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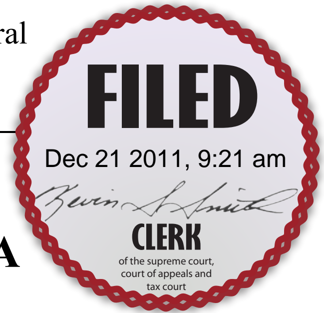

IN THE COURT OF APPEALS OF INDIANA

ARTHUR D. MILES,	)	
Appellant,	)	
vs.	)	No. 49A02-1104-PC-320
STATE OF INDIANA,	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William Young, Judge
Cause No. 49G20-0604-PC-65326

December 21, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Arthur Miles ("Miles") pleaded guilty in Marion Superior Court to Class B felony dealing in cocaine and was ordered to serve fifteen years executed in the Department of Correction. On appeal, Miles challenges his sentence arguing that the trial court's sentencing statement is inadequate and that his fifteen-year executed sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On April 11, 2006, Miles with charged with Class B felony dealing in cocaine and Class D felony possession of cocaine. But the State later amended the charging information by alleging that Miles committed Class B felony possession of cocaine because it was possessed within 1000 feet of the Fallcreek Greenway.

After Miles unsuccessfully filed a motion to dismiss the charging information, the parties entered into a written plea agreement on December 14, 2007. Miles agreed to plead guilty to Class B felony dealing in cocaine in exchange for dismissal of the Class B felony possession charge and all charges pending under another cause number. Sentencing was left entirely to the discretion of the trial court. On February 14, 2008, Miles was ordered to serve fifteen years executed in the Department of Correction.

Miles failed to file a notice of appeal within thirty days of his sentencing, but did request permission to file a belated notice of appeal. The trial court granted Miles permission to file a belated notice of appeal on March 17, 2011, and Miles filed his notice of appeal on April 13, 2011. Additional facts necessary to the resolution of the issues presented in this appeal will be set forth below.

Discussion and Decision

Miles was ordered to serve fifteen years for his Class B felony dealing in cocaine conviction. See Ind. Code § 35-50-2-5 (providing that the sentencing range for a Class B felony is six to twenty years, with ten years being the advisory term). Miles argues that the trial court abused its discretion in imposing his sentence because the court failed to enter a sufficiently detailed sentencing statement. Miles also argues that his fifteen-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

Sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. Id. An abuse of discretion will be found where 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 trial court may abuse its discretion by issuing an inadequate sentencing statement, finding aggravating or mitigating factors that are not supported by the record, omitting factors that are clearly supported by the record and advanced for consideration, or by finding factors that are improper as a matter of law. Id. at 490–91.

When imposing a sentence in a felony case, the trial court must provide a reasonably detailed sentencing statement explaining its reasons for imposing the sentence. Id. at 490. And a trial court abuses its discretion if it fails to enter a sentencing statement at all. In that instance, remand for resentencing may be the appropriate remedy if we

cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record. Id. at 490–91.

The State concedes that the sentencing statement in this case "was likely inadequate because of its brevity." Appellee's Br. at 4. Specifically, after the State reminded the trial court that Miles had been allowed to serve the time between his guilty and sentencing on home detection through community corrections, and that new charges were filed against Miles during that time, the following exchange occurred:

> COURT: . . . Well, I let you out, right?
>
> MILES: Yes, sir.
>
> COURT: You screwed that up, right?
>
> MILES: Yes, sir.
>
> COURT: Okay. So it's pretty straightforward. You've got to go to the DOC. So, we'll show that he'll be sentenced on the Class B felony to 15 years Department of Correction[.]

Tr. p. 34.

The trial court was willing to give Miles a chance to serve his sentence through community corrections. Miles was warned that if he was unable to serve the time between the guilty plea hearing and sentencing without violating the terms of his placement, he would be serving the remainder of his sentence in the Department of Correction. Tr. p. 21. The trial court sentenced Miles after considering his criminal history, which includes five prior felony convictions, and his inability to comply with the terms of his community corrections placement for the sixty days between his plea and sentencing. Upon review of the record, we are confident that the trial court would have

imposed the same fifteen-year sentence had it properly considered the mitigating and aggravating circumstances that are supported by the record. See Anglemyer, 868 N.E.2d at 491.

We turn now to Miles's argument that his fifteen-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences 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." Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing Anglemyer, 868 N.E.2d at 491). The defendant has the burden of persuading us that his or her sentence is inappropriate. Id. (citing Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)). Finally, although we have the power to review and revise sentences, "[t]he principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008).

Here, Miles pleaded guilty to Class B felony dealing in cocaine, and there are no facts in the record concerning the nature of the offense that would support a sentence near the maximum of the sentencing range. Miles took responsibility for his actions by pleading guilty to this offense, but it also appears that his decision was likely a pragmatic

one. While Miles's ability to successfully serve nine months on pretrial home detention reflects well on his character, it must be considered against the fact that Miles violated the terms of that placement prior to sentencing.

Most important, Miles is a recidivist and demonstrates an inability to live a law-abiding life. The instant offense is Miles's sixth felony conviction, including Class D felony possession of cocaine, Class D felony criminal recklessness, Class C felony carrying a handgun without a license, Class C felony conspiracy to commit forgery, and Class D felony conspiracy to commit theft. Also, pursuant to the terms of the plea agreement in this case, the following pending charges under a separate cause number were dismissed: Class A felony dealing in cocaine, Class C felony possession of cocaine, and Class D felony possession of marijuana.

For all of these reasons, we conclude that Miles's fifteen-year sentence for Class B felony dealing in cocaine is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BAILEY, J., and CRONE, J., concur.