ATTORNEY FOR APPELLANT:

BRUCE W. GRAHAM
Graham Law Firm P.C.
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

WILLIE JAMES HUGGINS, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A05-1106-CR-276
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-1009-FA-23

December 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Willie James Huggins, Jr., appeals his aggregate sentence of thirty-four years with four years suspended to probation for three Class A felonies, one Class C felony, and two Class A misdemeanors. He contends both that the trial court abused its discretion in identifying three aggravators and that his sentence is inappropriate in light of the nature of the offenses and his character. Finding no abuse of discretion and that Huggins has failed to persuade us that his sentence is inappropriate, we affirm.

Facts and Procedural History

In September 2010, the State charged Huggins with eight counts: Class A felony dealing in cocaine (Count I), Class A felony possession of cocaine (Count II), Class A misdemeanor possession of marijuana (Count III), Class A misdemeanor possession of paraphernalia (Count IV), Class C felony neglect of a dependent (Count V), Class A felony conspiracy to commit dealing in cocaine (Count VI), Class A felony dealing in cocaine (Count VII), and Class A felony dealing in cocaine (Count VIII).

The charges stem from two controlled buys of cocaine by the Lafayette Police Department on September 13, 2010. In the early morning hours of September 14, Huggins – who police had connected to the buys through his runner, Otis Battiste – was pulled over. Marijuana and some of the prerecorded buy money were found in his car. At the time, Huggins shared an apartment with his girlfriend and one-month-old daughter. Huggins' girlfriend consented to a search of their apartment. During the search, the police found two bags of marijuana, a baggie containing 8.6 grams of cocaine, and digital scales inside a Boppy pillow, which is used to support an infant. They also

found nearly one-fourth of a pound of crack cocaine in a box containing baby wipes, some more of the prerecorded buy money, and marijuana pipes.

In April 2011, the twenty-three-year-old Huggins pled guilty to Counts I-VII.

A sentencing hearing was held in May 2011. Detective Jonathan Eger from the Tippecanoe County Drug Task Force testified for the State. Specifically, Detective Eger testified that when he talked to Huggins at the police station after he was pulled over, Huggins

> admitted possession of the drugs inside the apartment at his girlfriend's house. He admitted that he sells crack cocaine. He stated that he was selling crack cocaine to repay a $50,000.00 debt to his drug supplier in Chicago, Illinois.[1]

Tr. p. 37. When asked about this large quantity of drugs, Detective Eger explained that based on his training and experience, he had never seen this amount of drugs before in Lafayette: "This is the biggest crack cocaine dealer, to my knowledge, that's ever been in [this] courtroom. He is the kingpin in Lafayette. I'm sure he has a larger drug supplier in Chicago, but for our area, this is the biggest one I've seen." *Id.* at 38. Detective Eger then clarified that Huggins was the largest "crack dealer," as opposed to powdered-cocaine dealer, that he had seen. *Id.* Detective Eger recounted that Huggins admitted to storing his drugs and scale in the Boppy pillow and that he used to sell drugs in Chicago before moving to Lafayette. Detective Eger also said that Huggins' reason for not having a full-time job was that if he had a regular job *and* sold cocaine to pay off his debt, he would still end up going to jail; therefore, it did not make sense to have a regular job. Detective Eger concluded his testimony by saying:

[1] At the beginning of the sentencing hearing, Huggins denied telling the police officer that he was selling crack cocaine to repay a $50,000 drug debt that he owed to his supplier in Chicago. Tr. p. 35.

> I don't just work on the Drug Task Force. I've helped out the Lafayette Street Crimes Unit quite a bit and they at one time had been conducting drug investigations. I've worked with the West Lafayette Narcotic's Unit. I've worked with the FBI Safe Streets Task Force here in Tippecanoe County. And this is the biggest crack dealer that I've seen. . . . I mean, I have never seen that much crack cocaine before, that is . . . not the norm, it's unheard of in this area.

Id. at 46-47. Detective Eger added that Huggins was not a crack user, which, based on his experience, "is what defines a true drug dealer." *Id.* at 50.

Huggins testified at the sentencing hearing and took full responsibility for his actions. He apologized to his daughter for putting her in that situation. He said that when he moved to Lafayette in 2008, his intention was not to sell drugs. Huggins said he was "not a bad person, [he] just made a bad mistake." *Id.* at 52. He pointed out that this was his first conviction. He also said he did not want to raise his daughter through a prison visiting room.

Following Detective Eger's and Huggins' testimony, the trial court made the following comments:

> I don't know that [Huggins] is a kingpin, but he is certainly up the line from the people who are users who sell at retail on the street. [Huggins] sells to the people who sell to retailers on the street and I think it is fair to infer that he gets his drugs in Chicago or that somebody from Chicago gets the drugs to him. I'm not sure if it's been established how he exactly acquired the drugs and whether somebody carried the drugs to him or whether he picked up the drugs in Chicago. He knows who his dealer is in Chicago, but it's not clear that he's provided that information . . . .[2] That places him in a chain where I would assume that the kingpin is somebody who is importing drugs into the country on a larger scale than this. I've also seen quantities of crack cocaine in town that are, if not as large as this, approaching this, so . . . I can't infer that this is the largest drug dealer in town. There is certainly on the other hand a substantial operation and enough drugs to make a substantial amount of money, but being sold to and delivered

[2] At this point, the trial court acknowledged the statement that Huggins disputed, but the court said it would "infer that he did make the statement that is reported." Tr. p. 58.

> through retailers and, in fact, close enough to the people making the purchases in the street that the communications are coming to the defendant rather than the defendant passing the goods out to wholesalers who are then . . . working through retailers. All of that—nevertheless, it's a serious crime. The amount of drugs is a large amount. There is a conspiracy involved.
>
> There is a child involved and it is a substantial operation. That's the aggravating factor. Those are the aggravating factors, collectively, which amount to the seriousness of the crime. [Huggins] did plead guilty and take responsibility. He did cooperate with law enforcement in providing most of the information which establishes the circumstances on which the State relied and he has no prior criminal record. There is some evidence that he was involved in substantial drug operations in Chicago, but that comes through his own statement rather than through independent evidence.
>
> I think with respect to the neglect of a dependent charge that it's—the child was there where drugs were being sold, but it's a substantial crime beyond that, in that the child's belongings were concealing the drugs. The drugs were right there in the bedroom so the child essentially was being used as a shield for the drugs. And so that's the aggravating factors there as well.

Id. at 58-60. In its written sentencing order, the trial court identified as "an aggravating factor the seriousness of the crime as to the amount, the conspiracy and there was a child involved." Appellant's App. p. 8. The court identified "as mitigating factors [Huggins] has no history of delinquent or criminal activity, [he] has pled guilty and taken responsibility for his crime, and [he] cooperated with law enforcement." *Id.* The trial court concluded that the aggravators outweighed the mitigators.

Accordingly, the trial court merged Count II into Count I and sentenced Huggins to thirty years for Count I, one year for Count III, one year for Count IV, four years for Count V, thirty years for Count VI, and thirty years for Count VII. Huggins received the advisory sentence for each count. The court ordered the sentences for Counts I, III, IV, VI, and VII to be served concurrently and the sentence for Count V, neglect of a

dependent, to be served consecutively, for an aggregate term of thirty-four years. The court ordered thirty years to be executed and four years to be suspended to probation.

Huggins now appeals his sentence.

Discussion and Decision

Huggins raises two issues on appeal. First, he contends that the trial court abused its discretion in identifying as aggravators the seriousness of the crime as to the amount of drugs, the conspiracy, and that there was a child involved. Second, he contends that his thirty-four-year sentence with four years suspended to probation is inappropriate in light of the nature of the offenses and his character. He therefore asks us to revise his sentence to one "in the range of twenty to twenty-five years, with ten years executed in the Department of Correction, and two years on Community Corrections. The consecutive sentence should run concurrently. The balance should be suspended." Appellant's Br. p. 16.

I. Abuse of Discretion

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 in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes

aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Id.* at 490-91. Because a trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, it cannot now be said to have abused its discretion in failing to properly weigh such factors. *Id.* at 491. In addition, when sentencing a defendant on multiple counts, a trial court may impose a consecutive sentence if he or she finds at least one aggravator. *Smylie v. State*, 823 N.E.2d 679, 686 (Ind. 2005); *see also* Ind. Code § 35-50-1-2(c). If a trial court abuses its discretion, "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." *Anglemyer*, 868 N.E.2d at 491.

Huggins argues that all three aggravators – the seriousness of the crime as to the amount of drugs, the conspiracy, and that there was a child involved – are improper as a matter of law because each aggravator is a material element of one of the offenses that he was convicted of. Therefore, he argues that the trial court abused its discretion when it ordered his four-year-advisory sentence for neglect of a dependent to be served consecutive to the concurrent, advisory sentences for his remaining convictions.

The law is clear that a material element of a crime may not be used as an aggravating factor. *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007); *Waldon v. State*, 829 N.E.2d 168, 183 (Ind. Ct. App. 2005), *trans. denied.* However, when evaluating the nature of the offense, the trial court may properly consider the particularized

circumstances of the factual elements as aggravating factors. *McElroy*, 865 N.E.2d at 590. This aggravator is generally associated with particularly heinous facts or situations. *Id.*

Huggins does not dispute that approximately 110 grams of crack cocaine were seized from him, he conspired with Battiste to sell cocaine, and he endangered his daughter. He notes, however, that his dealing offenses were elevated to a Class A felony because of the amount of cocaine involved and that he already was punished for both his conspiracy with Battiste "and/or unknown others," Appellant's App. p. 40 (charging information), and endangering his daughter.

We, however, find that the trial court was considering the particularized circumstances of the factual elements as aggravating factors. It is clear from the trial court's comments at the sentencing hearing that it thought that Huggins was one of the higher-ups in a substantial drug operation that involved filtering crack cocaine from Chicago to Tippecanoe County. Although the trial court cited the amount of crack cocaine recovered, the fact that the total amount of cocaine recovered from Huggins far exceeded the amount needed for a Class A felony was not used as an individual aggravator. Rather, it was used in conjunction with other aspects of his offenses that led the trial court to consider it a substantial, ongoing criminal enterprise. Further, even though Huggins was convicted of neglect of a dependent, the trial court found that not only did Huggins expose his one-month-old daughter to drugs, but he also hid his drugs and paraphernalia in her Boppy pillow, thereby using her to shield his drug activities. Accordingly, we find that the trial court properly identified the particularized

circumstances of these crimes as aggravating, which therefore supports Huggins' consecutive sentence for neglect of a dependent. The trial court did not abuse its discretion in sentencing Huggins.

II. Inappropriate Sentence

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 sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

The principal role of Rule 7(B) 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). We "should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Id.* Whether a sentence is inappropriate ultimately turns on 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. When reviewing the appropriateness of a sentence under Rule 7(B),

we may consider all aspects of the penal consequences imposed by the trial court in sentencing the defendant, including whether a portion of the sentence was suspended. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4. 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. *Id.* § 35-50-2-4(a). Here, the trial court sentenced Huggins to the advisory term of thirty years for his Class A felonies and the advisory term of four years for his Class C felony. As detailed above, the court ordered only two of Huggins' six sentences to run consecutively, for an aggregate term of thirty-four years. The trial court suspended four years to probation.

As for the nature of the offenses, Huggins – who did not use crack cocaine but only marijuana – possessed, dealt, and conspired to deal crack cocaine brought down to Tippecanoe County from Chicago and possessed marijuana and paraphernalia. He did so in close proximity to his one-month-old daughter, hiding drugs and paraphernalia inside her Boppy pillow and using her to shield his illegal activities. Furthermore, Huggins possessed approximately 110 grams of cocaine, which was one of the largest amounts recovered in Tippecanoe County. It was apparent that Huggins was involved in a substantial drug operation, which included using runners.

As for Huggins' character, it is true that he has no juvenile or adult record. But Huggins is an admitted drug dealer who obtained his crack cocaine from Chicago and

used runners to then sell it in Tippecanoe County. Huggins did not have a regular job at the time, although he had in the past, because he reasoned his drug-dealing activities would inevitably lead to his incarceration. We acknowledge that Huggins cooperated with law enforcement and pled guilty, thereby taking responsibility for the crimes. Also, Huggins obtained his GED diploma while incarcerated. Although Huggins has some redeeming aspects to his character, they are overshadowed by the nature of these offenses and the harm that he posed to his one-month-old daughter. Accordingly, we cannot say that an executed sentence of thirty years for three Class A felonies, one Class C felony, and two Class A misdemeanors is inappropriate.

Affirmed.

ROBB, C.J., and NAJAM, J., concur.