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IN THE
COURT OF APPEALS OF INDIANA

ALEX E. CASTILLO,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A04-0802-CR-54
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0707-FA-48

July 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Alex E. Castillo ("Castillo") appeals the twenty-five-year sentence imposed following his plea of guilty to Dealing in Cocaine, as a Class A felony.[1] We affirm.

Issues

Castillo presents two issues for review:

I. Whether the trial court abused its sentencing discretion by failing to give an adequate sentencing statement or recognize mitigators; and

II. Whether the sentence is inappropriate.

Facts and Procedural History

On July 10, 2007, the State charged Castillo with seven counts of Dealing in Cocaine, as Class A felonies. Subsequently, the State and Castillo entered into a plea agreement whereby Castillo agreed to plead guilty to one count of Dealing in Cocaine and the State agreed to dismiss the remaining six charges. The parties agreed that Castillo's sentence would not exceed twenty-five years. On October 26, 2007, the trial court accepted the plea agreement and Castillo's guilty plea. The trial court sentenced Castillo to twenty-five years imprisonment. Castillo now appeals.

Discussion and Decision

I. Abuse of Sentencing Discretion

Indiana Code Section 35-50-2-4 provides in relevant part, "A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50)

years, with the advisory sentence being thirty (30) years." The plea agreement here capped the sentence at twenty-five years; thus the trial court could impose a sentence from twenty to twenty-five years.

Castillo contends that the trial court abused its discretion by failing to give an adequate sentencing statement and by omitting relevant mitigating factors.

In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds, 875 N.E.2d at 218 (Ind. 2007), our Supreme Court determined that trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. Id. If the recitation includes the 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. So long as it is within the statutory range, a sentencing decision is subject to review on appeal for an abuse of discretion. Id. One way in which a trial court may abuse its discretion is to fail to enter a sentencing statement at all. Id. Another is to enter a sentencing statement that explains reasons for imposing a sentence and the record does not support the reasons, the statement omits reasons clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

Here, the trial court commented as follows:

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[1] Ind. Code § 35-48-4-1.

> People that deal that kind of dope in this community are going to prison for as long as I can put them in prison. I don't care what their circumstances are. I'm sorry that his wife has to suffer for this and the fact that his daughter is going to grow up without a father. Those are the consequences of people that deal with cocaine in this kind of quantity. If you want to play the game and you want to roll the dice and you come up losing, you're going to pay the price – 25 years.

(Tr. 19-20.) Without endorsing this language, we find the sentencing statement sufficient for this Court to conduct meaningful review. It is clear that the trial court relied upon the quantity of cocaine involved to support the imposition of a sentence five years more than the statutory minimum and five years less than the advisory sentence.[2]

Castillo also complains that the trial court ignored mitigators including his lack of criminal history, decision to plead guilty, low risk of re-offending, hardship to his dependents, employment history, and drug addiction.

The trial court need only identify mitigating circumstances that it finds to be significant, and if the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist. Anglemyer, 868 N.E.2d at 493. On appeal, the defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record. Felder, 870 N.E.2d at 558.

The record and the Presentence Investigation Report support Castillo's contentions

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[2] Castillo sold two "eight balls" of cocaine. According to the Prosecutor, the approximate weight involved was five grams. Castillo admitted that he sold "three grams or more" as charged in Count I. (App. 27.) It is possible, as Castillo alleges, that the trial court wrongfully contemplated the dismissed charges involving greater quantities. Nevertheless, even if a trial court is found to have abused is discretion in the procedure it

that he lacks a history of criminal convictions and he pled guilty. Further, at the sentencing hearing, Castillo offered a written statement from his wife indicating that Castillo had worked and provided support for her and for his stepsons. Otherwise, his claimed mitigators were not advanced for the trial court's consideration at the sentencing hearing.

A guilty plea demonstrates a defendant's acceptance of responsibility for the crime and at least partially confirms the mitigating evidence regarding his character. Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). Indiana courts have recognized that a defendant who pleads guilty deserves to have mitigating weight extended to the guilty plea in return, but it is not automatically a significant mitigating factor. Davis v. State, 851 N.E.2d 1264, 1268 n.5 (Ind. Ct. App. 2006), trans. denied. Here, Castillo already received a significant benefit in exchange for his guilty plea, because six charges of Dealing in Cocaine were dismissed.

A complete lack of criminal history is significant mitigating evidence. Merlington v. State, 814 N.E.2d 269, 273 (Ind. 2004). Here, however, Castillo admitted that he was regularly engaging in criminal conduct by using cocaine on a twice-monthly basis for five years.

Finally, a trial court is not required to find that a defendant's incarceration would result in undue hardship on his or her dependents. Roney v. State, 872 N.E.2d 192, 204 (Ind. Ct. App. 2007), trans. denied. Many persons convicted of crimes have children and, absent

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used to sentence a defendant, the sentence will be upheld if it is appropriate in accordance with Indiana Appellate Rule 7(B). Felder v. State, 870 N.E.2d 554, 558 (Ind. Ct. App. 2007).

special circumstances showing that the hardship to the children is "undue," a trial court does not abuse its discretion by not finding this to be a mitigating factor. Id.

Castillo has failed to demonstrate that the trial court abused its discretion by omitting significant mitigating factors supported by the record.

II. Appropriateness of the Sentence

Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Castillo requests that we reduce his sentence to the statutory minimum of twenty years.

The character of the offender is such that he had no history of criminal convictions. However, he was regularly using drugs at the time of the instant offense.

As to the nature of the offense, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Childress v. State, 848 N.E.2d 1073, 1081 (Ind. 2006). Castillo, who was employed as a driver and laborer in the Amish community, sold two eight-balls of cocaine to a confidential informant posing as an Amish man.

In sum, Castillo's lack of criminal convictions suggests that leniency is appropriate while his sale of a significant amount of cocaine militates against leniency. Castillo received a sentence that is five years less than the advisory sentence for a Class A felony. We do not find this sentence to be inappropriate in light of Castillo's character and the nature of his offense.

Conclusion

Castillo has not demonstrated that the trial court abused its sentencing discretion nor has he persuaded this Court that his sentence is inappropriate.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.