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Kevin L. Smith
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tax court

MATHIAS, Judge

Linda Montalvo (“Montalvo”) pleaded guilty to Class A felony dealing in cocaine. The trial court sentenced her to a term of twenty-five years. Montalvo appeals and argues that the trial court abused its discretion in finding aggravators and mitigators and that her sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On November 9, 2007, a search warrant was executed at Montalvo’s residence and over three grams of cocaine were seized. On November 13, 2007, the State charged Montalvo with Class A felony dealing in cocaine, Class D felony dealing in marijuana, Class D felony maintaining a common nuisance, and Class A misdemeanor possession of paraphernalia.

On March 5, 2009, Montalvo pleaded guilty to Class A felony dealing in cocaine with sentencing left to the discretion of the trial court. On August 27, 2009, the trial court accepted the plea agreement and sentenced Montalvo to twenty-five years with twenty years executed, two years spent on electronic monitoring, and three years suspended to probation. Montalvo now appeals.

I. Aggravators and Mitigators

Montalvo argues that the trial court abused its discretion by giving improper consideration to aggravating circumstances. 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 can 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.

Montalvo argues that her criminal history and statements of her co-defendants that she and her husband had used and dealt cocaine since 2004 and had continued to use and deal cocaine after their arrest for the present Class A felony dealing in cocaine are not valid aggravators.¹ Indiana Code section 35-38-1-7.1(a)(2) states that the court may consider, as an aggravating circumstance, whether the person has a history of criminal or delinquent behavior. Montalvo's criminal history consists of a battery conviction in 1999 and the instant offense. Although Montalvo's battery conviction is minor, the short length of her criminal history ultimately goes to the weight given it by the trial court, which we do not reconsider. The trial court also properly considered the statements of Montalvo's co-defendants about her prior cocaine dealing as aggravating factors. See Flinn v. State, 563 N.E.2d 536, 544 (Ind. 1990); Creasy v. State 518 N.E.2d 785, 787 (Ind. 1988).

Under these facts and circumstances, the trial court did not abuse its discretion when it considered Montalvo's criminal history and the statements of her co-defendants about Montalvo and her husband's use and sale of cocaine as aggravators.

II. Appropriateness of Sentence

¹ To the extent that Montalvo argues that the trial court improperly weighed the aggravators and mitigators, we do not review the relative weight given by the trial court to aggravators or mitigators. Anglemyer, 868 N.E.2d at 491.

Montalvo also argues that her sentence is inappropriate under Indiana Appellate Rule 7(B), which provides: “The 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.” In Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007), our supreme court explained:

It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

868 N.E.2d at 494. “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” Id.

Montalvo specifically contends that her twenty-five year sentence for Class A felony dealing in cocaine is inappropriate because of a perceived disparity between her co-defendants’ sentences and her own. In this regard, we note that Montalvo received nearly the same sentence as that of her husband, who also pleaded guilty to Class A felony dealing in cocaine. Her husband’s sentence is a twenty-five year term with twenty years executed, eighteen years in the Department of Correction and two years on electronic monitoring with the remaining five years suspended to probation.

The nature of the offense supports Montalvo’s sentence. Montalvo admitted to selling cocaine out of her residence and was known for selling drugs. Appellant’s App. p. 73. During the search of her house, police found twenty grams of crack cocaine among other items. Id. Testimony of the co-defendants established that Montalvo sold drugs on numerous occasions and that Montalvo travelled to Indianapolis on a weekly

basis to obtain more cocaine to sell from her home. The nature of the offense supports Montalvo's twenty-five year sentence.

While Montalvo's age of sixty-one might initially give one pause, her character also supports her sentence. Although Montalvo's criminal history is short, the testimonies of her co-defendants show that Montalvo has been involved in the use and sale of cocaine since 2004. Id. Additionally, and very importantly, during the pendency of the case, Montalvo continued to use and sell cocaine. Id. Montalvo clearly is uninterested in rehabilitating herself and leading a law-abiding life. Her character adequately supports her twenty-five year sentence.

Conclusion

The trial court did not abuse its discretion when it considered Montalvo's criminal history and the statements of her co-defendants about her use and sale of cocaine as aggravators. The nature of the offense and the character of the offender support Montalvo's twenty-five year sentence.

Affirmed.

RILEY, J., and BRADFORD, J., concur.