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IN THE COURT OF APPEALS OF INDIANA

JERIMIAH MORRIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A05-1001-CR-16
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen M. Jessup, Judge
Cause No. 34D02-0406-FD-251

August 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jerimiah Morris appeals his sentence following a plea of guilty to possession of marijuana as a class D felony.[1]

We affirm.[2]

ISSUE

Whether the trial court erred in sentencing Morris.

FACTS

On June 12, 2004, Kokomo Police Officer Mark Miller conducted a traffic stop after observing a red Chevrolet with a license plate registered to a blue Plymouth. Officer Miller confirmed that the driver, Morris, had a suspended license. After receiving permission from Morris to search the vehicle, Officer Miller discovered marijuana in a plastic container.

On June 14, 2004, the State charged Morris with possession of marijuana as a class A misdemeanor. The State also filed a notice of intent to seek an enhancement of the possession of marijuana charge to a class D felony based on a prior possession of marijuana conviction.

On July 28, 2004, Morris posted bond and was released from custody. On March 8, 2005, the trial court held a pretrial conference and set March 15, 2005, as the final date

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[1] Ind. Code § 35-48-4-11.

[2] We remind Morris' counsel that pursuant to Indiana Appellate Rule 50(A)(2), the "appellate's Appendix shall contain a table of contents . . . ." We also remind Morris' counsel that presentence investigation reports shall be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential." Ind. Trial Rule 5(G)(1).

to file a plea agreement. On March 16, 2005, the State and Morris, by counsel, filed a plea agreement. The trial court rejected the plea as "too late." (App. 3). Subsequently, however, the trial court reconsidered and set a plea hearing for April 19, 2005.

On April 19, 2005, the trial court held a hearing on the plea agreement; set the sentencing hearing for June 21, 2005; and ordered Morris to reappear "without further notice." (App. 3). The trial court rescheduled the sentencing hearing due to court congestion. The trial court held the sentencing hearing on July 18, 2005, after which it rejected the plea agreement. The trial court set the matter for a pre-trial hearing on January 17, 2006, and again on July 11, 2006.

On July 19, 2006, the State and Morris, by counsel, filed a plea agreement. The trial court again rejected the plea agreement.

Following several delays due to court congestion, the trial court held another pre-trial conference on August 7, 2007. Morris, however, failed to appear. The trial court therefore issued a bench warrant for Morris' arrest. Morris was arrested on August 22, 2007, but subsequently released. Again, court congestion caused several more delays in setting the matter for pre-trial conference and trial.

On June 26, 2008, the State and Morris, by counsel, filed another plea agreement. The trial court scheduled the plea hearing for July 15, 2008, which it continued to October 31, 2008. Morris, however, failed to appear at the hearing on October 31, 2008. The trial court again issued a bench warrant for his arrest. Morris was arrested on

November 10, 2008. The trial court rejected the plea agreement on November 13, 2008, and again set the matter for a pre-trial conference.

On January 15, 2009, Morris filed a motion to schedule another plea hearing. The trial court set the hearing for March 12, 2009, which it continued to May 27, 2009, due to a congested court calendar. The trial court again rescheduled the hearing to June 18, 2009, at Morris' request.

On June 18, 2009, the trial court accepted Morris' guilty plea. Morris pleaded guilty as charged, stipulating to the "Affidavit for Probable Cause as a factual basis . . . ." (Tr. 4).

The trial court held a sentencing hearing on December 10, 2009. According to the pre-sentence investigation report (the "PSI"), Morris was convicted of class A misdemeanor possession of marijuana in 1996. He, however, twice failed to complete his court-ordered community service and did not comply with court-ordered alcohol and drug treatment.

In 2001, Morris was convicted of class A misdemeanor operating a vehicle while intoxicated, for which he received a suspended sentence and probation; Morris' probation was "terminated unsuccessfully[.]" (App. 37). Morris also was convicted of class A misdemeanor criminal trespass in 2000. In 2002, Morris was convicted of class D felony dealing in marijuana and class D felony possession of marijuana. According to the PSI, he failed to comply with in-home detention. Furthermore, while on bond awaiting trial

for the instant offense, Morris committed theft, for which he was convicted and received probation.

The trial court found as follows:

> There's no sense putting [Morris] on probation. I'm just going through the record here. Petition to Revoke for failure to complete community service, Petition to Revoke for failure to complete community service a second time, non-compliance with alcohol and drug, non-compliance with in-home detention.

(Tr. 12). The trial court sentenced Morris to three years.

DECISION

Morris asserts that the trial court erred in sentencing him. Specifically, he argues that the trial court failed to enter an adequate sentencing statement and failed to give sufficient mitigating weight to his guilty plea. He also asserts that his sentence is inappropriate.

1. Sentencing Statement

Morris argues that the trial court's sentencing statement is inadequate. Specifically, he argues that "no statement was made by the trial court to enhance a sentence." Morris' Br. at 8.

Sentences are within the trial court's discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Thus, we review a sentence for abuse of that discretion. *Id.* "One way in which a trial court may abuse its discretion is failing to enter a sentencing statement . . . ." *Id.* In *Anglemyer*, Indiana's Supreme Court explained that

> Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. In order to facilitate its underlying goals, the statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating.

Id. (internal citations omitted).

We acknowledge that the trial court's sentencing statement could have been more detailed. However, the trial court did identify as an aggravating circumstance Morris' past failures to comply with probation. We therefore find that the sentencing statement is adequate.

2. Mitigating Circumstance

Morris also asserts that the trial court abused its discretion in failing to consider his guilty plea as a mitigating circumstance. A sentence that is within the statutory range is subject to review only for an abuse of discretion. *Id.* A trial court may abuse its discretion if the sentencing statement

> explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law.

Id. at 490-91.

> The failure to find a mitigating circumstance clearly supported by the record may imply that the trial court overlooked the circumstance. The trial court, however, is not obligated to consider "alleged mitigating factors that are highly disputable in nature, weight, or significance." The trial

> court need enumerate only those mitigating circumstances it finds to be significant. On appeal, a defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record.

Rawson v. State, 865 N.E.2d 1049, 1056 (Ind. Ct. App. 2007) (internal citations omitted), *trans. denied*. "Our courts have long held that a defendant who pleads guilty deserves to have some mitigating weight extended to the guilty plea in return." *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005). A guilty plea, however, is not necessarily a significant mitigating factor. *Id.*

The evidence against Morris indicates that his decision to enter a guilty plea was pragmatic. Thus, we do not find that the trial court abused its discretion in failing to identify Morris' guilty plea as a mitigating circumstance as we cannot say that it was significant. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("[A] guilty plea 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*.

Even if this court were to find the trial court's sentencing statement inadequate or that the trial court abused its discretion in failing to consider Morris' guilty plea as a mitigating circumstance, this court would have at least three courses of action:

> 1) "remand to the trial court for a clarification or new sentencing determination", 2) "affirm the sentence if the error is harmless", or 3) "reweigh the proper aggravating and mitigating circumstances independently at the appellate level."

Scott v. State, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006) (quoting *Cotto*, 829 N.E.2d at 525), *trans. denied*.

Here, the record clearly supports the finding of Morris' criminal history as an aggravating circumstance. Furthermore, the record reveals that after being charged with the instant offense but prior to the disposition of this case, Morris was arrested and convicted of theft. A single circumstance may be sufficient to support an enhanced sentence. *Edwards v. State*, 842 N.E.2d 849, 855 (Ind. Ct. App. 2006). Even if we were to find Morris' guilty plea to be a significant mitigating circumstance, his criminal history far outweighs that mitigating circumstance. Thus, any error in sentencing was harmless.[3]

4. Inappropriate Sentence

Morris also asserts that his sentence is inappropriate. Specifically, he argues that given the lengthy delay from time of this arrest until sentencing and his attempts to plead guilty, "his conviction should be reduced to an A misdemeanor," with his sentence reduced accordingly. Morris' Br. at 8. We disagree.

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden

[3] To the extent that Morris contends the trial court abused its discretion in not sentencing him under alternative misdemeanor sentencing, we disagree. Indiana Code section 35-50-2-7(b) provides that "[n]otwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly." "The trial court has broad discretion whether to grant leniency under Indiana Code § 35-50-2-7(b)." *Fox v. State*, 916 N.E.2d 708, 711 (Ind. Ct. App. 2009). Here, Morris entered a plea of guilty to a class D felony and did not request alternative misdemeanor sentencing. We therefore cannot say that the trial court abused its discretion in entering Morris' conviction as a class D felony and sentencing him accordingly. *See Fox*, 916 N.E.2d at 711.

to "'persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" *Anglemyer*, 868 N.E.2d at 494 (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress*, 848 N.E.2d at 1081. The advisory sentence for a class D felony is one and one-half years. I.C. § 35-50-2-7(a). The potential maximum sentence is three years. *Id.* The trial court sentenced Morris to the maximum sentence.

We acknowledge the unusual delay in sentencing Morris and his several attempts to plead guilty. We note, however, that Morris contributed to some of the delay by failing to appear for two separate hearings, including a guilty plea hearing; and the record does not indicate the reason for the trial court rejecting Morris' earlier attempts to plead guilty. As to Morris' acceptance of responsibility for his crime by pleading guilty, we cannot say that this is a significant reflection of his character. The evidence against him indicates that his guilty plea was pragmatic.

We also note that Morris has several prior convictions, including drug-related convictions; had failed to comply with the terms of his probation on at least three occasions; failed to comply with in-home detention; and committed theft while on bond awaiting trial for the instant offense. Furthermore, at the time of his arrest, Morris was driving with a suspended license. Given Morris' obvious disregard for the law and failed prior attempts to rehabilitate him, we cannot say that his sentence is inappropriate.

Affirmed.

BRADFORD, J., and BROWN, J., concur.