

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Anne Medlin Lowe
Fugate Gangstad LLC
Carmel, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jeffery Lee Price, II,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 30, 2022

Court of Appeals Case No.
22A-CR-820

Appeal from the
Vermillion Circuit Court

The Honorable
Jill D. Wesch, Judge

Trial Court Case Nos.
83C01-1906-F6-98
83C01-2105-F6-68

Shepard, Senior Judge.

[1] Jeffery Lee Price, II, appeals the five-year sentence imposed after he pleaded guilty to operating a vehicle with a controlled substance or its metabolite in the body, a Level 6 felony, and being a vehicular substance offender in one case, and admitted to violating the terms of his probation in another case. He claims the trial court erred in identifying aggravating and mitigating sentencing factors and further asks this Court to exercise its power under the Indiana Constitution to review and revise his sentence. We affirm Price's sentence because the trial court did not err, and his sentence does not warrant revision.

Facts and Procedural History

[2] On May 20, 2021, Officer Brandon Mahady of the Clinton City Police Department was driving through a parking lot when he saw Price (whom he knew from previous encounters) driving a car, accompanied by a female passenger. The officer looked up Price's record on a computer and determined his driver's license was suspended.

[3] Next, Officer Mahady saw Price drive out of the parking lot. The officer followed Price and saw him tap on his brakes suddenly, causing another car to stop close to the rear of Price's car. Next, Officer Mahady watched Price make an unsafe turn into another parking lot. The officer pulled Price over and approached the car. Officer Mahady told Price he knew Price's license was suspended. Price claimed he had been granted a hardship license by the Vermillion Circuit Court, but he could not produce any documents to support that claim.

- [4] Officer Mahady had Price get out of the car and walk to the trunk area. He noted that Price was dirty, had watery, bloodshot eyes, and had a shaky voice. Price also had dry saliva on the sides of his mouth. The officer had Price perform several field sobriety tests. During the tests, Officer Mahady saw several additional signs that Price was intoxicated, and he read Price an implied consent warning, asking him to submit to a blood draw and urine screen. Price agreed to submit to the tests and admitted he had used methamphetamine the previous day. Officer Mahady told Price that, based on his observations, Price had used controlled substances more recently than the previous day.
- [5] Officer Mahady took Price to a hospital for a blood draw and urine screen. Testing revealed the presence of amphetamines, MDMA, and cannabinoids.
- [6] On May 24, 2021, the State filed an information, opening Case Number 83C01-2105-F6-68. The State charged Price with operating a vehicle while intoxicated, a Class A misdemeanor, and two counts of operating a vehicle with a controlled substance or its metabolite in the body: one as a Class C misdemeanor, and the other as a Level 6 felony. The State also alleged that Price was a vehicular substance offender, which would enhance his sentence.
- [7] At the time of Price's arrest, he was on probation in Case Number 83C01-1906-F6-98 ("F6-98") after pleading guilty to trespass and invasion of privacy, both Class A misdemeanors. On May 25, 2021, the State moved to revoke his probation based on the new charges in F6-68. The State had filed two prior

motions to revoke probation in this case, and on both occasions Price had admitted to violating the terms of his probation.

[8] Subsequently, in F6-68, Price pleaded guilty without a plea agreement to operating a vehicle with a controlled substance or its metabolite in the body as a Level 6 felony, and to being an habitual substance offender. The State acknowledged his admission on the Level 6 felony was sufficient to resolve the case, because the two misdemeanor counts “would merge [into the Level 6 felony] anyway.” Tr. Vol. 2, p. 7. In F6-98, Price admitted to violating the terms of his probation. On January 26, 2022, the court held a hearing in both cases and accepted his guilty plea and admission of probation violation.

[9] The trial court disposed of F6-98 by terminating Price’s probation unsatisfactorily, noting that Price had already served his suspended sentence while awaiting resolution of the case. As to F6-68, the court ordered Price to serve a sentence of five years, all executed. This appeal followed.

Discussion and Decision

I. Mitigating Sentencing Factors

[10] Price claims the trial court erred during sentencing by failing to weigh aggravating and mitigating factors and by overlooking mitigating factors he had presented. A trial court’s sentencing decisions rest within the sound discretion of the court and are reviewed on appeal only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (2007). An abuse of discretion occurs if the decision is clearly against the logic

and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Williams v. State*, 997 N.E.2d 1154 (Ind. Ct. App. 2013).

[11] When a trial court enters a sentence for a felony it must issue a statement of the reasons for selecting that sentence, unless the court imposes the advisory sentence. Ind. Code § 35-38-1-1.3 (2014). Indiana Code section 35-38-1-7.1 (2019) provides a nonexclusive list of aggravating circumstances and mitigating circumstances that a court may consider. With respect to mitigating circumstances, a trial court may abuse its sentencing discretion by “omit[ing] reasons that are clearly supported by the record and advanced for consideration” *Anglemyer*, 868 N.E.2d at 490-91. A trial court is not obligated to accept as mitigating each of the circumstances offered by the defendant. *Green v. State*, 65 N.E.3d 620 (Ind. Ct. App. 2016), *trans. denied*.

[12] The court sentenced Price to two years for the Level 6 felony, which is above the advisory sentence, but Price claims the court did not adequately explain the basis for the increased sentence. We disagree. The court determined that Price’s criminal history and history of probation violations were aggravating circumstances that justified a term of imprisonment rather than home detention or probation.

[13] Price next argues the trial court overlooked the following circumstances, which he claims merit a reduced sentence: (1) he has successfully completed drug treatment programs in the past; and (2) he accepted responsibility for his wrongdoing by pleading guilty without an agreement. Price’s current

conviction involves consumption of controlled substances, so the trial court did not err in rejecting his past treatment efforts as mitigating. And a court is not required to determine that a guilty plea is a mitigating circumstance where the defendant's decision to plead guilty was likely a pragmatic one due to overwhelming evidence. *Hollins v. State*, 145 N.E.3d 847 (Ind. Ct. App. 2020), *trans. denied*. Here, the evidence of Price's criminal misconduct was strong, based on the officer's observations and the test results. The court did not abuse its discretion in failing to accept the mitigating factors offered by Price.

II. Appropriateness of Sentence

[14] Price asks this Court to revise his sentence so that he serves it on probation rather than in the Indiana Department of Correction, arguing that he can obtain better treatment for his substance abuse issues on the outside. Even when a trial court imposes a sentence within its discretion, the Indiana Constitution authorizes independent appellate review and revision of sentencing decisions. *Hoak v. State*, 113 N.E.3d 1209 (Ind. 2019) (citing Indiana Constitution article 7, sections 4 and 6). This sentencing authority is implemented through Indiana Appellate Rule 7(B), which provides that we “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.”

[15] The principal role of sentencing review under Rule 7(B) is to attempt to leaven the outliers. *Shepherd v. State*, 157 N.E.3d 1209 (Ind. Ct. App. 2020), *trans.*

denied. The defendant bears the burden of persuading the reviewing court that the sentence imposed is inappropriate. *Id.* Our review under Rule 7(B) is “very deferential to the trial court.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012).

[16] At the time Price committed his offense, the maximum sentence for a Level 6 felony was two and a half years, the minimum sentence was six months, and the advisory sentence was one year. Ind. Code § 35-50-2-7 (2015). In addition, a person found to be a habitual vehicular substance offender may be sentenced to an additional fixed term of at least one year but not more than eight years of imprisonment. Ind. Code § 9-30-15.5-2 (2015).

[17] The trial court sentenced Price to two years for the Level 6 felony, plus three years for the sentencing enhancement, for a total of five years, all executed. As noted, his sentence is above the advisory amount, but well short of the maximum possible sentence of ten and one-half years.

[18] Price argues the nature of the offense was “no more egregious than the typical level 6 felony.” Appellant’s Br. p. 5. We disagree. Price committed two infractions in Officer Mahady’s presence within the span of several minutes while under the influence of controlled substances, presenting a severe risk to the public. And although Price agreed to the blood and urine tests, he lied to the officer as to when he had consumed controlled substances, claiming he had not had any since the previous day. The tests revealed the presence of multiple controlled substances in Price’s system.

- [19] Turning to the character of the offender, Price was thirty-three at sentencing. He has a substantial criminal record despite his relatively young age, consisting of two felony convictions and sixteen misdemeanor convictions. His felony offenses consist of Level 6 felony operating while intoxicated and Level 6 felony possession of methamphetamine. Price's misdemeanor convictions include multiple counts of battery, multiple counts of public intoxication, theft, driving while suspended, and check deception.
- [20] Price argues that his rehabilitation would best be served by a term of probation, allowing him to obtain treatment for his substance abuse issues. But, as he concedes, he has violated the terms and conditions of his probation in four prior cases. He is a poor candidate for alternatives to incarceration, and the record amply supports the trial court's conclusion that a period of incarceration is necessary. Price has failed to prove that his sentence is inappropriate.

Conclusion

- [21] For the reasons stated above, we affirm the judgment of the trial court.
- [22] Affirmed.

Bradford, C.J., and Weissmann, J., concur.