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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL L. ERICKSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A05-0612-CR-738
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0512-FA-212

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Michael Erickson pleaded guilty to Delivery of Methamphetamine Weighing Three Grams or More,[1] a class A felony, and Delivery of a Schedule II Substance (Amphetamine),[2] a class B felony, and was subsequently sentenced to an aggregate sentence of thirty-five years. Erickson challenges the reasonableness of his sentence as the sole issue upon appeal.[3]

We affirm.

On December 19, 2005, the State charged Erickson with class A felony dealing in cocaine and class B felony dealing in a schedule II controlled substance. The State filed an amended charging information on January 11, 2006, changing the class A felony charge to dealing in methamphetamine. At an October 6, 2006 hearing, Erickson pleaded guilty as charged pursuant a plea agreement, which provided that sentencing was left to the trial court's discretion, but that the sentences would run concurrently. In exchange for Erickson's guilty plea, the State agreed to dismiss charges under two other causes.[4]

At a sentencing hearing held on November 16, 2006, the trial court sentenced Erickson to thirty-five years on the class A felony dealing in methamphetamine conviction and to ten years on the class B felony dealing in a schedule II substance. Pursuant to the terms of the plea agreement, the trial court ordered the sentences to be

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[1] Ind. Code Ann. § 35-48-4-1(b) (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

[2] I.C. § 35-48-4-2 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

[3] There is no dispute that Erickson has the right to challenge his sentence after pleading guilty under an open plea. *See Collins v. State*, 817 N.E.2d 230 (Ind. 2004).

[4] Erickson did not include the plea agreement in his appendix. Nevertheless, we were able to determine the relevant terms of the plea agreement from the transcripts of the guilty plea and sentencing hearings.

served concurrently for an aggregate sentence of thirty-five years. In explaining the sentence imposed, the trial court identified as aggravating circumstances Erickson's criminal history, which consists of five misdemeanors, three felonies, and five failures to appear, and that prior attempts to rehabilitate Erickson through fines, house arrest, shelter care, juvenile detention, probation, and suspended sentences have proven unsuccessful. As mitigating circumstances, the trial court noted Erickson's young age, his addiction problems, and his acceptance of responsibility. The trial court found that Erickson's criminal history alone justified a thirty-five year sentence on the A felony conviction.[5]

Erickson argues that his sentence is "excessive and unreasonable".[6] *Appellant's Brief* at 1. We note that sentencing decisions rest within the sound discretion of the trial court and are reviewed only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *modified on reh'g*, 43S05-0606-CR-230 (Oct. 30, 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences to be drawn therefrom. *Id*.

The entirety of Erickson's argument is that the trial court "improperly minimized the importance" of the mitigating circumstances it identified. *Appellant's Brief* at 5. Erickson asserts that the mitigating circumstances should have been given "substantial" or "considerable" weight. *Id*. at 5, 6.

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[5] Ind. Code Ann. § 35-50-2-4 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007) provides that "[a] person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years."

[6] Erickson does not include in his argument a statement of the applicable standard of review as required by Ind. Appellate Rule 46(A)(8)(b).

In *Anglemyer*, our Supreme Court held that "[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse." 868 N.E.2d at 491. The Court explained:

> Because the trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to "properly weigh" such factors. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then "impose any sentence that is . . . authorized by statute; and . . . permissible under the Constitution of the State of Indiana."

Id. (citations omitted). Erickson's argument is therefore not subject to review.

To the extent Erickson argues that his sentence is excessive, his recourse would be to challenge his sentence as inappropriate. Under Indiana Appellate Rule 7(B), this court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Erickson, however, does not cite to App. R. 7(B) or cite any authority in support of an argument that his sentence is inappropriate. We therefore conclude that Erickson has waived this issue for review. *See* Ind. Appellate Rule 46(A)(8); *Hollowell v. State*, 707 N.E.2d 1014 (Ind. Ct. App. 1999).

Judgment affirmed.

SHARPNACK, J., and RILEY, J., concur.