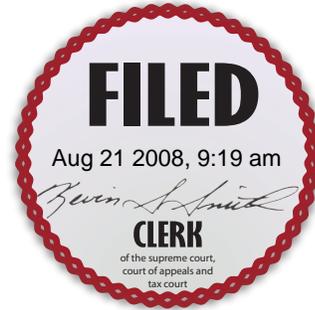


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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KENNETH E. HATCHETT, II, )

Appellant-Defendant, )

vs. )

No. 40A01-0709-CR-448

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE JENNINGS CIRCUIT COURT

The Honorable Jon W. Webster, Judge

Cause No. 40C01-0607-FA-165

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**August 21, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Kenneth Hatchett II pled guilty to possession of methamphetamine with intent to deliver, a Class B felony.<sup>1</sup> He contends his sentence of eighteen years was inappropriate in light of his character and the nature of the offense. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On July 12, 2006, five Jennings County Sheriff's Department officers searched Hatchett's residence, outbuildings, and property. They found marijuana, methamphetamine, a loaded .32 caliber pistol, cash, drug paraphernalia, and items used to manufacture methamphetamine. Hatchett waived his *Miranda* rights and admitted he had a methamphetamine problem for six years and had been dealing for one year. He told police he would deal to friends on a weekly basis and he or someone else would manufacture the methamphetamine. Hatchett was charged with manufacturing methamphetamine, a class A felony;<sup>2</sup> possession of methamphetamine, a class D felony;<sup>3</sup> dealing marijuana in an amount greater than thirty grams, a class D felony;<sup>4</sup> altering a vehicle identification number, a class C felony;<sup>5</sup> and illegal possession of anhydrous ammonia, a class D felony.<sup>6</sup> Hatchett pled guilty to possession of methamphetamine with intent to deliver, a class B felony, and the State dismissed the remaining counts.

During sentencing, the trial court found five aggravating circumstances: Hatchett was on probation in two other cases when he was arrested for the present offense; his

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<sup>1</sup> Ind. Code § 35-48-4-1.

<sup>2</sup> Ind. Code § 35-48-4-1(b).

<sup>3</sup> Ind. Code § 35-48-4-6.1.

<sup>4</sup> Ind. Code § 35-48-4-10(b)(1)(B).

<sup>5</sup> Ind. Code § 9-18-8-12.

<sup>6</sup> Ind. Code § 35-48-4-14.5.

criminal history includes one felony conviction, five misdemeanor convictions, and three probation revocations; Hatchett had a firearm in his home; Hatchett had been dealing methamphetamine on a regular basis for at least a year; and Hatchett never sought treatment for his addiction. As mitigating circumstances the trial court noted Hatchett pled guilty and had been gainfully employed for most of his adult life. The court determined the aggravating circumstances outweighed the mitigating circumstances and ordered Hatchett to serve fifteen years at the Department of Correction with three years suspended to probation.<sup>7</sup> The sentence was to be served consecutively to sentences imposed for cases in other courts.

### **DISCUSSION AND DECISION**

We may revise a sentence if it is “inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). 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 2089 (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).

Hatchett’s eighteen-year sentence was appropriate in light of his character and the nature of the offense. The penalties for a Class B felony range from six to twenty years. Hatchett pled guilty, but a guilty plea does not automatically amount to a significant mitigating factor. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). “[A] guilty

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<sup>7</sup> The sentencing range for a class B felony is a fixed term between six and twenty years. The advisory sentence is ten years. Ind. Code § 35-50-2-5.

plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one.” *Rogers v. State*, 878 N.E.2d 269, 273 (Ind. Ct. App. 2007), *trans. denied*. Hatchett faced numerous other charges stemming from the same search that the State agreed to dismiss. As a result, he received a substantial benefit from his guilty plea.

While there was nothing significant about the nature of Hatchett’s offense compared to other drug offenses, the evidence regarding his character supports his enhanced sentence. Hatchett had six prior convictions: one felony and five misdemeanors. His probation had been revoked three times. The significance of a defendant’s criminal history for the purposes of imposing sentence varies based on the gravity, nature and number of prior offenses as they relate to the current offenses. *Combs v. State*, 851 N.E.2d 1053, 1062 (Ind. Ct. App. 2006), *trans. denied* 860 N.E.2d 595 (Ind. 2006). Hatchett was convicted of possession of marijuana while in possession of a firearm, a Class C felony, in 2003. His misdemeanor convictions are criminal mischief, a Class B misdemeanor; driving while suspended, a Class A misdemeanor; driving while suspended, a Class A misdemeanor; possession of marijuana, a Class A misdemeanor; and operating a vehicle while intoxicated, a Class A misdemeanor. Three of Hatchett’s prior convictions are drug or alcohol related, and thus are similar to the current offense. *See Gregory v. State*, 885 N.E.2d 697, 708-09 (Ind. Ct. App. 2008) (sentence of 20 years for dealing methamphetamine and conspiracy was not inappropriate considering prior

convictions of driving while under the influence, possession of drug paraphernalia, theft, and illegal assembly or possession of chemical for manufacture).

Hatchett asks us to find his sentence inappropriate because he has had a six-year substance abuse problem; however, Hatchett never sought treatment, choosing instead to manufacture and sell drugs to others to support his habit. *See, e.g., Iddings v. State*, 772 N.E.2d 1006, 1018 (Ind. Ct App. 2002) (substance abuse more likely found an aggravator than a mitigator), *trans. denied* 783 N.E.2d 700 (Ind. 2002). Prior leniency by criminal courts has had no deterrent effect on Hatchett's behavior. We cannot say an eighteen-year sentence was inappropriate in light of Hatchett's character. Accordingly, we affirm.

Affirmed.

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