropriate.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.