MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeremy Pauley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 27, 2022

Court of Appeals Case No. 22A-CR-1039

Appeal from the Cass Circuit Court

The Honorable Stephen R. Kitts, II, Judge

Trial Court Cause Nos.
09C01-2001-F6-27
09C01-2001-F2-4
09C01-1912-F4-13

Bradford, Chief Judge.

Case Summary

[1] Following three separate arrests, Jeremy Pauley was charged with multiple crimes under three separate cause numbers. He subsequently pled guilty, under two of the cause numbers, to Level 2 felony dealing in methamphetamine, Level 4 felony possession of methamphetamine, two counts of Class B misdemeanor possession of marijuana, and two counts of Class C misdemeanor possession of paraphernalia. In exchange for his guilty plea, the State agreed to dismiss the remaining charges, including all of the charges listed in the third cause number. After accepting Pauley's guilty plea, the trial court sentenced Pauley to an aggregate twenty-five and one-half-year sentence. Pauley challenges an eight-year portion of his overall sentence on appeal, arguing both that the trial court abused its discretion in sentencing him and that the eight-year portion of his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On December 11, 2019, Pauley was observed to have committed a traffic infraction and was stopped by police. At the time, he was found to be in possession of over thirteen grams of methamphetamine, a marijuana cigarette, and a smoking device. Two days later, on December 13, 2019, Pauley was charged under cause number 09C01-1912-F4-13 ("Cause No. F4-13") with Level 4 felony possession of methamphetamine, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia.

[3] On January 24, 2020, Pauley was again stopped by police after police observed him commit another traffic infraction. He was found to be in possession of both methamphetamine and drug paraphernalia. On January 27, 2020, Pauley was charged under cause number 09D01-2001-F6-27 ("Cause No. F6-27") with Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia.

[4] On January 29, 2020, Pauley was again stopped by police, this time for speeding. Pauley was found to be in possession of over thirty-four grams of methamphetamine, approximately eighteen grams of marijuana, and a glass smoking device. The next day, Pauley was charged under cause number 09C01-2001-F2-4 ("Cause No. F2-4") with Level 2 felony dealing methamphetamine, Level 3 felony possession of methamphetamine, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia.

[5] On February 17, 2022, Pauley pled guilty to Level 2 felony dealing methamphetamine, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia in Cause No. F2-4 and Level 4 felony possession of methamphetamine, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia in Cause No. F4-13. In exchange for Pauley's guilty plea, the State agreed to dismiss the remaining charges in both Cause Nos. F2-4 and F4-13 and all of the charges in Cause No. F6-27. On April 7, 2022, the trial court sentenced Pauley to seventeen and one-half years for the Level 2 felony conviction in Cause No. F2-

4 and eight years for the Level 4 felony conviction in Cause No. F4-13.[1] The trial court ordered the sentences to run consecutively, for a total aggregate sentence of twenty-five and one-half years.

Discussion and Decision

[6] "A person who commits a Level 2 felony shall be imprisoned for a fixed term of between ten (10) and thirty (30) years, with the advisory sentence being seventeen and one-half (17½) years." Ind. Code § 35-50-2-4.5. "A person who commits a Level 4 felony shall be imprisoned for a fixed term between two (2) and twelve (12) years, with the advisory sentence being six (6) years." Ind. Code § 35-50-2-5.5. On appeal, Pauley challenges the eight-year sentence imposed by the trial court in Cause No. F4-13, arguing both that the trial court abused its discretion in sentencing him and that the eight-year sentence is inappropriate.[2] Specifically, Pauley contends that "[t]he aggravated sentence in [Cause No.] F4-13 is against the logic and the effect of the facts in this case and contrary to the nature of the offense and Pauley's character. This Court should enter a six-year advisory sentence on the [L]evel 4 felony in [Cause No.] F4-13." Appellant's Br. p. 11.

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[1] In both cause numbers, additional time imposed for Pauley's misdemeanor convictions was ordered to run concurrently to the sentences imposed for Pauley's felony convictions.

[2] Pauley does not challenge the seventeen and one-half-year sentence imposed by the trial court in Cause No. F2-4.

A. Abuse of Discretion

[7] Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *modified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 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." *Id.* (quotation omitted).

> We review for an abuse of discretion the court's finding of aggravators and mitigators to justify a sentence, but we cannot review the relative weight assigned to those factors. When reviewing the aggravating and mitigating circumstances identified by the trial court in its sentencing statement, we will remand only if the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record, and advanced for consideration, or the reasons given are improper as a matter of law.

Baumholser v. State, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016) (internal citation and quotation omitted).

> A single aggravating circumstance may be sufficient to enhance a sentence. When a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld. The question we must decide is whether we are confident the trial court would have imposed the same sentence even if it had not found the improper aggravator.

Id. at 417 (internal citation and quotation omitted).

[8] Pauley claims that "the trial court's [sentencing] decision is against the logic and effect of the circumstances for three reasons." Appellant's Br. p. 12. First, he claims that the "decision to enter an advisory sentence in [Cause No.] F2-4 but an aggravated sentence in [Cause No.] F4-13 is against the logic of the mitigating circumstances because each mitigating circumstance carried *greater* weight in [Cause No.] F4-13." Appellant's Br. p. 12 (emphasis in original). The trial court, however, did not find any mitigating circumstances when sentencing Pauley. While Pauley listed several potential mitigating circumstances, most notably his drug addiction, in his Appellant's Brief, he did not argue that the trial court abused its discretion by failing to find that the proffered circumstances warranted mitigating weight.

[9] Second, Pauley claims that "the trial court's decision to enter an advisory sentence in [Cause No.] F2-4 but an aggravated sentence in [Cause No.] F4-13 is against the logic of the aggravating circumstances because any aggravating circumstance carried *less* wight in [Cause No.] F4-13." Appellant's Br. p. 13 (emphasis in original). The trial court found Pauley's "prior conviction for meth, the amount's [*sic*] we're dealing with, the timeframe for which we're dealing with them[,] and his apparent notoriety with law enforcement in the community" to be aggravating circumstances. Tr. Vol. II p. 35. We agree with the State that "[t]he fact that the trial court chose to apply the aggravators to enhance [Cause No.] F4-13, but not [Cause No.] F2-4, is of no consequence contrary to [Pauley's] suggestions." Appellee's Br. p. 9.

[10] The trial court "has broad discretion to determine the sentence imposed on a defendant" and that discretion "includes the ability to increase or decrease the sentence" from the advisory based on aggravating or mitigating circumstances. *Rose v. State*, 810 N.E.2d 361, 365 (Ind. Ct. App. 2004). Pauley does not argue that the trial court considered any improper aggravating circumstances, only that the aggravators should have applied with greater force to Cause No. F2-4 than to Cause No. F4-13. In this case, Pauley pled guilty, and the trial court sentenced Pauley, to crimes brought under two separate cause numbers. While the trial court could arguably have chosen to impose enhanced sentences in relation to both of these cause numbers, we cannot say that the trial court abused its discretion by finding that the aggravators should only be applied to enhance the portion of Pauley's sentence relating to one of the cause numbers. To the extent that Pauley is arguing that any aggravating weight should have been applied to Cause No. F2-4, *i.e.*, the cause number containing the more serious charges, or not at all, we will not second guess the trial court's decision as to which portion of the sentence to apply the aggravating weight.[3]

[11] Third, Pauley claims that the trial court's decision to enter an aggravated sentence "is against the logic of [the probation department's] own evidence-based recommendations" in the pre-sentence investigation report ("PSI"). Appellant's App. Vol. II p. 14. However, the Indiana Supreme Court has long

[3] It is important to note that because the sentence for Cause No. F4-13 was ordered to run consecutive to Cause No. F2-4, a ruling that Pauley does not challenge on appeal, it makes no difference to Pauley's total sentence whether the aggravated weight was applied to Cause No. F2-4 or Cause No. F4-13.

held that "[a] trial court is not obliged to follow the recommendation set out in a presentence report." *Murphy v. State*, 555 N.E.2d 127, 132 (Ind. 1990) (citing *Jenkins v. State*, 492 N.E.2d 666, 669 (Ind. 1986)). We cannot say that the trial court abused its discretion in this regard.

[12] In claiming that the trial court abused its discretion in sentencing him, Pauley "respectfully requests this Court to reweigh the mitigators and aggravators in [Cause No.] F4-13 independently and revise Pauley's sentence to a term of six years." Appellant's Br. p. 16. However, as the trial court cannot be said to have abused its discretion by failing to properly weigh any aggravating or mitigating factors, "[t]he relative weight or value assignable to reasons properly found … is not subject to review for abuse." *Anglemyer*, 868 N.E.2d at 491. The trial court did not abuse its discretion in sentencing Pauley.

B. Appropriateness

[13] Indiana Appellate Rule 7(B) provides that "The 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." In analyzing such claims, we "concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted). The defendant bears the burden of

persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[14] Again, Pauley does not argue that the seventeen and one-half-year sentence imposed in connection with Cause No. F2-4 is inappropriate, but rather merely argues that the eight-year sentence imposed in connection with Cause No. F4-13 is inappropriate. As for the nature of his offense, Pauley was found to have possessed over thirteen grams of methamphetamine, a marijuana cigarette, and a smoking device. Pauley's arrest in relation to these charges was followed, in relatively short order, by two other arrests, escalating to his arrest for over thirty-four grams of methamphetamine, approximately eighteen grams of marijuana, and a glass smoking device.

[15] As for his character, Pauley's criminal history included prior convictions for dealing in methamphetamine, possession of methamphetamine, possession of chemical reagents with intent, and operating a vehicle while intoxicated. In addition, at the time of sentencing, Pauley had an unrelated pending criminal case, which included charges of Level 2 felony dealing in methamphetamine, Level 3 felony possession of methamphetamine, Level 6 felony dealing in marijuana, Level 6 felony maintaining a common nuisance, and Class C misdemeanor possession of paraphernalia. Pending charges may be considered by courts when imposing and reviewing a sentence. *See Allen v. State*, 722 N.E.2d 1246, 1253 (Ind. Ct. App. 2000). In addition, according to the PSI, Foley was considered to be a "moderate" risk to reoffend. Appellant's App. Vol. II p. 47. Further, while Pauley claims that his criminal behavior was the

result of a brief relapse, Pauley possessed large quantities of methamphetamine and was described during the sentencing hearing as being "a significant drug dealer in the community." Tr. Vol. II p. 30. Pauley has failed to prove that the eight-year portion of his sentence is inappropriate.

[16] The judgment of the trial court is affirmed.

Brown, J., and Pyle, J., concur.