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# IN THE COURT OF APPEALS OF INDIANA

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|---|---|---|
| DANIEL HUCKELBY, | ) | |
| | ) | |
| Appellant- Defendant, | ) | |
| | ) | |
| vs. | ) | No. 52A02-0910-CR-1020 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee- Plaintiff, | ) | |

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable Robert A. Spahr, Judge
Cause No. 52C01-0810-MR-1

**March 22, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issue

Following a plea agreement, Daniel Huckelby was convicted of conspiracy to commit dealing in methamphetamine, a Class B felony, and reckless homicide, a Class C felony. Huckelby was sentenced to ten years for the conspiracy conviction and six years for the reckless homicide conviction, with the sentences to be served consecutive to each other. Huckelby appeals his aggregate sixteen-year sentence, raising the sole issue of whether the sentence is inappropriate. Concluding the sentence is not inappropriate in light of the nature of the offenses and Huckelby's character, we affirm.

## Facts and Procedural History

In August and September of 2008, Huckelby and several friends bought pseudoephedrine, which Huckelby used to manufacture methamphetamine. On September 19, 2008, Huckelby, his now-wife, Tabatha, and Robert Vandergriff, among others, were at the home Huckelby and Tabatha shared with Richard Bolen and Heather Sweeney. Vandergriff was a friend of Tabatha's daughter. Huckelby handled a .45 caliber handgun that fired into Vandergriff's chest, killing him. Someone called 911 and although Huckelby initially stayed at the house, when he heard sirens, he gathered up the methamphetamine lab and several of the guns that were in the house and fled into the woods behind the house. Huckelby turned himself in to police a couple of days later.

The State charged Huckelby with murder, a felony, conspiracy to commit dealing in methamphetamine, a Class B felony, possession of methamphetamine and reckless homicide, both Class C felonies, and maintaining a common nuisance and possession of chemical reagents or precursors with intent to manufacture a controlled substance, both

Class D felonies. The State also filed an enhancement pursuant to Indiana Code section 35-50-2-11 alleging Huckelby knowingly or intentionally used a firearm in the commission of a felony that resulted in death. Pursuant to a plea agreement, Huckelby pled guilty to conspiracy to commit dealing in methamphetamine and reckless homicide and the State dismissed the remaining charges. Sentencing was left to the discretion of the trial court with the provision that the sentence for conspiracy would not exceed ten years. Further, the plea agreement provided an enhancement hearing regarding the use of a firearm would be held at the time of sentencing and the trial court could add an additional fixed term of imprisonment of five years to any sentence imposed under the agreement.

Following the enhancement and sentencing hearing, the trial court issued the following sentencing order:

> And now the Court, being duly advised in the premises, FINDS as aggravators that (1) [Huckelby] has a prior criminal record; (2) [Huckelby] was on probation in Miami County when he was charged with three new felony causes; (3) [Huckelby] was charged with the offense of Receiving Stolen Property (15 counts, D felony) . . . after being released from the Howard County Jail on bond . . .; (4) [Huckelby] discharged a firearm, killing Robert Vandergriff, within hearing distance of a person less than eighteen years of age. [A.B.], age one, was in the residence at the time of the shooting; (5) [Huckelby] fled the scene of the crime and did not return to render aid to the victim; (6) [Huckelby] has demonstrated a lack of remorse for the crime; (7) imposition of a reduced sentence or suspension of sentence and imposition of probation would depreciate the seriousness of the crime; and (8) [Huckelby] is in need of correctional or rehabilitative treatment that can best be provided by his commitment to a penal facility.
>
> The Court FINDS as mitigators that (1) [Huckelby] entered into a plea agreement and saved Miami County the expense of a jury trial; and (2) [Huckelby] has no felony convictions.
>
> The Court FINDS that the aggravators outweigh the mitigators.
>
> . . . The Court sentences [Huckelby] in Count II [conspiracy] to the Indiana Department of Correction for 10 years. . . .

> The Court sentences [Huckelby] in Count VI [reckless homicide] to the Indiana Department of Correction for 6 years. Said sentence shall run consecutive to the sentence in Count II.

Appellant's Appendix at 81-82. Huckelby now appeals.

## Discussion and Decision

### I. Standard of Review

This court has authority to revise a sentence "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." Ind. Appellate Rule 7(B). We may "revise sentences when certain broad conditions are satisfied," Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005), and recognize the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed," Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). In determining whether a sentence is inappropriate, we examine both the nature of the offense and the character of the offender. Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When making this examination, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) ("[I]nappropriateness review should not be limited … to a simple rundown of the aggravating and mitigating circumstances found by the trial court."). The burden is on the defendant to demonstrate that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Huckelby was convicted of a Class B and a Class C felony. "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." Ind. Code § 35-50-2-5. "A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years." Ind. Code § 35-50-2-6(a). The trial court sentenced Huckelby to the advisory sentence of ten years for his Class B felony conspiracy conviction and to six years for his Class C felony reckless homicide conviction – a sentence midway between the advisory sentence and the statutory maximum. In addition, the trial court ordered the two sentences to be served consecutively, for an aggregate sentence of sixteen years. Huckelby contends that his aggregate sentence is inappropriate in light of the nature of his offenses "but most notably his character" and should be reduced. Brief of the Appellant at 4.

II. Nature of Offenses and Character of Offender

With respect to the nature of Huckelby's offenses, Huckelby and several friends procured pseudoephedrine which Huckelby used in manufacturing methamphetamine. After manufacturing methamphetamine one night, Huckelby accidentally shot and killed Vandergriff while "holding [a gun] in my lap playing with it." Transcript at 50. As the trial court noted in its sentencing statement, at the time of the incident there was a young child present in the house. Manufacturing methamphetamine and discharging a firearm[1] in the presence of a young child makes these offenses slightly more egregious than is typical. In other words, nothing about the nature of the offenses renders Huckelby's sentence inappropriate.

[1] Although Huckelby did not intend to discharge the firearm, the very act of taking out a firearm and "playing" with it in proximity to anyone, let alone an infant, is egregious.

As to Huckelby's character, Huckelby's criminal history consists of adjudications as a juvenile for resisting law enforcement and criminal conversion, and convictions as an adult for driving while suspended and check deception, both misdemeanors. Huckelby's convictions do not relate in nature or gravity to the instant offense, as they do not involve drug offenses or injury to a person. See Harris v. State, 897 N.E.2d 927, 930 (Ind. 2008) ("The significance of a defendant's criminal history varies based on the gravity, nature and number of prior offenses as they relate to the current offense.") (quotation omitted). Huckelby also pled guilty and apologized to Vandergriff's family. As the trial court noted, Huckelby's lack of felony convictions and his acceptance of responsibility reflect favorably on his character. However, the trial court did not give credit to Huckelby's expression of remorse, and we note that his words of apology expressed as much regret for how his actions affected him as for how they affected Vandergriff's family. In addition, Huckelby has several pending charges, including check deception, conversion, possession of methamphetamine, resisting law enforcement, false informing, and fifteen counts of receiving stolen property, as well as four pending probation violations. Although a record of arrests not reduced to convictions may not be considered as evidence of criminal history, it may be relevant to the assessment of a defendant's character "in terms of the risk that he will commit another crime" because it reveals the defendant "has not been deterred even after being subject to the police authority of the State." Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2005). Huckelby was fifteen at the time of his first juvenile adjudication and was twenty-five at the time of the instant offense, so he has committed or has allegedly committed a number of crimes in a

relatively short span of time and has been in trouble with the law consistently throughout that time. He was on probation when he was charged in this case. Finally, rather than rendering aid or support to his victim, Huckelby gathered up evidence of guns and the methamphetamine lab in the house and fled with it before the authorities arrived. Huckelby also admitted to lying to police about some of the events of the night. See Tr. at 50 (when asked if he lied to police about whether there was a clip in the gun at the time of the shooting, Huckelby answered yes). These factors weigh against Huckelby's character. Huckelby's character does not render a sentence slightly above the advisory sentence inappropriate.

## Conclusion

Huckelby has failed to meet his burden of persuading us his sixteen-year aggregate sentence for conspiracy to commit dealing in methamphetamine and reckless homicide is inappropriate. His sentence is, therefore, affirmed.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.