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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN W. JESSOP,)

Appellant-Defendant,)

vs.)

No. 20A03-0705-CR-215

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0407-FA-92
Cause No. 20C01-0703-FB-18

December 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

John Jessop pled guilty in two separate causes to one count of possession of methamphetamine in excess of three grams with intent to deliver, a Class A felony, and two counts of manufacturing methamphetamine, both Class B felonies. The trial court denied his subsequent motion to withdraw his plea and imposed an aggregate sentence of forty-eight years incarceration with eight years suspended. Jessop appeals, contending that the trial court erred in denying his motion to withdraw guilty plea and that his forty-eight year sentence is inappropriate. Concluding that the trial court did not err in denying Jessop's motion to withdraw his guilty plea and that his sentence is not inappropriate, we affirm.

Facts and Procedural History

According to the factual basis established at Jessop's guilty plea hearing, on July 15, 2004, Jessop knowingly possessed more than three grams of methamphetamine with intent to deliver and knowingly manufactured methamphetamine. Jessop was charged with possession of methamphetamine in excess of three grams with intent to deliver, a Class A felony, and manufacturing methamphetamine, a Class B felony. On March 15, 2007, Jessop failed to appear for a pre-trial conference on this case and a bench warrant was issued for his arrest.

On March 16, 2007, the bench warrant was served and Jessop was arrested. Apparently based upon circumstances surrounding Jessop's arrest, on March 19, 2007, Jessop was charged with knowingly manufacturing methamphetamine, a Class B felony. Trial had been scheduled to begin in the 2004 case on March 19, 2007. Instead, Jessop entered into a plea agreement with the State on that date that disposed of both the 2004 and

the 2007 charges. The plea agreement called for Jessop to plead guilty to all three counts as charged. Sentencing was left open, but the State agreed to recommend that the maximum executed sentence not exceed forty years. Jessop and the State also agreed that sentences for the two 2004 counts would be served concurrently.

At the guilty plea hearing, the trial court asked Jessop if he was under the influence of alcohol or drugs that would affect his understanding of the proceedings. Jessop stated that he was not. The trial court noted that an initial hearing had not been held on the 2007 charge, but Jessop, his counsel, and the State all agreed that an initial hearing was not necessary. The trial court also asked Jessop if he understood that by pleading guilty, he was admitting the truth of the material facts alleged in the charging informations. Jessop replied that he understood and admitted that he was guilty of each charge. The trial court found a factual basis, accepted the plea, and scheduled a sentencing hearing.

A few days before the sentencing hearing, Jessop filed a pro se motion to withdraw his guilty plea. The trial court refused to act on the motion because Jessop was represented by counsel. Jessop's counsel then filed a verified motion to set aside the guilty plea on the day of the sentencing hearing. Both motions asserted essentially the same grounds for relief: that Jessop was under the influence of drugs when the guilty plea was entered, that he had just learned of the 2007 charge immediately prior to entering a guilty plea to that charge, and that he was not guilty of the charges. After hearing evidence and arguments of counsel, the trial court denied Jessop's motion to withdraw guilty plea and proceeded to sentencing. With respect to the 2004 charges, the trial court sentenced Jessop to thirty-three years with three

years suspended for the Class A felony possession count and ten years for the Class B felony manufacturing count with the sentences to be served concurrently. With respect to the 2007 charge, the trial court sentenced Jessop to fifteen years with five years suspended for the Class B felony manufacturing count, to be served consecutively to the sentences for the 2004 counts. The trial court therefore ordered Jessop to serve an aggregate sentence of forty-eight years with forty years to be executed. Jessop now appeals.¹

Discussion and Decision

I. Motion to Withdraw Guilty Plea

A. Standard of Review

Indiana Code section 35-35-1-4(b) provides:

After entry of a plea of guilty . . . but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty . . . for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea. The motion to withdraw the plea of guilty . . . shall be in writing and verified. The motion shall state facts in support of the relief demanded, and the state may file counter-affidavits in opposition to the motion. The ruling of the court on the motion shall be reviewable on appeal only for an abuse of discretion. However, the court shall allow the defendant to withdraw his plea of guilty . . . whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

The moving party has the burden of establishing his grounds for relief by a preponderance of the evidence. Ind. Code § 35-35-1-4(e). The trial court is required to grant the request only if the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice. Weatherford v. State, 697 N.E.2d 32, 34 (Ind. 1998). Conversely, the trial court is

¹ Jessop's motion to consolidate his appeals of the 2004 and 2007 cases was granted by this court on

required to deny the request if withdrawal of the plea would result in substantial prejudice to the State. Id. In all other circumstances, the grant or denial of the request is at the discretion of the trial court. Id.; Ind. Code § 35-35-1-4(b). We will not disturb the trial court's ruling where it is based on conflicting evidence. Turner v. State, 843 N.E.2d 937, 941 (Ind. Ct. App. 2006).

B. Withdrawal of Guilty Plea

In conjunction with his motion to withdraw guilty plea, Jessop testified that he had consumed methamphetamine, oxycodone, and hydrocodone within thirty minutes of being arrested on March 16, 2007. He spent the next two days in jail and slept most of the time. On Monday morning, March 19, 2007, when he was taken to court, he was scared and suffering from withdrawal symptoms such as “the shakes a little bit” and dizziness. Transcript at 29. He testified, “I feel I was still under the effects of the drugs that I took,” id. at 30, and therefore simply took his attorney's advice to plead guilty and responded to the trial court's questions as directed by his attorney. He admitted that he was guilty of possessing methamphetamine in 2004, but denied that he had the intent to deliver the methamphetamine to anyone except himself. He also denied that he was guilty of the 2007 charge.

The answers Jessop gave while pleading guilty, however, belie his later assertion, supported by only his own testimony, that he was under the influence of drugs and said only what his attorney told him to say. At the guilty plea hearing, Jessop stated that he was not

under the influence of alcohol or drugs, and also stated that he understood that by pleading guilty he was admitting to the allegations against him. He specifically admitted that he possessed and manufactured methamphetamine in 2004 and again manufactured methamphetamine in 2007.

The trial court determined that Jessop's testimony at the guilty plea hearing was more credible and reliable than his testimony at the hearing on his motion to withdraw:

I asked you these questions [at the guilty plea hearing] . . . [a]nd you told me you were just fine, you said, no, I don't have any problems. Now, when we get here to the moment of truth, all of a sudden you've got problems.

* * *

I go through all of your rights with you. I ask you, very specifically, did you commit these three offenses. You told me you did. I chose, at the time, to believe you because (a) you were under oath, and (b) you were on the eve of having your trial in [the 2004 case], which seemed to me to be a circumstantial guarantee of trustworthiness. I took you at your word.

Tr. at 35, 42. We conclude that in this case, the trial court exercised appropriate discretion in denying Jessop's motion to withdraw his guilty plea. See Davis v. State, 770 N.E.2d 319, 327 (Ind. 2002) (holding trial court did not abuse its discretion by denying defendant's motion to withdraw guilty plea to habitual offender charge where defendant asserted he was "tired, confused, and upset" after being found guilty in the first phase of his trial; trial court had thoroughly questioned defendant about his understanding of the plea and any mental or emotional disabilities interfering with his understanding of the plea); Carter v. State, 739 N.E.2d 126, 131 (Ind. 2000) (holding trial court did not abuse its discretion by denying defendant's motion to withdraw guilty plea even when the motion was premised on a

protestation of innocence).

II. Sentencing

A. Standard of Review

When reviewing a sentence imposed by the trial court, 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.” Ind. Appellate Rule 7(B). “Although appellate review of sentences must give due consideration to the trial court’s sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied.” Purvis v. State, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations omitted), trans. denied, cert. denied, 547 U.S. 1026 (2006). We must examine both the nature of the offense and the defendant’s character. See Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When conducting this inquiry, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied.

B. Inappropriate Sentence

In sentencing Jessop, the trial court cited the following aggravating and mitigating circumstances:

[T]he Court finds aggravating circumstances to be the following:

(1) the Defendant has another case pending in Kosciusko County which may have occurred while the Defendant was on bond. The Defendant acknowledged using methamphetamine and other illegal drugs while on bond; and

(2) the Defendant’s three (3) felony convictions; one (1) misdemeanor

conviction; one (1) violation of probation; and one (1) failure to appear. The Court notes that his criminal history evidences contempt for the laws of this state and unwillingness or inability to conform thereto.

The Court finds mitigating circumstances to be as follows: the Defendant accepting responsibility for his criminal conduct; his addictions issues; and all other mitigators mentioned by counsel for the Defendant.

Appellant's Appendix at 119. The court determined that the aggravating circumstances outweighed the mitigating circumstances and warranted an enhanced sentence. Jessop was sentenced to thirty-three years, with three years suspended for his Class A felony possession of methamphetamine with intent to deliver conviction, to be served concurrent with a ten year sentence for the 2004 Class B felony manufacturing methamphetamine conviction and consecutive to a fifteen-year sentence with five years suspended for the 2007 Class B felony manufacturing methamphetamine conviction.² Jessop was ordered to serve an executed sentence of forty years. Jessop contends that his sentence is inappropriate and asks that we revise his sentence to the presumptive/advisory terms.³

1. Nature of the Offenses

Although the underlying facts are sparse because of the limited factual basis given during the guilty plea hearing, the record shows that in July 2004, Jessop was arrested when

² Because Jessop committed the 2007 offense while he was released on bond for the 2004 offenses, the terms of imprisonment for those crimes were required by statute to be served consecutively. Ind. Code § 35-50-1-2(d).

³ The 2004 charges were subject to our prior presumptive sentencing scheme, pursuant to which a Class A felony was punishable by a fixed term of thirty years, to which not more than twenty years could be added for aggravating circumstances and not more than ten years subtracted for mitigating circumstances; and a Class B felony was punishable by a fixed term of ten years, to which not more than ten years could be added for aggravating circumstances and not more than four years subtracted for mitigating circumstances. Ind. Code §§ 35-50-2-4, -5 (2004). The 2007 charge was subject to the advisory sentencing scheme, pursuant to

officers serving a warrant discovered 17.5 grams of methamphetamine and components used in manufacturing and distributing methamphetamine at Jessop's residence. In March 2007, Jessop was arrested when officers serving a bench warrant for his failure to appear at a hearing on the 2004 case discovered items used in manufacturing methamphetamine at Jessop's residence. Jessop argues that the nature of his offense is not "particularly egregious." Brief of Appellant at 16. He notes there was no violence associated with his arrests and that no weapons, which are commonly associated with the manufacture and dealing of drugs, were found on his premises. Nonetheless, the nature of Jessop's offenses is serious. He possessed a large quantity of methamphetamine with the intent to deliver it to others and was undertaking the dangerous process of manufacturing more methamphetamine. Moreover, Jessop was continuing to manufacture methamphetamine while awaiting trial on manufacturing and possession with intent to deliver charges.

2. Character of the Offender

Jessop also argues that his acceptance of responsibility in pleading guilty and his substantial family support comment favorably on his character. He also notes that he admitted he has a substance abuse addiction and "has never had the benefit of addictions treatment." Brief of Appellant at 17. The trial court found that although Jessop attempted to withdraw his guilty plea, he ultimately accepted responsibility for his crimes and considered that a mitigating circumstance. The trial court also found Jessop's addiction issues to be a mitigating circumstance. We accept the trial court's findings as commenting favorably on

which a Class B felony is punishable by a fixed term of between six and twenty years, with the advisory

Jessop's character, although we note with respect to Jessop's addiction, the fact that he "never had the benefit of addictions treatment" is solely attributable to Jessop.

Jessop's criminal history consists of two Class C felony convictions of burglary, a Class D felony conviction of theft, and one misdemeanor conviction of criminal conversion. In addition, with respect to Jessop's most recent felony theft conviction, he violated probation and was placed on work release, which he also violated. He also had a Class D felony theft charge pending at the time of his sentencing. Nonetheless, the significance of a defendant's criminal history depends "on the gravity, nature and number of prior offenses as they relate to the current offense." Prickett v. State, 856 N.E.2d 1203, 1209 (Ind. 2006). Jessop has three prior felony convictions over a twenty-year span, none of which are similar in nature or gravity to the instant offenses. His criminal history is not a particularly significant factor in evaluating his sentence. See id. (holding that where defendant's prior criminal history is not similar in gravity or nature to his current offense, it does not "warrant consideration as an aggravating factor in enhancing his Class A felony sentence").

The trial court found the fact that Jessop admitted using methamphetamine and manufacturing methamphetamine while on bond awaiting trial for the 2004 charges was an aggravating circumstance of "the highest magnitude." Tr. at 63. We agree that Jessop's continued use and production of methamphetamine even while facing charges for that exact conduct is significant. With respect to the 2004 charges, Jessop failed to appear as ordered in court and a bench warrant was issued for his arrest. Together with Jessop's prior probation

sentence being ten years. Ind. Code § 35-50-2-5 (2007).

and work release violations, his failure to appear demonstrates a lack of respect for the law. See Jones v. State, 807 N.E.2d 58, 69 (Ind. Ct. App. 2004), trans. denied. All of these facts comment negatively on Jessop's character, and representing the most recent conduct in which Jessop has engaged, are a significant consideration in the evaluation of his character.

3. Enhanced Sentence

Considering the nature of Jessop's offenses and his character, we cannot say that an enhanced sentence of forty-eight years with eight years suspended was inappropriate. See Storey v. State, 875 N.E.2d 243, 253 (Ind. Ct. App. 2007) (holding that concurrent forty-five year sentences for possession of methamphetamine in excess of three grams with intent to deliver and manufacturing methamphetamine were not inappropriate).

Conclusion

Jessop did not prove that withdrawal of his guilty plea was necessary to correct a manifest injustice and the trial court did not abuse its discretion in denying his motion to withdraw. Jessop's sentence is not inappropriate in light of the nature of his offenses and his character. The judgment of the trial court is therefore affirmed.

Affirmed.

KIRSCH, J., and BARNES, J., concur.