



Joshua Hambrick pled guilty to dealing in methamphetamine<sup>1</sup> as a Class B felony and was sentenced to twenty years, with ten years executed and ten years suspended. This sentence was ordered to be served consecutively to a ten-year sentence from a prior conviction for conspiracy to commit dealing in a schedule II controlled substance<sup>2</sup> as a Class B felony. Hambrick appeals, raising two issues, of which we find one dispositive: whether his sentence was inappropriate in light of the nature of the offense and the character of the offender.<sup>3</sup>

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On March 11, 2005, and again on April 5, 2005, a confidential informant made controlled purchases of methamphetamine from Hambrick at his residence in Washington, Indiana. During each of these transactions, Hambrick's minor children were present in the residence. Other purchases were attempted by the confidential informant between March 11 and April 5, but were unsuccessful. On May 2, 2005, the State charged Hambrick with two counts of dealing in methamphetamine as Class A felonies and two counts of neglect of a dependant as Class D felonies.

Hambrick had previously pled guilty to conspiracy to commit dealing in a schedule II controlled substance as a Class B felony and had been placed in treatment under the supervision of the Division of Mental Health in lieu of imprisonment for a period of three

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<sup>1</sup> See IC 35-48-4-1.

<sup>2</sup> See IC 35-48-4-2; IC 35-41-5-2.

years. As part of this treatment, he was to participate in treatment programs and comply with all conditions imposed upon him by the Division of Mental Health. *Appellant's App.* at 70. Hambrick failed to complete this treatment program, and on November 9, 2005, he was sentenced to ten years for this prior case.

Also, on November 9, 2005, Hambrick pled guilty in the present case to an amended count of dealing in methamphetamine as a Class B felony, and all of the remaining counts were dismissed. The plea agreement provided that he would be sentenced to twenty years with ten years executed and ten years suspended. *Id.* at 39-40. Hambrick was to be placed on supervised probation for ten years. The plea agreement did not state whether the sentence was to run consecutively or concurrently to the sentence from the prior conviction. The parties submitted briefs on the issue of consecutive sentencing, and a sentencing hearing was held on March 23, 2006. The trial court sentenced Hambrick to twenty years with ten years executed and ten years suspended and ordered that the sentence be served consecutively to the sentence from his prior conviction. Hambrick now appeals.

### **DISCUSSION AND DECISION**

Hambrick argues that his consecutive sentence is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B) states that “[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” *Buggs v. State*, 844 N.E.2d 195, 204 (Ind. Ct.

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<sup>3</sup> Hambrick also contends that his consecutive sentences were not mandatory. Because we find the imposition of consecutive sentences to be within the trial court’s discretion, we do not reach such issue.

App. 2006), *trans. denied*. Our review under Appellate Rule 7(B) is extremely deferential to the trial court. *Pennington v. State*, 821 N.E.2d 899, 903 (Ind. Ct. App. 2005).

Hambrick specifically contends that the trial court erred in failing to consider his guilty plea as a mitigating circumstance. “A guilty plea demonstrates a defendant’s acceptance of responsibility for the crime and extends a benefit to the State and to the victim and the victim’s family by avoiding a full-blown trial.” *Francis v. State*, 817 N.E.2d 235, 237 (Ind. 2004). Therefore, “a defendant who pleads guilty deserves to have mitigating weight extended to the guilty plea in return.” *Id.* However, the extent to which a guilty plea is mitigating will vary from case to case. *Williams v. State*, 840 N.E.2d 433, 438 (Ind. Ct. App. 2006). A guilty plea is not necessarily a significant mitigating circumstance. *Id.* (citing *Cotto v. State*, 829 N.E.2d 520, 525-26 (Ind. 2005)).

Here, assuming that the trial court erred in failing to specifically acknowledge that Hambrick’s guilty plea was a mitigating circumstance, we conclude that the error was harmless because the guilty plea did not amount to a significant mitigator. Hambrick received a substantial benefit from pleading guilty. As a result of this plea agreement, Hambrick was convicted of one amended count of dealing in methamphetamine as a Class B felony, and the State dismissed the two original charges of dealing in methamphetamine as Class A felonies and two counts of neglect of a dependant as Class D felonies. Additionally, the evidence was strongly in the State’s favor. A confidential informant had made two controlled purchases of methamphetamine from Hambrick at his residence, which was located within one thousand feet of a school, and Hambrick’s minor children were present at the time of these transactions.

As to the nature of the offense, the evidence showed that Hambrick made two transactions with a confidential informant for the sale of methamphetamine. He testified that he had received both money and marijuana in payment for these transactions. Although these are relatively normal circumstances for a drug transaction, at the time they occurred, Hambrick was still under a commitment to the Division of Mental Health for treatment in lieu of imprisonment under his previous conviction. When he committed the present offense, he had only completed the in-patient portion of his treatment, but had failed to complete his outpatient treatment.

As to the character of the offender, Hambrick had juvenile adjudications for disorderly conduct, resisting law enforcement, and curfew violation. He also had a previous adult conviction for conspiracy to commit dealing in a schedule II controlled substance, which was the offense for which he was under the commitment to the Division of Mental Health. We conclude that a consecutive sentence was not inappropriate in light of the nature of the offense and Hambrick's character.

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur.