

Bernard A. Winfrey appeals his conviction of and fifteen-year sentence for dealing in cocaine as a Class B felony.¹ We affirm his conviction and sentence, but *sua sponte* remand so the court may correct the Abstract of Judgment.²

FACTS AND PROCEDURAL HISTORY

Lawrence Police Officer Scott Evans received from a confidential informant the telephone number of an alleged drug dealer. On November 21, 2006, Officer Evans called the number and said, “My buddy Brian told me to call you, said you could hook me up.” (Tr. at 39.) When asked what he needed, Officer Evans said, “A hundred twenty.” (*Id.*) Evans told the person on the phone that he was at Motel 67 on Pendleton Pike in Marion County.

Fifteen minutes later, the confidential informant, two females, and Winfrey arrived together at Officer Evans’ motel room. After a few minutes of casual conversation, Winfrey and Officer Evans went into the bathroom. Winfrey produced a rock of crack cocaine and a knife, and he cut the rock in half. Winfrey gave half the rock to Officer Evans and put the other half back in his pocket. Officer Evans paid \$120 for 2.2415 grams of crack and asked if he could call again. Winfrey responded, “You can call me any time.” (*Id.* at 43.) Winfrey then left in his car with one of the women.

Officer Evans informed other officers that the sale was complete, and those officers stopped Winfrey’s car. Winfrey denied selling drugs to an undercover officer.

¹ Ind. Code § 35-48-4-1.

² The Abstract of Judgment erroneously indicates Winfrey was convicted of a Class A felony. (See Appellant’s Br. at 20.)

The woman in the car with Winfrey “couldn’t sit still,” (*id.* at 67), began crying and complaining of burning, and then pulled 1.3615 grams of unpackaged crack cocaine from her vagina and handed it to an officer. Winfrey was carrying the \$120.00 of recorded buy money, and in the car police found a knife Officer Evans identified as the knife used to cut the crack.

Initially, the State charged Winfrey with dealing in cocaine and possession of cocaine, both as Class A felonies. Nearly four months later, the State added charges based on slightly different elements, one being Class A felony dealing in cocaine and the other being Class B felony possession. Then, on the day of trial, the State amended the information to charge only Class B felony dealing in cocaine and Class D felony possession of cocaine.

A jury found Winfrey guilty of Class B felony dealing and Class D felony possession. The court entered judgment only for dealing. After a sentencing hearing and the entry of a pre-sentence investigation report, the court sentenced Winfrey to fifteen years in the Department of Correction.

DISCUSSION AND DECISION

1. Sufficiency of Evidence

In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess the credibility of the witnesses. We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. A judgment based on circumstantial evidence will be sustained if the circumstantial evidence alone supports a reasonable inference of guilt.

Richardson v. State, 856 N.E.2d 1222, 1227 (Ind. Ct. App. 2006) (citations omitted), *trans. denied* 869 N.E.2d 448 (Ind. 2007).

Winfrey alleges a number of inadequacies in the State's evidence: the absence of a recording from the wire Officer Evans wore during the drug sale, an absence of cell phone records, the informant's regular use of marijuana, and differences between Officer Evans' and another officer's recollections of the conversation during the drug sale in the bathroom. Based on that "missing" evidence and the State's amendments of the charges to lesser-included offenses, Winfrey asserts the State produced insufficient evidence of his intent to deal cocaine. We cannot agree.

Officer Evans' testimony was corroborated by the cash, knife, and crack recovered from Winfrey, his car, and his companion. Winfrey's intent to deal cocaine was supported by the fact that Winfrey dealt cocaine; this is not, as Winfrey alleges, similar to cases in which a defendant's intent is inferred from the amount of drug possessed. Winfrey wants us to reassess Officer Evans' credibility and reweigh the evidence, but our standard of review does not permit us to do so. Accordingly, we affirm his conviction.

2. Sentence

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 on other grounds* 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.* (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind.

2005)).

Winfrey was convicted of dealing in cocaine as a Class B felony. A court may sentence a defendant to between six and twenty years for a Class B felony; ten years is the advisory sentence. Ind. Code § 35-50-2-5. The court ordered Winfrey to serve fifteen years.

Winfrey first asserts the court “made one general reference to Winfrey’s criminal history as an aggravator,” (Appellant’s Br. at 14), and that reference was insufficiently detailed to justify his fifteen-year sentence. The court said:

I think both parties, Mr. Winfrey included, pretty well described the range here of what’s going on. He does have a bad criminal history. I don’t doubt that he has a drug problem. The -- I think the felony convictions weigh pretty heavily on a sentence like this.

So here is what I’m going to do. Count One, which is Dealing, it’s a 15 year [sic] sentence.

(Tr. at 160.) The court’s statement about the weight assigned to Winfrey’s criminal history adequately explains why the court assigned a fifteen-year sentence.³

Winfrey also asserts his sentence is inappropriate.

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 of a sentence imposed by the trial court.” This appellate authority is implemented through Appellate Rule 7(B), which provides that 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.”

³ That statement also undermines Winfrey’s argument that the sentence erroneously rested on evidence regarding Winfrey’s attitude toward his female passenger when police stopped his car. Because the court explicitly announced it would not rely on that evidence and because Winfrey’s sentence is supported by his criminal history, we need not discuss the admissibility of that evidence.

Anglemyer, 845 N.E.2d at 491 (citations omitted). We give deference to the trial court's decision, recognizing its special expertise in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied* 878 N.E.2d 208 (Ind. 2007). The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Winfrey's criminal history includes a juvenile true finding of being "ungovernable" by his mother. (PSI at 3.) He was convicted of Class C felony forgery in 1994, 1995, and 2005; Class D felony theft in 1997, 1998, and 1999; Class A misdemeanor conversion in 1998; Class A misdemeanor domestic battery in 2002; Class A misdemeanor criminal trespass in 2003; and Class B misdemeanor criminal mischief in 2002. Each of the five times a court has placed Winfrey on probation, his probation has been revoked.

Nothing about Winfrey's crime is worse than a typical conviction of dealing in cocaine. However, his criminal history and admitted years of drug abuse suggest his character could use reformation. We accordingly cannot find his fifteen-year sentence inappropriate, and we affirm Winfrey's conviction and sentence.

We also *sua sponte* remand so the court may correct the abstract of judgment, which erroneously indicates Winfrey was convicted of Class A felony dealing in cocaine.

Affirmed and remanded with instruction.

VAIDIK, J., and MATHIAS, J., concur.