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IN THE
COURT OF APPEALS OF INDIANA

ROBIN BANKS,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 21A01-0912-CR-570
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE FAYETTE CIRCUIT COURT
The Honorable Daniel Lee Pflum, Judge
Cause No. 21C01-0805-FB-61

May 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Robin Banks appeals the sentence imposed by the trial court following her guilty plea to Class B felony Dealing in Cocaine.[1] Specifically, Banks argues that her sentence is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

The stipulated factual basis entered during the July 12, 2009 plea hearing provides that on or about January 3, 2008, Banks knowingly or intentionally delivered approximately one gram of crack cocaine to a confidential informant and an undercover police detective. On May 29, 2008, the State charged Banks with Class B felony Dealing in Cocaine. On June 12, 2009, Banks entered into an open guilty plea. The trial court accepted the plea agreement and scheduled a sentencing hearing on August 3, 2009.

During the August 3, 2009 sentencing hearing, the State presented evidence that at the time Banks completed the transaction with the confidential informant and the undercover police detective, Banks's twelve or thirteen-year-old daughter was in the home, albeit a different room of the home, and an unidentified individual was openly smoking a crack pipe. Prior to the trial court's pronouncement of Banks's sentence, Banks submitted to a drug test, which tested positive for cocaine. On September 4, 2009, the trial court sentenced Banks to twelve years, with six years executed and six years suspended to probation. Banks now appeals.

DISCUSSION AND DECISION

Banks argues on appeal that her sentence is inappropriate in light of the nature of her

[1] Ind. Code § 35-48-4-1 (2007).

offense and her character. Indiana Appellate Rule 7(B) provides that 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." The defendant bears the burden of persuading us that her sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

With respect to the nature of Banks's offense, our review reveals that Banks sold approximately one gram of crack cocaine to a confidential informant and an undercover police detective. In completing the sale, Banks exposed her twelve or thirteen-year-old daughter, who was present in the home, to the appreciable danger and potential for violence that is a part of illicit drug activity. *See White v. State*, 547 N.E.2d 831, 836 (Ind. 1989) (providing that the knowing exposure of a dependent to an environment of illegal drug use poses an actual and appreciable danger to that dependent). Moreover, one can reasonably infer from the record that Banks was involved with ongoing drug activity. After all, the confidential informant knew that he or she could approach and purchase cocaine from Banks. Also, at the time Banks completed this sale, an unidentified individual was smoking a crack pipe in the home.

With respect to Banks's character, our review reveals that Banks was a drug addict who had successfully hidden her drug problem from various family members. Banks sold cocaine out of her home, and by doing so knowingly exposed her daughter to both illicit drug activity and the associated potential for violence. Further, Banks failed a drug test during the time period following her guilty plea but prior to her sentencing. We are also unconvinced

that Banks's guilty plea reflects particularly well on her character because Banks waited more than one year after she was charged with the instant crime before deciding to plead guilty. She entered her plea of guilty approximately ten days before the beginning of her scheduled trial. Under the circumstances, we cannot say that Banks's guilty plea necessarily shows that Banks feels remorse for her actions because her decision to plead guilty at such a late date appears to be merely a pragmatic decision to avoid trial. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (providing that a guilty plea is not necessarily a showing of remorse and does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one), *trans. denied*.

We recognize that although Banks's daughter may suffer from not having her mother in her life while Banks is incarcerated, Banks's daughter has undoubtedly suffered from Banks's previous drug use and drug activity. *See White*, 547 N.E.2d at 836. We do not find a partially executed sentence to be inappropriate despite Banks's desire to care for her daughter while receiving treatment for her drug addiction. Based on our review of the evidence, we see nothing in Banks's character or in the nature of her offense that would suggest that her sentence is inappropriate.[2]

[2] To the extent that Banks argues that her sentence is inappropriate because the trial court failed to attribute appropriate mitigating weight to the fact that she accepted responsibility for her actions; that she was remorseful; that she was motivated by her addiction, not greed; that she acted as a go-between; and that she did not have a significant criminal history, we note that the trial court was under no obligation to "give the same weight or credit to the mitigating evidence as does the defendant." *Allen v. State*, 722 N.E.2d 1246, 1252 (Ind. Ct. App. 2000). Moreover, because the trial court cannot now be said to have abused its discretion in failing to "properly weigh" such factors, we will not review the weight granted to aggravating or mitigating factors by a trial court on appeal. *See Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *modified on other grounds on*

The judgment of the trial court is affirmed.

RILEY, J., and MATHIAS, J., concur.

reh'g, 875 N.E.2d 218 (Ind. 2007).