



## STATEMENT OF THE CASE

Defendant-Appellant Kimberly S. Yeager (“Yeager”) is appealing after entering into a plea agreement. We affirm.

## ISSUES

Yeager raises two issues for our review, which we restate as:

- I. Whether Yeager has the right to challenge the sentence imposed after she pled guilty.
- II. Whether the sentence imposed was unreasonable under the circumstances.

## FACTS

On My 10, 2006, Kimberly knowingly delivered methamphetamine to another person. Kimberly agreed to plead guilty to delivery of methamphetamine, a Class B felony, while the State agreed to forgo all other pending and potential charges. The trial court rejected the first tendered plea agreement and an amended plea agreement was submitted and accepted when the sentence cap was changed to ten years instead of the previously submitted cap of eight years. The trial court sentenced Kimberly to an executed sentence of ten years. The advisory sentence for a Class B felony is ten years. Ind. Code §35-50-2-5.

Additional facts will be disclosed as needed.

## DISCUSSION AND DECISION

### I.

Kimberly contends that she has the right to challenge the trial court’s decision to impose the advisory ten-year sentence. Our supreme court has held that where a

defendant pleads guilty in what has been characterized as an open plea, a plea setting forth a sentencing cap, or a plea setting forth a sentencing range, the trial court must exercise some discretion. *See Childress v. State*, 848 N.E.2d 1073, 1078 (Ind. 2006). Consequently, a defendant is entitled to contest the merits of the trial court's sentencing discretion. *Id.*

## II.

Kimberly also contends that her sentence is inappropriate under Ind. Appellate Rule 7(B). That rule provides that the court on appeal may revise the trial court's sentence if it finds the sentence is inappropriate in light of the nature of the offense and the character of the offender. Essentially, Kimberly is arguing that her sentence is inappropriate because the trial court failed to give sufficient weight to certain mitigating factors.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (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.* A court may impose any legal sentence "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). Thus, we will not review the trial court's assignment of weight to aggravating or mitigating circumstances. *Anglemyer*, 868 N.E.2d at 489. The trial court may, however, identify aggravating and mitigating

circumstances when it makes its sentencing determination. *Id.* at 489. Furthermore, we will review the appropriateness of a particular sentence.

Regarding the nature of the offense, an advisory sentence is the starting place chosen by the legislature as an appropriate sentence for the crime committed. *See Childress*, 848 N.E.2d at 1080. Kimberly received the advisory sentence for a Class B felony. The trial court's analysis of aggravating and mitigating circumstances reveals Kimberly's character.

Even though Kimberly's appendix omits a complete transcript of the sentencing hearing, our reading of the record discloses that Kimberly had a criminal history and that Kimberly was on probation at the time of the current offense. Those factors were found to be aggravating circumstances. The trial court found several mitigating circumstances, but gave them little weight. Kimberly's substance abuse was given little weight because she has not addressed her problem responsibly in the past. The trial court found that her troubled childhood had no nexus to her recent criminal past. The trial court also found that her family support, while existent, had failed to prevent her from committing crimes while receiving that family support. The trial court further found that her nearly daily use of methamphetamine prevented her from being a mother or a dutiful daughter. The trial court then determined that the advisory sentence of ten years was appropriate.

Kimberly's criminal record, probationary status, and failure to address her substance abuse problem, factors that show Kimberly's character, establish that the advisory sentence is appropriate in this case. Thus, the trial court did not abuse its

discretion in imposing the sentence. We find no reason in light of the nature of the offense or the character of the offender to reduce Kimberly's sentence.

### CONCLUSION

Because the trial court exercised discretion in determining Kimberly's sentence after she pled guilty, this court may review the sentence to determine whether it is appropriate in light of the offense and the character of the offender. Our review leads us to the conclusion that the trial court did not abuse its discretion in imposing the advisory ten-year sentence.

Affirmed.

SHARPNACK, J., and ROBB, J., concur.