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IN THE COURT OF APPEALS OF INDIANA

FRANK POOLE, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1101-CR-12
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0905-FA-18

November 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Frank Poole, Jr. ("Poole") appeals his sentence for Dealing in Cocaine, as a Class B felony.[1] He presents the single issue of whether the trial court abused its discretion by not entering an adequate sentencing statement and by failing to find and weigh certain mitigating circumstances. Although we conclude that the trial court did not enter an adequate sentencing statement, we also exercise our authority to review Poole's sentence under Indiana Appellate Rule 7(B) and, because we conclude that Poole's sentence is not inappropriate given his character and the nature of his offense under Indiana Appellate Rule 7(B), we affirm.

Facts and Procedural History

On March 12, 2009, a police confidential informant gave Poole one hundred twenty-five dollars ($125), and in exchange Poole gave the informant a clear knotted plastic bag that he knew contained cocaine. On May 18, 2009, the State charged Poole with two counts of Dealing in Cocaine,[2] both as Class A felonies.[3] On September 22, 2010, pursuant to a plea agreement, the State dismissed both Class A felony counts and Poole pleaded guilty to one count of Dealing in Cocaine, as a Class B felony. Poole's plea agreement further stipulated that his sentence would be capped at ten years, and that he would have the opportunity to argue for a lesser sentence at the sentencing hearing.

On December 15, 2010, the trial court held a sentencing hearing. After considering the evidence and hearing the argument of counsel, the court sentenced Poole to six years in

[1] Ind. Code § 35-48-4-1(a).
[2] The State alleged that Poole dealt cocaine on another occasion as well.
[3] I.C. § 35-48-4-1(b).

the Department of Correction and four years in Lake County Community Corrections for an aggregate term of ten years.

Poole now appeals. Additional facts will be supplied as necessary.

Discussion and Decision

Sentencing Statement

Poole argues that the trial court abused its sentencing discretion by not entering a reasonably detailed recitation of the reasons for imposing its sentence, and by failing to find and weigh certain mitigating factors. When a trial court imposes sentence for a felony offense, it is required to issue a sentencing statement that includes a reasonably detailed recitation of its reasons for the sentence imposed. Anglemyer v. State, 868 N.E.2d 482, 484-85 (Ind. 2007), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007). "This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions." Id. at 490 (quoting Page v. State, 424 N.E.2d 1021, 1023 (Ind. 1981)). Such statements serve the primary purpose of guarding against arbitrary and capricious sentencing and providing an adequate basis for appellate review. Id. at 489 (citing Dumbsky v. State, 508 N.E.2d 1274, 1278 (Ind. 1987)). They also "contribute significantly to the rationality and consistency of sentences" and "help both the defendant and the public understand why a particular sentence was imposed" because "acceptance of the sentence by the defendant without bitterness is an important ingredient in rehabilitation, and acceptance by the public will foster confidence in the criminal justice system." Id. (quoting Abercrombie v. State, 275 Ind. 407, 417 N.E.2d 316,

319 (1981)).

However, a sentencing statement need not necessarily include aggravating and mitigating circumstances, because, regardless of those factors, a trial judge may "impose any sentence that is…authorized by statute; and…permissible under the Constitution of the State of Indiana." Id. at 491 (quoting I.C. § 35-38-1-7.1(d)). Once a trial court enters a sentencing statement that includes reasonably detailed reasons or circumstances for imposing a particular sentence, then the reasons given, including the finding of any aggravating factors or the omission of any mitigating factors, are reviewable on appeal for an abuse of discretion. Id. at 490-91. A sentencing order may no longer be challenged as reflecting an improper weighing of sentencing factors. Id. The approach employed by Indiana appellate courts in non-capital cases is to examine both the written and oral sentencing statements to discern the findings of the trial court. McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007).

The trial court's written sentencing order states, in relevant part:

> The Court having reviewed the pre-sentencing investigation report and the parties offering no objections, accepts the same of record. Evidence presented. Arguments of counsel heard.
>
> Having considered the written pre-sentence investigation report, as well as I.C. 35-38-1-7.1, the Court now enters the following findings and sentence:
>
> MITIGATING CIRCUMSTANCES:
>
> 1. None.
>
> AGGRAVATING CIRCUMSTANCES:
>
> 1. None.
>
> Cause submitted for SENTENCING. After considering the above, the Court

> now finds the defendant guilty of the amended charge in Count III: dealing in Cocaine, a Class B felony; and sentences the defendant to ten (10) years in the Indiana Department of Correction. Six (6) years of said sentence are to be executed and the remaining four (4) years are to be served in Lake County Community Corrections.

App. 44.

Although the court was not required to find aggravating or mitigating circumstances, the general references here to the pre-sentence investigation report, the relevant statute, "evidence presented," and "arguments of counsel" do not constitute a sufficient recitation of the trial court's reasons for the sentence imposed, let alone a statement of facts, in some detail, that are peculiar to the particular defendant and the crime. See Anglemyer, 868 N.E.2d at 490. At the hearing, the court's sentencing remarks focused on the fact that Poole had to serve at least six years in the Department of Correction, rather than in community corrections, because of his criminal history. However, even if the trial court was required to order that Poole serve the statutory minimum of six years in the Department of Correction, it offered no explanation as to why it also ordered an additional four years in community corrections. The State concedes that "the trial court did not give an explicit statement of the reasons behind the sentence[.]" Appellee's Br. p. 5.

Consequently, we must conclude that the trial court abused its discretion by not entering an adequate sentencing statement. When a trial court does not enter a sentencing statement that meets the requirements of the law, we have the option to remand to the trial court for clarification or a new sentence determination. Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007). We may also exercise our authority under Indiana Appellate Rule 7(B) to

review and revise the sentence. Id. We choose to exercise our authority under Indiana Appellate Rule 7(B) in this case.

Sentence Review under Indiana Appellate Rule 7(B)

In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

> Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a court 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. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

Our supreme court more recently stated that "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to "leaven the outliers." Id. at 1225. "Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." Id. at 1224.

There is nothing particularly noteworthy about the nature of Poole's offense. As for his character, Poole pleaded guilty but received significant benefits in exchange for that plea. He was originally charged with two Class A felonies. A Class A felony carries a sentencing

range of between twenty (20) and fifty (50) years. I.C. § 35-50-2-4. These counts were dismissed in exchange for Poole's agreement to plead guilty to one of Dealing in Cocaine as a Class B felony. A Class B felony carries a sentencing range of between six (6) and twenty (20) years. I.C. § 35-50-2-5. Poole's plea agreement further capped his sentence at the Class B felony advisory sentence of ten (10) years. Although he received the maximum aggregate term available under his plea agreement, four of those years will be served in community corrections.

Furthermore, Poole's pre-sentence investigation report lists several prior offenses that together comprise an extensive criminal history. He has previously been convicted of dealing in cocaine. He also has an armed robbery conviction in another state. Poole even concedes "his prior criminal record is a sufficient aggravating circumstance to impose a sentence in access [sic] of the advisory." Appellant's Br. p. 5. While Poole expressed remorse for his crime and has demonstrated rehabilitation through community involvement, we do not find these factors so compelling as to conclude that his sentence is inappropriate in light of his criminal history and the significant benefits that he has already obtained through his plea agreement.

Conclusion

The trial court abused its discretion by failing to issue an adequate sentencing statement that offered a detailed recitation of the reasons why it imposed Poole's sentence. However, we conclude that Poole's sentence is not inappropriate given his character or the nature of his offense. We therefore affirm Poole's sentence.

Affirmed.

MATHIAS, J., and CRONE, J., concur.