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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY CRAIG,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A01-0705-CR-235
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No. 03C01-0608-FB-1706

September 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Anthony Craig appeals his two-year sentence for Maintaining an Illegal Drug Lab,[1] a class D felony. Specifically, Craig argues that the trial court erred by failing to find a proffered mitigator, his two-year sentence is inappropriate in light of the nature of the offense and his character, and the trial court erred by imposing his sentence consecutively to a sentence in an unrelated cause. Finding no error, we affirm the judgment of the trial court.

FACTS

On August 29, 2006, the State charged Craig with class B felony manufacturing methamphetamine and class D felony possession of chemical reagents or precursors with the intent to manufacture a controlled substance. On March 19, 2007, Craig pleaded guilty to class D felony maintaining an illegal drug lab and sentencing was left to the trial court's discretion. The trial court accepted Craig's guilty plea on April 25, 2007, and held a sentencing hearing, after which it sentenced Craig to two years imprisonment and ordered the sentence to run consecutively to his sentence in 03C01-9908-CF-1128 (CF-1128).[2] Craig now appeals.

DISCUSSION AND DECISION

[1] Ind. Code § 35-48-4-14.5.

[2] Craig was on probation for class B felony dealing in cocaine when he committed the instant offense. As a result of the probation violation, the CF-1128 trial court revoked Craig's probation and ordered him to serve the balance of his sentence in that case, approximately four years imprisonment. Appellant's App. p. 53.

I. Sentencing

Craig argues that the trial court erred by imposing a two-year sentence for his conviction. Specifically, he argues that the nature of the offense was "unremarkable" and that the trial court did not consider that Craig had "recently completed a DOC class [and] received an outstanding performance review." Appellant's Br. p. 6, 7.

The amended sentencing statutes[3] provide that for a class D felony, a person "shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years." Ind. Code § 35-50-2-7. At the sentencing hearing, the trial court noted that Craig had various drug-related convictions and had not reformed his conduct in spite of numerous "break[s.]" Tr. p. 24-25. In its sentencing order, the trial court found Craig's "opportunity for treatment previously" and the fact that he was on probation when he committed the instant offense to be aggravating circumstances. Appellant's App. p. 39. The trial court did not find any mitigating circumstances.

We review challenges to the trial court's sentencing process for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). The trial court may abuse its discretion in the following ways during the sentencing process: (1) by failing to enter a sentencing statement; (2) by entering a sentencing statement that includes reasons not supported by the record; (3) by entering a sentencing statement that omits reasons clearly

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[3] Craig committed the offense after the April 2005 amendment of the sentencing statutes; thus, we will apply the amended versions thereof. Gutermuth v. State, 868 N.E.2d 427, 431 n.4 (Ind. 2007).

supported by the record and advanced for consideration; or (4) by entering a sentencing statement that includes reasons that are improper as a matter of law. Id. at 490-91.

If a defendant chooses to challenge the result of the sentencing process—i.e., the sentence itself—then he must do so via Appellate Rule 7(B), which provides that the "[c]ourt may review 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." See id. at 491 (holding that because "a trial court [cannot] now be said to have abused its discretion in failing to 'properly weigh'" aggravators and mitigators, if the trial court enters a proper sentencing statement then the only way a defendant can challenge the sentence is via Rule 7(B)). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Craig first argues that the trial court erred when it did not consider that he had completed a safety for horticulture class and received an outstanding performance review when imposing his sentence.[4] An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Anglemyer, 868 N.E.2d at 493. However, if the trial court does not find the existence of a mitigating factor after it has been proffered, the

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[4] Craig also argues that the trial court did not consider that he was "currently involved in Parenting, Peer Relationships, and Substance Abuse programs, Exhibit C." Appellant's Br. p. 7. However, Exhibit C is an

trial court is not obligated to explain why it has found that the factor does not exist. Id.

At the hearing, Craig admitted that completing the educational class resulted in a "time cut" in the sentence he was already serving at the time of sentencing. Tr. p. 14. Therefore, while Craig argues that the trial court erred by not finding his attempt to "better himself" to be a mitigating factor, id. at 24, the evidence presented was not overwhelming and Craig had already received a benefit. Consequently, the trial court did not abuse its discretion by failing to find this evidence to be a mitigating factor.

As for the appropriateness of Craig's two-year sentence, he emphasizes that the nature of the offense was "unremarkable." Appellant's Br. p. 6. However, at the time of his arrest, Craig had begun the process of manufacturing methamphetamine and other individuals were "bringing the anhydrous ammonia to complete the process." Appellant's App. p. 7. Furthermore, Craig was using another person's residence to manufacture the methamphetamine. We do not find the nature of the offense to aid his argument.

Turning to the character of the offender, Craig has a significant criminal history, including prior convictions for class B felony dealing in cocaine, class B misdemeanor furnishing alcohol to a minor, and possession of marijuana. As the trial court noted at the sentencing hearing, Craig has received a variety of breaks during his previous encounters with the judicial system—lenient suspended sentences and advantageous plea agreements. Tr. p. 24-25; Appellant's App. p. 53-56. However, even after this favorable treatment, Craig

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unsigned re-entry accountability plan that "recommend[s]" that Craig begin participating in these programs, not that he actually is participating. (Emphasis added).

returned to a life involving drugs and committed the underlying offense while he was on probation. It is obvious that Craig has not learned from his past mistakes and, instead, has chosen to lead a lawless life. In sum, his character does not aid his argument and, ultimately, we do not find his two-year sentence to be inappropriate.

II. Consecutive Sentences

Craig argues that the trial court erred by imposing his enhanced sentence consecutively to his sentence for CF-1128. While Craig "respectfully requests this Court adopt the rationale as set forth in Robertson v. State[, 860 N.E.2d 621 (Ind. Ct. App. 2007),]" appellant's br. p. 7, our Supreme Court recently reversed that decision, holding that "subsection 1.3(c) did no more than retain the fixed maximum sentences permissible under the episode and repeat offender provisions . . . [and that] the trial court was not required to impose the 'advisory' sentence for a class D felony when sentencing [the defendant] to a consecutive term." Robertson v. State, No. 49S05-0704-CR-152, slip op. at 4-5 (Ind. Aug. 8, 2007). Therefore, Craig's argument fails and the trial court did not err in ordering the enhanced sentence to run consecutively to the sentence imposed in CF-1128.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.