MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Amy Sharp,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 1, 2024

Court of Appeals Case No.
23A-CR-2767

Appeal from the Morgan Superior Court

The Honorable Dakota R. VanLeeuwen, Judge

Trial Court Cause No.
55D01-2207-F5-856

Memorandum Decision by Judge Vaidik
Judges May and Kenworthy concur.

Vaidik, Judge.

Case Summary

[1] Amy E. Sharp appeals her sentence of two-and-a-half years, suspended to probation, for Level 6 felony possession of methamphetamine. We affirm.

Facts and Procedural History

[2] During a traffic stop in July 2022, Sharp was found in possession of methamphetamine and a pipe. The State charged her with Level 5 felony possession of methamphetamine (at least five grams but less than ten grams) and Class C misdemeanor possession of paraphernalia. The parties then entered into a plea agreement under which Sharp would plead guilty to the lesser-included offense of Level 6 felony possession of methamphetamine and receive a suspended sentence, and the trial court would decide the length of the suspended sentence and Sharp's eligibility for alternative-misdemeanor sentencing under Indiana Code sections 35-38-1-1.5 and 35-50-2-7.

[3] At the sentencing hearing, the State argued that because Sharp had been using methamphetamine for three or four years, the trial court should enter conviction as a Level 6 felony, impose the maximum (but suspended) sentence of two-and-a-half years (912 days), and "have her earn the [alternative-misdemeanor sentencing] on the back end after she's done some probation and worked some of the drug programming that we have." Tr. p. 30.

[4] Sharp submitted a letter in which she claimed (1) she was "very sorry and remorseful," (2) she was "attending fellowships called Lamplighters and Stonecroft Ministries," (3) she had cut off the bad influences in her life and surrounded herself with "very good and supportive people," (4) she had taken "an on-line drug course," (5) she had been "helping an elderly friend," (6) she had "learned a lesson" and "given up this dark way of living," and (7) "God has been revealed to me that I am one of his children[.]" Ex. 1. She asked the trial court to enter conviction as a Class A misdemeanor and impose a sentence of one year or less. As mitigating factors, she noted that she has no prior convictions, she pled guilty and accepted responsibility, she "did some treatment," and she stayed out of trouble while the case was pending. Tr. p. 31.

[5] After hearing the parties' positions, the trial court had the following exchange with Sharp and her attorney:

> Court: Ma'am, simple question. If I drug test you right now, which I will, what will that come back as?
>
> Sharp: Dirty.
>
> Counsel: For what?
>
> Sharp: Methamphetamine.
>
> Court: All right. So that answers that question. This will be 912 days of probation. It will be entered as a felony. You will earn your way to a misdemeanor.

Id. at 31-32. The court added:

> If at the end of 912 days, you successfully complete probation, then I will enter it as a misdemeanor. That means no violations. Ma'am, this has been pending since 2022. You still haven't gotten your methamphetamine addiction under control. That's not acceptable. Don't come in here and tell me you're in an online class, you found God, and everything else, when you're still using.

Id. at 32. The court didn't address any of Sharp's proposed mitigating factors.

[6] Sharp now appeals.

Discussion and Decision

I. The trial court entered an adequate sentencing statement

[7] Sharp first contends that the trial court failed to enter a sentencing statement. She cites the following passage from *Bretz v. State*:

> [W]hen a sentencing court uses aggravating or mitigating circumstances to enhance or reduce a sentence, the court must include in its sentencing statement the following three elements: (1) it must identify all significant mitigating and aggravating circumstances, (2) it must state the specific reason why each circumstance is considered to be mitigating or aggravating, and (3) it must articulate that the court evaluated and balanced the mitigating circumstances against the aggravating circumstances to determine if the mitigating circumstances offset the aggravating circumstances.

701 N.E.2d 1251, 1252 (Ind. Ct. App. 1998). Sharp argues that "the trial court enhanced [her] sentence from the one-year advisory sentence to two and one-

half years without any sentencing statement, written or oral." Appellant's Br. p. 8.

[8] The flaw in Sharp's argument is that it discusses the sort of sentencing statements that were required under Indiana's former "presumptive" sentencing scheme. Under that scheme, there was a presumptive sentence between the minimum and maximum sentences, and a trial court was generally required to impose the presumptive sentence unless it found one or more aggravating circumstances to justify an "enhanced" sentence or one or more mitigating circumstances to justify a "reduced" sentence. *Anglemyer v. State*, 868 N.E.2d 482, 485-86 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). That is why we required a sentencing statement focused on aggravating and mitigating circumstances.

[9] But in 2005, our legislature replaced presumptive sentences with "advisory" sentences to comply with the U.S. Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004). *Id.* at 487-88. Under this new scheme, the advisory sentence is similar to the former presumptive sentence, but a court is not strictly required to find one or more aggravating circumstances to go above the advisory sentence or one or more mitigating circumstances to go below the advisory sentence. *Id.* at 488. Rather, "A court may impose any sentence that is: (1) authorized by statute; and (2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). If the court does find aggravators or mitigators, it must "explain why each circumstance has been

determined to be mitigating or aggravating." *Anglemyer*, 868 N.E.2d at 490. Otherwise, the court need only provide "a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." *Id.*; *see also* I.C. § 35-38-1-1.3.

[10] Here, the trial court didn't find any aggravators or mitigators, but it explained exactly why it was imposing the maximum sentence of two-and-a-half years (suspended to probation). After Sharp admitted that she would test positive for methamphetamine, the trial court stated: "Ma'am, this has been pending since 2022. You still haven't gotten your methamphetamine addiction under control. That's not acceptable. Don't come in here and tell me you're in an online class, you found God, and everything else, when you're still using." This was a reasonably detailed recitation of the court's reasons and therefore satisfied the sentencing-statement requirement.

II. Even if the trial court abused its discretion by failing to find Sharp's proposed mitigating circumstances, remand for resentencing would be unnecessary because we can say with confidence that the trial court would have imposed the same sentence

[11] Sharp also argues that the trial court should have accepted her proposed mitigating circumstances. The finding of aggravators and mitigators rests within the sound discretion of the trial court, and we review such decisions only for an abuse of that discretion. *Wert v. State*, 121 N.E.3d 1079, 1084 (Ind. Ct. App. 2019), *trans. denied*. One way a trial court abuses its discretion is by not

recognizing mitigators that are clearly supported by the record and advanced for consideration. *Id.*

[12] We acknowledge that at least two of Sharp's proposed mitigators—her lack of criminal history and her guilty plea—are usually entitled to some weight. *See McElroy v. State*, 865 N.E.2d 584, 592 (Ind. 2007) (lack of criminal history); *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005) (guilty plea). But even if the trial court abused its discretion in this regard, remand for resentencing is unnecessary "if we can say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Vega v. State*, 119 N.E.3d 193, 203 (Ind. Ct. App. 2019). Here, given the trial court's understandable displeasure upon learning that Sharp had recently used methamphetamine, we are confident it would have imposed the same sentence even if it had accepted Sharp's proposed mitigators. This is especially so because the court could not impose any executed time, per the terms of the plea agreement. Therefore, we need not decide whether the court abused its discretion by failing to find the proposed mitigators.

[13] Affirmed.

May, J., and Kenworthy, J., concur.

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