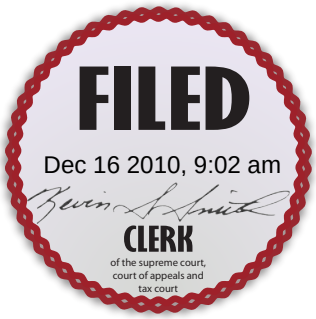

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IN THE
COURT OF APPEALS OF INDIANA

TERRENCE L. OLIVER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A01-0912-CR-564
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Steven M. Fleece, Judge
Cause No. 10D02-0811-FA-364

December 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF CASE

Terrance L. Oliver ("Oliver") appeals his convictions and sentencing, following a jury trial, for dealing in a narcotic drug, a class A felony, and maintaining a common nuisance, a class D felony.

ISSUES

1. Whether the trial court erred in admitting evidence seized during the execution of a search warrant.

2. Whether Oliver's sentence is inappropriate.

FACTS

On October 29, 2008, Sergeant Myron Wilkerson, Trooper Barry Brown, and Detective Devin Bizer, along with other Jeffersonville Police Officers, executed a search warrant for Oliver's residence. The affidavit for the search warrant stated that within the previous 72 hours, an informant had purchased a white powdery substance, which field tested positive as cocaine, from Oliver during a controlled drug buy. The affidavit further provided that Oliver, while under surveillance, had left his residence and proceeded directly to the drug transaction without making any stops. Moreover, the affidavit described the residence as follows:

> 2131 Fountain Crest Jeffersonville, Clark County Indiana. The dwelling is a one story duplex that has red brick with tan siding a gray shingled roof and a blue entry door that faces west. The numbers 2131 are black in color affixed over the entry door. There is a red IU flag in the front window of the residence.

(Supp. Tr. 2).

Upon arrival at the residence, the officers announced their presence and knocked on the front door. Oliver was seen inside the residence; however, he did not respond to the officers and was observed walking away from the front door. Officers forcibly entered, and found Oliver alone in the residence. The officers searched the premises and found cocaine in multiple locations, marijuana, a digital scale, plastic baggies, approximately $3,080 in cash, and multiple firearms.

On November 3, 2008, the State charged Oliver with dealing in a narcotic drug, a class A felony; possession of a controlled substance, a class D felony; maintaining a common nuisance, a class A misdemeanor; and possession of marijuana, a class A misdemeanor. Oliver filed a motion to suppress on December 10, 2008. On May 19, 2009, the trial court held a hearing on the suppression motion and on May 20, 2009, the trial court denied the motion. A jury trial was held on August 25-26, 2009, after which the jury found Oliver guilty of dealing in a narcotic drug and maintaining a common nuisance. On October 14, 2009, the trial court sentenced Oliver to concurrent sentences of thirty years for the dealing offense, and one-half year for the nuisance offense.

DECISION

1. Admission of Evidence

Oliver argues that the trial court erred by denying his motion to suppress the items seized pursuant to a search warrant. However, Oliver challenges the admission of evidence after a completed trial. Thus, the issue here is whether the trial court abused its discretion by admitting the evidence at trial. *See Washington v. State*, 784 N.E.2d 584,

587 (Ind. Ct. App. 2003) (stating that when a defendant fails to file an interlocutory appeal after a denial of motion to suppress, after a completed trial, "the issue is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial").

A trial court has broad discretion in ruling upon the admissibility of evidence, and this court will reverse such a ruling only when the defendant has shown an abuse of discretion. *Id*. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Id*.

Oliver argues that the trial court committed reversible error when it admitted evidence that was obtained as a result of an illegal search. However, as the State properly responds, the search was conducted after the issuance of a search warrant.

The seizure of evidence generally requires a search warrant. U.S. Const. amend IV; Ind. Const. art. 1, § 11. Under the state and federal constitutions, a court will not issue a search warrant without probable cause. *Id*. '"Probable cause to search premises is established when a sufficient basis of fact exists to permit a reasonably prudent person to believe that a search of those premises will uncover evidence of a crime."' *Redden v. State* 850 N.E.2d 451, 461 (Ind. Ct. App. 2006) (quoting *Esquerdo v. State*, 640 N.E.2d 1023, 1029 (Ind. 1994)). The decision to issue the search warrant is to be based on the facts stated in the affidavit and the rational and reasonable inferences drawn therefrom. *Id*.

The existence of probable cause is evaluated pursuant to the '"totality-of-the-circumstances"' test. *Eaton v. State*, 889 N.E.2d 297, 299 (Ind. 2008) (quoting *Illinois v.*

Gates, 462 U.S. 213, 238 (1983)). When determining whether to issue a search warrant, '"[t]he task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *Marchetti v. State*, 725 N.E.2d 934, 936 (Ind. Ct. App. 2000) (quoting *Jaggars v. State*, 687 N.E.2d 180, 181 (Ind. 1997)).

Oliver argues that a search warrant should not have been issued because the affidavit did not provide a substantial basis for the magistrate to conclude the property identified at 2131 Fountain Crest was in fact his residence. However as previously noted, Oliver appeals following a completed trial, and at trial he admitted that 2131 Fountain Crest Circle was his residence.

Oliver also argues the search warrant should not have been issued because the affidavit failed to establish a nexus between the residence and the illegal activity. However, our Supreme Court has held that "it is reasonable to believe that drug dealers keep evidence of their activities in their residences." *Eaton*, 889 N.E.2d at 301. After arranging a controlled purchase, officers observed Oliver leaving his residence to conduct a drug transaction. He did not make any stops before meeting with the confidential informant. Therefore, it was reasonable to believe that drugs could be found at the residence described in the affidavit.

Oliver next argues that the search warrant should not have been issued because the probable cause affidavit relied on hearsay. Specifically, he questions the reliability of the

information provided by the confidential informant and statements made to the affiant by Trooper Brown. We are not persuaded.

"'An affidavit or sworn testimony. . . , which is based upon statements of officers engaged in the investigation and shown to be based upon their actual knowledge, is not deficient, despite its hearsay character.'" *Redden*, 850 N.E.2d at 461-62 (quoting *Spears v. State*, 383 N.E.2d 282, 284 (Ind. 1978)). Such testimony satisfies the standard for establishing probable cause. *Id.* Further, collective information known to law enforcement as a whole sufficiently establishes probable cause. *See Rios v. State*, 762 N.E.2d 153, 163 (Ind. Ct. App. 2002).

In *Redden*, Redden argued that the search warrant was based entirely on uncorroborated hearsay information from a confidential informant. This court found that the information from the confidential informant was only used as a preliminary introductory matter to explain the investigation but did not provide information crucial to the probable cause determination.

Here, as in *Redden*, the affidavit for the search warrant did not rely solely on information provided by the confidential informant but simply states that a confidential informant was used for a controlled purchase. Further, there is no statement from the confidential informant mentioned in the affidavit. The statements mentioned in the probable cause affidavit are those of Trooper Brown, whose statements described his eyewitness observations of Oliver and the confidential informant. However, in addition to the statements provided by Trooper Brown, there was testimony at the trial regarding the narcotic investigation, and Sergeant Wilkerson's knowledge and experience in

narcotic trafficking. We must reject Oliver's claim that the search warrant was based upon uncorroborated hearsay from a confidential informant.

Given the nature of the statements contained in the affidavit, we cannot say the affidavit failed to establish that a fair probability did not exist that illegal contraband would be found at the resident. Accordingly, we find no abuse of discretion by the trial court in admitting the evidence found pursuant to the search warrant.

2. Inappropriate Sentence

Oliver argues that the trial court imposed an inappropriate sentence considering the nature of the offense and his character. Further, he maintains that the court should have either suspended the sentence or ordered an alternative sentence. We do not agree.

"'[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference.'" *Smith v. State*, 929 N.E.2d 255, 258 (Ind. Ct. App. 2010) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008)). According to Indiana Appellate Rule 7(B), this court will not revise the sentence imposed unless it is inappropriate in light of the nature of the offense and the character of the offender. "It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record . . . ." *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007).

Indiana Code section 35-50-2-4 provides that a person who commits a class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty years. "'. . . [T]he advisory sentence is the starting point

the Legislature has selected as an appropriate sentence for the crime committed.'" *Id*. at 494. (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)). The trial court sentenced Oliver to the advisory sentence of thirty years.

Pertaining to his character, Oliver argues that he should have received a lesser sentence. He further argues that though the trial court considered some mitigating factors, it failed to consider the undue hardship that being incarcerated would cause on his two dependent children. He suggests that an alternative sentence through the Clark County Community Corrections program would have minimized the potential hardship on his children. However, Oliver failed to demonstrate that such hardship would have been "undue" or that the hardship would be worse than that suffered by any other family, in particularly children, whose parent or family member is incarcerated.

In *Anglemyer*, our Supreme Court concluded that the trial court did not abuse its discretion when it determined that Anglemyer's mental illness was not significant nor would it be an influential factor in the trial court's decision. *Id*. at 493. The Court found that the amount of weight given to a particular factor is the "court's call" and that no error had occurred. *Id*. Here, the trial court found that Oliver failed to demonstrate that such hardship would have been "undue" or that the hardship would be worse than that suffered by any other family, in particularly children, whose parent or family member is incarcerated. Like *Anglemyer*, rather than overlooking "undue" hardship as a mitigating factor, the trial court did not find the factor to be significant.

Oliver disputes the trial court's finding regarding his criminal history. He argues that his criminal history includes "only" one previous conviction that occurred fifteen

years prior to the instant offense. Oliver's Br. at 25. Further, he offers that after being convicted in the first matter, he successfully completed probation. Nevertheless, this court has previously found that when considering the "character of the offender," the defendant's criminal history is relevant. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). A criminal history can reflect poorly on the defendant's character and may reveal that he has not been deterred even after having been previously subjected to the court process and/or incarceration. *Id*. (citing *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005)).

Despite his prior experiences with the judicial system, Oliver has not been deterred from committing further offenses. Though Oliver's prior offense occurred fifteen years prior to the instant matter, it is worth noting that his prior criminal offense involved the dealing and possession of illegal drugs. In 1993, Oliver was charged with dealing in cocaine, a B felony; violating controlled substance excise tax, a D felony; and possession of cocaine, a D felony. In 1994, he was convicted of possession of cocaine, with the entire sentence suspended to probation. In the instant matter, Oliver was found guilty of dealing a narcotic drug, a class A felony, and maintaining a common nuisance, a class D felony.

Oliver has demonstrated on more than one occasion his unwillingness to comply with the law. Despite the court's leniency after his first conviction, fifteen years later, he committed a similar drug offense. Further, the amount of drugs found in the instant matter was larger than in the previous conviction. Thus, Oliver's involvements in drug-related activities have increased.

As to his argument that the sentence was inappropriate in light of the nature of the offense, Oliver argues that the facts that led to his conviction do not justify the advisory sentence that he received. Specifically, he argues that there was no violence involved and that the weapons discovered were not related to the cocaine found. He further asserts that there were no books or ledgers indicating that he was actively engaged in dealing cocaine.

Oliver appears to be asking us to reweigh the evidence, which we will not do. Such is not an argument addressed to Appellate Rule 7(B) review. *Anglemyer*, 868 N.E.2d at 491. The record reflects that the police discovered eighty-five grams of cocaine, a digital scale, plastic baggies, approximately $3,080 in cash, and multiple firearms in Oliver's possession. We cannot ignore that Oliver was already a convicted felon when he possessed the eighty-five grams of cocaine and the firearms. Though no violence occurred, whenever firearms are present during the commission of a crime, there is a high likelihood that serious injury or death may occur. Oliver has failed to persuade us that his sentence is inappropriate.

Affirmed.

BRADFORD, J., and BROWN, J., concur.