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IN THE
COURT OF APPEALS OF INDIANA

TRACEY L. ROUTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A04-1104-CR-209
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Jr., Judge
Cause No. 34D01-1009-FA-748

October 31, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Tracey L. Routon (Routon), appeals his sentence for conspiracy to commit possession of methamphetamine in excess of three grams, as a lesser included Class C felony, Ind. Code §§§ 35-48-4-1-1(a)(1); 35-48-4-1-1(b)(1); 35-41-5-2.

We affirm.

ISSUE

Routon raises one issue on appeal, which we restate as: Whether Routon's sentence is appropriate in light of his character and the nature of the crime.

FACTS AND PROCEDURAL HISTORY

In July 2010, Routon shared a jail cell with James Shelley (Shelley) in the Howard County Jail. After their release, Shelley stayed at Routon's residence in Sharpsville, Indiana. He introduced Routon to Herbert Depoy (Depoy) and Jerry Vanzyll (Vanzyll). In early August 2010, Routon rented his garage to Depoy and Vanzyll for $150 per week so Depoy and Vanzyll could not only store their methamphetamine manufacturing supplies but also manufacture the drug. Depoy and Vanzyll manufactured approximately 20 grams of methamphetamine daily and Shelley sold the methamphetamine in Howard County. At some point, Depoy was apprehended and, on August 31, 2010, identified Routon in a photo array. Routon was subsequently arrested.

On September 1, 2010, the State filed an Information, charging Routon with conspiracy to commit dealing in methamphetamine, a Class A felony, I.C. §§§ 35-48-4-1.1(a)(1); 35-48-4-1.1(b)(1); 35-41-5-2. On March 30, 2011, Routon entered into a guilty

plea with the State in which he agreed to plead guilty to a lesser included charge of conspiracy to commit possession of methamphetamine in excess of three grams, as a Class C felony. That same day, the trial court sentenced Routon to eight years executed in the Department of Correction.

Routon now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Routon contends that the trial court abused its discretion when it imposed an eight year sentence for his conspiracy conviction, as a Class C felony. A person who commits a Class C felony shall be imprisoned for a fixed term of between two and eight years, with the advisory sentence being four years. I.C. § 35-50-2-6. Here, the trial court imposed the maximum sentence under the statute. In doing so, the trial court considered the following aggravating factors: (1) Routon's criminal history; (2) his violation of a protective order; and (3) the fact that he was on probation when committing the current offense. The trial court did not find any mitigating factors.

As long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *aff'd 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*. One way in which a trial court may abuse its discretion is by failing to enter a sentencing statement at all. *Id*. Another example includes entering a sentencing statement that explains reasons

for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. *Id*. at 490-91.

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion by failing to properly weigh such factors. *Id*. at 491. 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 permitted under the Indiana Constitution. *Id*.

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id*. Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id*. It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id*.

A. *Mitigator*

Routon first claims that the trial court should have considered his guilty plea as a proper mitigator. An allegation that a trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant

and clearly supported by the record. *Lavoie v. State*, 903 N.E.2d 135, 141 (Ind. Ct. App. 2009). Here, Routon exchanged his guilty plea for a substantial benefit: instead of pleading guilty to a Class A felony to commit dealing, the State agreed to let Routon plea to the lesser included Class C felony, with a substantial reduction in sentence as a result. As Routon already received a substantial benefit from his plea, the guilty plea can no longer be considered a significant mitigator. *See Anglemyer*, 875 N.E.2d at 221.

Furthermore, Routon asserts that although his involvement in the crime was minimal, a co-defendant with greater involvement received a lesser sentence. However, it should be noted that sentence review is independent to each defendant and we "need not compare" sentences between co-defendants. *See Dennis v. State*, 908 N.E.2d 209, 214 (Ind. 2009).

B. *Aggravator*

Routon also contends that the trial court's consideration of aggravators was improper. Specifically, Routon claims that the trial court did not state which convictions in his criminal history the court considered to be aggravators. Where the trial court enhances a sentence due to the defendant's prior criminal record, we require that the trial court detail such activity and not merely recite statutory language. *Berry v. State*, 819 N.E.2d 443, 453 (Ind. Ct. App. 2004), *trans. denied*. However, in non-death penalty cases it is sufficient if the trial court's reasons for enhancement are clear from a review of the sentencing transcript. *Id*. Although the trial court did not detail Routon's criminal history in its sentencing statement, the pre-sentence investigation report (PSI) reveals that it is substantial. Our review of the PSI discloses that Routon has at least twenty-two prior

criminal convictions, including convictions for theft, aggravated burglary, burglary, and aggravated battery. Therefore, we conclude that Routon's criminal history is an appropriate aggravator.

In addition, Routon asserts that the trial court improperly relied on a violation of a protective order as an aggravator because the violation had been dismissed by the State. The record reflects that Routon pled guilty to having violated a protective order and thus, having committed an invasion of privacy on March 17, 2010. These charges were unrelated to the current case. During the sentencing hearing on March 31, 2011, Routon was sentenced to one year in jail for invasion of privacy and subsequently, during the same hearing, was sentenced to eight years on the current offense. The trial court stated that both sentences had to be served consecutively. As such, the charge had not been dismissed and the trial court properly used it as an aggravator.[1]

C. *Nature and Character*

With respect to Routon's argument pursuant to Ind. Appellate Rule 7(B), we find Routon's sentence of eight years not inappropriate in light of the nature of the offense and his character.

With respect to the nature of Routon's crime, we note that almost immediately after having served a previous sentence, Routon returned to his life of crime. In exchange for a small amount in weekly rent, he allowed others to use his garage as a methamphetamine lab and dealing operation. The laboratory was in use every day, with

[1] Although the trial court had found a third aggravator—Routon was on probation when he committed the instant offense—Routon does not challenge its appropriateness.

two batches of methamphetamine cooked, resulting in 20 grams each day for a month. All these drugs found their way to the marketplace. Routon's actions not only were dangerous to himself, but also to his neighborhood, and the community at large.

Turning to his character, Routon's record reveals that he is a career criminal. He has an extensive criminal history, mainly consisting of out-of-state convictions, including, among others, theft, aggravated burglary, criminal trespass, resisting arrest, and aggravated battery. Routon has violated probation in Kansas and also has a pending probation violation in Indiana. He admits to having a substance abuse problem but only went through treatment several years ago. Instead of continuing treatment, Routon moved to Indiana hoping for a fresh start. He was unsuccessful.

We affirm the trial court's imposition of an eight year sentence.

CONCLUSION

Based on the foregoing, we conclude that Routon's sentence is not inappropriate in light of his character and the nature of the offense.

Affirmed.

NAJAM, J. and MAY, J. concur