

Case Summary

Charlton Smith appeals his twenty-year executed sentence for Class A felony dealing in cocaine. We affirm.

Issues

Smith presents compound issues for review, which we restate as:

- I. whether the trial court abused its discretion in sentencing him; and
- II. whether his sentence is appropriate in light of the nature of the offense and his character.

Facts

On February 9, 2005, the State charged Smith with Class A felony dealing in cocaine, Class B felony dealing in a controlled substance, Class A misdemeanor carrying a handgun without a license, and Class A misdemeanor possession of marijuana. Smith pled guilty to the Class A felony and the State dismissed the remaining charges and two other pending causes against him. The plea agreement provided that the sentence could not exceed twenty years executed.

The trial court initially sentenced Smith on June 1, 2007, to twenty years executed in the Department of Correction. Smith appealed that sentence contending that the trial court wrongly considered a dismissed charge in determining his sentence was non-suspendable. This court concluded that the trial court wrongly considered Smith's withdrawn guilty plea to the dismissed possession of firearm charge in rendering his sentence non-suspendable. On January 23, 2008, we remanded the case to the trial court for consideration of suspension of the sentence.

The trial court held a resentencing hearing on April 14, 2008. Smith requested house arrest, work release, or probation and an entirely suspended sentence. The State requested a sentence of twenty years executed. The trial court sentenced Smith to twenty years executed. Smith made a statement of remorse, but also stated his disagreement with the sentence. The trial court voiced its displeasure with Smith's remarks and attitude. This appeal followed.

Analysis

I. Abuse of Discretion

Smith's analysis contains numerous references to the abuse of discretion standard and specifically sets out that standard, but then merges abuse of discretion claims with inappropriate sentence claims. Our court has recently reminded practitioners that inappropriate sentence and abuse of discretion claims are to be analyzed separately. See King v. State, 894 N.E.2d 265, 266 (Ind. Ct. App. 2008). Smith's brief does not differentiate these two arguments. We glean one abuse of discretion argument by Smith: that the trial court failed to recognize three mitigating factors and improperly found one aggravating factor.

In reviewing a sentence imposed under the current advisory scheme, we engage in a four-step process. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal only for an abuse of discretion. Id. Third, the weight given to those reasons—the aggravators and

mitigators—is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B).

Id.

The trial court entered both an oral and written sentencing statement that sufficiently indicated the reasons for the sentence. The trial court indicated that Smith's dealing drugs for profit and not as a result of addiction was an aggravating factor. Smith's lack of criminal history and his young age were the mitigating factors. The trial court concluded that the mitigating factors outweighed the aggravating factors, but not enough to justify a suspension of the sentence.

Smith contends that the record contains no evidence to support the trial court's finding of the aggravator that he was distributing cocaine for a profit rather than because of an addiction. He contends the amount of cocaine was too small, 3.5 grams, to indicate dealing for a profit and that he had tested positive for cocaine. Smith also points out that the pre-sentence report details his past alcohol, marijuana, and cocaine abuse. The probable cause affidavit indicated that Smith had over \$1400 in cash when arrested and an open box of 150 baggies. The trial court had facts from which to conclude Smith was dealing for a profit and did not abuse its discretion in making that conclusion.

Smith argues that his lack of criminal history and young age deserves substantial mitigating weight. The trial court recognized these factors and Smith merely requests we reweigh the trial court's assessment of them, which we cannot do on appeal. See Anglemyer, 868 N.E.2d at 491. Smith also contends that the trial ignored the positive steps he had taken while incarcerated to improve his life and entrance into the

community, including learning Spanish and earning a certification in food processing. The trial court heard the evidence of these achievements, but did not afford them weight as mitigating factors. The record does not indicate that the trial court overlooked or ignored these factors.

Smith finally contends that the trial court relied on facts outside the record, specifically its comments about Smith's attempts at pro se pleadings and the trial court's past personal experience with recalcitrant clients. Though the trial court made references to these instances, its sentencing decision rested on the record and on Smith's statements and behavior during the resentencing hearing. The trial court did not abuse its discretion in sentencing Smith.

II. Appropriateness

Smith argues that the twenty-year executed sentence is inappropriate given the nature of the offense and his character. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

The plea agreement provided that the executed portion of the sentence could be no more than twenty years. Twenty years is also the minimum sentence for a Class A felony, with an advisory term of thirty years and a maximum term of fifty. See Ind. Code § 35-

50-2-4. Smith contends his twenty-year executed sentence is inappropriate and should be revised to six years executed with the remainder suspended to probation.

“The location where a sentence is to be served is an appropriate focus for application of our review and revise authority.” King, 894 N.E.2d at 267. It is quite difficult for a defendant to succeed on a claim that the placement of his or her sentence is inappropriate because the question under Indiana Appellate Rule 7(B) is not “whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate.” Id. Moreover, the trial court in the best position to know the realities and feasibility of alternative placements within the community. Id. The trial court commented during sentencing that Smith would not be eligible for home detention or work release programs.

Smith’s guilty plea does enhance his argument regarding his character, but it should be noted that the State dropped multiple other charges in exchange for that plea. Although it is commendable that Smith is utilizing resources while incarcerated to learn a trade and extend his education, these actions do not automatically entitle him to a suspended sentence. As pointed out by the trial court, while some of Smith’s comments during the sentencing indicated remorse, he also seemed to blame the State or the unfairness of the legal system for his predicament.

The facts on the nature of Smith’s crime are scarce and we only have the affidavit for probable cause to rely on. It’s undisputed that Smith pled guilty to a Class A felony of having 3.5 grams of cocaine with the intent to deliver and agreed to an executed sentence of no more than twenty years. Smith received that sentence, which is the

minimal possible sentence for an A felony. Smith has not convinced us that the sentence is inappropriate.

Conclusion

The trial court did not abuse its discretion in sentencing Smith. His twenty year sentence is not inappropriate. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.