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IN THE COURT OF APPEALS OF INDIANA

LINDA MORROW,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0805-CR-223
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20C01-0609-FB-51

December 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Linda Morrow appeals her sentence for Class B felony delivery of cocaine.[1] We affirm.

FACTS AND PROCEDURAL HISTORY

During Morrow's jury trial, she testified someone she knew who looked like her had committed the offense. After the trial, Morrow sent the court a letter admitting her testimony was false. At her sentencing hearing on April 3, 2008, Morrow explained she had lied because she was "trying to stall for time just to find out what I was going to do with my [grand]child." (Tr. at 10.) Morrow had adopted her grandchild because her daughter has lupus and is unable to care for the child herself. Morrow has health problems of her own, including a history of strokes and an injury to her ankle and knee.

The trial court found Morrow's false testimony before the jury to be "a serious and extreme aggravator." (Appellant's App. at 6.) As additional aggravators, the trial court found Morrow's grandchild may have been in her care while she was selling drugs, Morrow sold drugs after having received treatment for her own addiction, and she made inconsistent statements concerning her drug use.[2] The trial court found as mitigating circumstances Morrow's "health issues, her stroke history, and her leg and ankle injury and any and all mitigating circumstances made by counsel for the Defendant." (*Id*. at 8.)

[1] Ind. Code § 35-48-4-1(a)(1)(C).

[2] When interviewed for the presentence investigation report, Morrow stated she had last used drugs in 2007. At the beginning of the sentencing hearing, she stated the PSI was correct; however, during the sentencing hearing, she asserted she had not used drugs since 2006.

The trial court found the aggravators were "substantial" and imposed a sentence of eighteen years with four years suspended.[3] (*Id*.)

DISCUSSION AND DECISION

Morrow first argues the trial court engaged in impermissible judicial fact-finding, contrary to *Blakely v. Washington*, 542 U.S. 296 (2004), and *Smylie v. State*, 823 N.E.2d 679 (Ind. 2005). Morrow committed her offense on January 31, 2006. (*See* Appellee's App. at 9) (charging information). Our sentencing statutes were amended effective April 25, 2005 to permit a trial court to impose any sentence within the statutory range, thus remedying the Sixth Amendment violation identified by *Blakely* and *Smylie*. *Robertson v. State*, 871 N.E.2d 280, 283 (Ind. 2007). This argument is not available to Morrow.

Morrow next argues the trial court abused its discretion by imposing an eighteen-year sentence. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g on other grounds*. A trial court abuses its discretion if (1) the court fails to enter a sentencing statement; (2) the reasons for imposing the sentence are not supported by the record; (3) the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration; or (4) the reasons given are improper as a matter of law. *Id*. at 490-91. Because the trial court no longer has any obligation to weigh aggravating and mitigating factors, the weight assigned to properly found factors is not subject to review for abuse of discretion. *Id*. at 491.

[3] The sentencing range for a Class B felony is six to twenty years. The advisory sentence is ten years. Ind. Code § 35-50-2-5.

Morrow argues the trial court "improperly gave substantial weight to a letter [she] wrote to the trial court admitting that she misled the court and the jury at trial." (Appellant's Br. at 6-7.) She asserts the letter is both an aggravator and a mitigator because she lied at trial but also "accepted responsibility" for her perjury by admitting it to the trial court. (*Id*. at 7.) We will not review the weight the trial court attached to the letter. *Anglemyer*, 868 N.E.2d at 491. The trial court adequately explained why it viewed Morrow's perjury to be a "serious and extreme aggravator," and it was not required to adopt Morrow's view that the letter carried some mitigating weight. *See Creekmore v. State*, 853 N.E.2d 523, 530 (Ind. Ct. App. 2006) ("A sentencing court need not agree with the defendant's assessment as to the weight or value to be given to proffered mitigating facts."), *clarified on reh'g on other grounds*.

Morrow next argues the trial court erred by "failing to give proper weight to [her] taking care of a twenty-two month old child." (Appellant's Br. at 7.) Again, we will not review the weight attached to this factor. To the extent Morrow argues the trial court failed to consider the factor at all, she must establish the mitigating evidence is both significant and clearly supported by the record. *Anglemyer*, 868 N.E.2d at 493. The trial court expressed concern that Morrow may have engaged in drug transactions while her grandchild was present. The trial court was unable to confirm whether that was the case because Morrow made inconsistent statements concerning the timing of the adoption of her grandchild and of her drug activity. Although Morrow was taking care of her grandchild, the quality of that care was unclear, and we find no abuse of discretion. *See Padgett v. State*, 875 N.E.2d 310, 317 (Ind. Ct. App. 2007) (trial court did not abuse its

discretion by failing to recognize hardship to defendant's dependents where record did not support conclusion that the mitigator was significant), *trans. denied* 878 N.E.2d 221 (Ind. 2007).

Finally, Morrow argues the trial court erred by "failing to give proper weight to [her] medical condition." (Appellant's Br. at 7.) We again decline to review the trial court's weighing.

Morrow's sentencing arguments fail, and we affirm the trial court's judgment.[4]

Affirmed.

ROBB, J., and NAJAM, J., concur.

[4] Morrow has not requested review of her sentence pursuant to Ind. Appellate Rule 7(B), which authorizes us to revise a sentence authorized by statute if we find the sentence "inappropriate in light of the nature of the offense and the character of the offender."