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IN THE COURT OF APPEALS OF INDIANA

WILLIE MYLES, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 52A02-1011-CR-1315
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable Daniel C. Banina, Special Judge
Cause No. 52C01-0710-FA-176

November 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Willie Myles, Jr., pleaded guilty pursuant to a plea agreement to class B felony dealing in cocaine. The trial court sentenced him to an executed term of fifteen years in prison. In this belated appeal, Myles argues that the trial court abused its discretion in failing to find certain mitigating circumstances and that the sentence is inappropriate.

We affirm.[1]

On August 15, 2007, Myles sold crack cocaine to Larry Riggle for fifty dollars at Myles's residence. Riggle was Myles's friend/tenant and, unbeknownst to Myles, had become a confidential informant for the police in Peru, Indiana. Controlled buys between Riggle and Myles also occurred on at least four other occasions in August and September. All of the controlled buys were audio recorded and some transactions were also recorded on video.

On October 16, 2007, the State charged Myles with five counts of class A felony dealing in cocaine, five counts of class B felony possession of cocaine, and five counts of class D felony maintaining a common nuisance. The State later sought to join another cause, which involved a class A felony dealing in cocaine charge and a class D felony possession charge. The trial court granted the motion on September 2, 2008 and joined the causes for trial.

Myles entered into a plea agreement with the State on November 26, 2008. Pursuant to the agreement, Myles pleaded guilty to a lesser charge of dealing as a class B felony, and

[1] The State argues, on cross appeal, that the appeal should be dismissed for lack of jurisdiction because Myles's belated notice of appeal was filed more than thirty days after the trial court gave him permission to file it. After submission of extensive written argument by the parties, this court's motions panel denied the State's motion to dismiss on July 29, 2011, which was before the case was fully brief and assigned to this

the sixteen remaining counts in the joined causes were dismissed, as well as the charges in two unrelated causes (battery, disorderly conduct, and invasion of privacy). The agreement left sentencing to the trial court's discretion.

At sentencing, the State agreed with the probation department's recommendation of a fifteen-year executed sentence. Myles, by counsel, stated that the fifteen-year sentence was "probably actually pretty accurate" but requested that three to five years of that sentence be suspended to probation. *Transcript* at 40. Myles acknowledged that his twenty-year criminal history was aggravating but argued that his guilty plea was mitigating and noted that the amount of cocaine he sold each time was small. The trial court imposed a fully-executed fifteen-year sentence, finding Myles's criminal history as an aggravating circumstance and no mitigating circumstances. Myles now appeals.

It is well settled that sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. The trial court must enter a sentencing statement that includes the court's reasons for the imposition of the particular sentence. *Id*. If the statement includes a finding of aggravating and/or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances. *Id.* To demonstrate an abuse of discretion, the defendant must show the court failed to find a mitigating circumstance that is both significant and clearly supported by the record. *Felder v. State*, 870 N.E.2d 554 (Ind. Ct. App. 2007).

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panel. We find no reason to reconsider the motions panel's ruling and, therefore, will address Myles's appeal on the merits.

Myles contends that the trial court failed to credit the fact that he pleaded guilty. The State responds that Myles's plea does not amount to a significant mitigating circumstance because Myles received substantial benefits under the plea agreement in that he pleaded to a lesser-included offense and numerous other criminal charges were dismissed.

It has long been held that not every guilty plea amounts to a significant mitigating circumstance that must be credited by the trial court. *See Trueblood v. State*, 715 N.E.2d 1242 (Ind. 1999). The significance of a guilty plea as a mitigating factor varies from case to case. *Francis v. State*, 817 N.E.2d 235 (Ind. 2004). For example, a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one. *Wells v. State*, 836 N.E.2d 475 (Ind. Ct. App. 2005), *trans. denied*.

While the better practice certainly would have been for the trial court to acknowledge the guilty plea and discuss its significance under the circumstances, the trial court did not abuse its discretion by failing to find this mitigating circumstance. We observe that the record indicates seemingly inescapable evidence of guilt with respect to the charges in the underlying cause, which involved five controlled drug buys that were audio and/or video recorded.[2] Further, pursuant to the plea agreement, Myles pleaded guilty to B felony dealing in cocaine, rather than A felony dealing. This reduced Myles's sentencing exposure for this single charge by thirty years.[3] Finally, in addition to the fourteen counts dismissed in the

[2] In fact, defense counsel "acknowledge[d]" at sentencing that "there were multiple buys, I think we have six." *Transcript* at 41.

[3] The maximum sentence for a Class A felony is fifty years, while the maximum for a Class B felony is only twenty years. Ind. Code Ann. § 35-50-2-4, -5 (West, Westlaw through 2011 1st Regular Sess.).

instant cause, counts in three other causes were also dismissed pursuant to the plea agreement, including dealing cocaine, battery, disorderly conduct, and invasion of privacy.

Under the circumstances, we find that Myles's decision to plead guilty was primarily, if not entirely, a pragmatic one that did not rise to the level of significant mitigation. Moreover, to the extent the trial court erred in failing to address the guilty plea, we find the error harmless.

Myles also contends that the trial court abused its discretion by failing to find as a mitigating circumstance the small amount of drugs involved in each drug transaction. Myles, however, fails to establish that this alleged mitigating circumstance is significant and clearly supported by the record. Contrary to Myles's assertion on appeal, the record before us does not establish the amount of cocaine involved in the buys.[4] Further, Myles has not established that selling a piece of crack cocaine for fifty dollars, as opposed to a much larger amount of the drug, constitutes a significant mitigating circumstance.

Finally, Myles argues that the fifteen-year executed sentence imposed in this case is inappropriate. We have the constitutional authority to revise a sentence if, after careful consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Ind. Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482. Even if a trial court follows the appropriate procedure in arriving at its sentence, we maintain the constitutional power to revise a sentence we find

[4] The trial court took judicial notice of the probable cause affidavit at the guilty plea hearing, but it is absent from the appendix filed by Myles in this appeal.

inappropriate. *Hope v. State,* 834 N.E.2d 713 (Ind. Ct. App. 2005). Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). The burden of persuading us that the sentence is inappropriate is on the defendant. *Rutherford v. State,* 866 N.E.2d 867.

In this case, Myles does not dispute that a fifteen-year sentence is appropriate. Rather, he asks us to suspend five years of that sentence to probation. The trial court expressly denied this request, noting Myles's twenty-year criminal record and history of arrests.[5] Myles's character counsels against his request to suspend five years of his sentence. Without detailing his significant criminal history, which is not in dispute, we simply observe that essentially Myles's entire adult life has involved drug abuse and criminal behavior. He has been granted the benefit of probation on more than one occasion and has been sentenced to the Illinois Department of Correction on two occasions (three years in 1993 and four years in 1995). Despite this, Myles continued a life of crime and drug use and has never sought drug treatment.[6]

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[5] In addition to Myles's lengthy criminal record and history of drug abuse, the trial court explained:

> As far as suspending any of that and placing you on probation actually I think it's in your best interest that I not put you on probation. Looking at your record [], whether they've been dismissed or not, you've consistently been arrested almost every year for the past, since you've been out of prison. I think if I put you on probation I'm just going to set you up for failure. If you were really true about kicking your drug habit you don't need the Court behind you to kick you to go there. There are services available to you through the Department of Correction and certainly if you want help there are people in the community that can help you whether or not you're on probation.

Transcript at 43-44.

[6] We are unpersuaded by Myles's assertion that a portion of his sentence should be suspended because he had "shown a talent for entrepreneurial endeavors since moving to Peru." *Appellant's Brief* at 15.

We remind Myles: "The suspension of a sentence is a matter of grace and a judicial favor to a defendant. In other words, a suspended sentence is not something to which a defendant has a right or an entitlement." *Turner v. State*, 878 N.E.2d 286, 296 (Ind. Ct. App. 2007), *trans. denied*. The trial court's refusal to suspend a portion of Myles's sentence was not inappropriate.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.