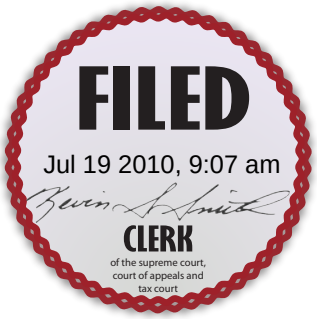

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IN THE
COURT OF APPEALS OF INDIANA

JAMES EDWARD PRICE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 76A03-1001-CR-23
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable William C. Fee, Judge
Cause No. 76D01-0312-FA-1359

July 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

James Edward Price appeals the sentence imposed after his conviction for dealing in methamphetamine, as a Class A felony, following a guilty plea. Price raises two issues for our review:

1. Whether the trial court abused its discretion in entering its sentencing order; and

2. Whether Price's sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 9, 2003, Price sold 221 grams (about one-half of a pound) of methamphetamine to an undercover police officer in Angola for $3,000. The officer then arrested Price and searched his vehicle. There, the officer seized an additional 174.5 grams of methamphetamine.

On December 10, the State charged Price with dealing in methamphetamine, as a Class A felony, and possession of methamphetamine, as a Class A felony. The next day, the State amended its possession charge to a Class C felony. On August 30, 2004, Price pleaded guilty to the dealing charge, and, in exchange, the State dismissed the possession charge. Price agreed to leave sentencing open for the court's determination, so long as the term of imprisonment did not exceed twenty-five years.

On September 27, 2004, the trial court held a sentencing hearing, during which the court accepted Price's guilty plea. The court then stated as follows in determining Price's sentence:

> Of course we begin with the nature of the offense. This is a serious offense. . . . We all are well aware of the social cost that is extracted by methamphetamine in this locality and it's high. Very high. And someone who is dealing in methamphetamine in large quantities needs to be prepared to deal also with the consequences. And the legislature of this State has said that the consequences of dealing in methamphetamine, the most serious offenses, the Class A Felony offenses, is [sic] a presumptive jail term of more than twenty-five years. The presumptive is thirty years. And the plea agreement in this case is for less than that. And next we move on to the nature of the offender himself and his character. And in that regard, the prior criminal history is highly relevant and is heavily weighted by the court. The court also—and is an aggravating circumstance, just to be very clear for the record. The fact that he was on probation at the time the offense occurred is also an aggravating circumstance. It demonstrates to the court that he's continuing in a course of criminal conduct knowing that he's already been before a criminal court . . . and then penalized once, but given an opportunity as a probationer. It indicates disregard . . . or inability or unwillingness to comply with court orders. And it is a legitimate aggravating circumstance. Those are the two aggravating circumstances that the court would find in this cause. They are heavily weighted. The court has considered the mitigating circumstances that Mr. Price has pled guilty, but finds that that is heavily overshadowed by the aggravating circumstances and, accordingly, the weight is all on the side of the aggravating circumstances and is heavily weighted to tip the scales in that direction. The court would find, accordingly, that a term of imprisonment of twenty-five years is a fair and reasonable disposition and does now so order that sentence.

Transcript at 37-39. After various filings, on December 30, 2009, the State and Price filed an Agreed Entry stating that Price was entitled to file a belated notice of appeal, which the trial court accepted on January 5, 2010. This appeal ensued.

DISCUSSION AND DECISION[1]

Issue One: Abuse of Discretion

Price first argues that the trial court abused its discretion when it sentenced him to twenty-five years because the court ignored clearly supported mitigators. Sentencing

[1] We remind Price's counsel that the law in effect at the time Price committed his crime is the law that applies to Price's sentencing. Williams v. State, 891 N.E.2d 621, 631 (Ind. Ct. App. 2008).

decisions are within the discretion of the trial court and we reverse only upon a showing of manifest abuse of that discretion. Ford v. State, 704 N.E.2d 457, 461-62 (Ind. 1998). The trial court's sentencing statement must: 1) identify significant aggravating and mitigating circumstances; 2) state the specific reason why each circumstance is aggravating or mitigating; and 3) evaluate and balance the mitigating against the aggravating circumstances to determine if the mitigating offset the aggravating circumstances. Ellison v. State, 717 N.E.2d 211, 215 (Ind. Ct. App. 1999), trans. denied. When a trial court imposes the presumptive sentence, we presume on appeal that the trial court considered the proper factors in making its sentencing determination. Ford, 704 N.E.2d at 462. At the time of Price's criminal act, the presumptive sentence for a Class A felony was thirty years. See Ind. Code § 35-50-2-4 (2003).

Here, the trial court identified the following aggravating circumstances: Price's criminal history and the fact that he was on probation when he committed the instant offense. The court identified Price's guilty plea as a mitigator. The court then concluded that the aggravators greatly outweighed the mitigators, although, due to the terms of Price's guilty plea, the court still imposed a less-than-presumptive sentence.

On appeal, Price contends that his criminal history was in fact a mitigating circumstance because the majority of his past crimes occurred "quite a while ago." Appellant's Br. at 7. Price also argues that his guilty plea should have been afforded more mitigating weight. But those arguments were before the trial court and it rejected them. We cannot say the court's assessment of Price's contentions was a "manifest abuse

of discretion"; to the contrary, the court's conclusions were well within the logic and effect of the facts and circumstances before the court. See Ford, 704 N.E.2d at 461-62.

Issue Two: Inappropriateness of Sentence

Price also contends that his sentence is inappropriate in light of his character and the nature of the offense. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B).[2] Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration original).

Regarding the nature of Price's offense, Price rightfully concedes "the severity of the offense for which [he] was convicted. Significant amounts of methamphetamine were involved." Appellant's Br. at 9-10. While Price then suggests that "the nature of

[2] Our review of sentences under Rule 7(B) has not changed in any relevant, material way since Price committed his crime.

this offense cannot be considered the absolute worst under the statute," id. at 10, he also received a sentence that was five years below the presumptive sentence and twenty-five years below the statutory maximum. See I.C. § 35-50-2-4. Thus, his sentence is not inappropriate in light of the nature of the offense.

Regarding his character, Price reiterates that his criminal history is "distant" and that he accepted responsibility by pleading guilty. Appellant's Br. at 9. But he was also on probation when he committed the instant offense, and, in exchange for his guilty plea, the State dismissed a Class C felony charge. As such, we cannot say that Price's twenty-five-year sentence for a Class A felony conviction is inappropriate in light of his character.

Affirmed.

VAIDIK, J., and BROWN, J., concur.