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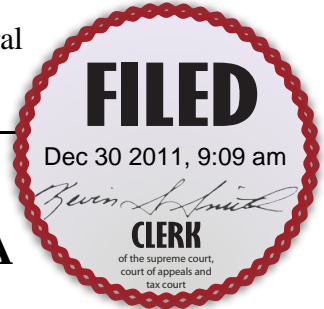
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**IN THE  
COURT OF APPEALS OF INDIANA**

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DYLAN R. SINN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 84A01-1106-CR-318

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APPEAL FROM THE VIGO SUPERIOR COURT

The Honorable David R. Bolk, Judge

Cause Nos. 84D03-0408-FA-2260, 84D03-1103-FD-830 & 84D03-0910-FD-3398

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**December 30, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

After entering into a plea agreement which covers three cause numbers, Dylan R. Sinn now appeals his aggregate sentence of thirteen years for violating his probation, committing two Class D felony drug-related offenses, and being a habitual substance offender. Sinn contends both that the trial court abused its discretion in failing to find his substance abuse as a mitigator and that his sentence is inappropriate. Finding no abuse of discretion and that Sinn has failed to persuade us that this thirteen-year sentence is inappropriate, we affirm.

## **Facts and Procedural History**

This appeal involves three separate cases concerning Sinn. In August 2004, the State charged Sinn with Class A felony dealing in methamphetamine, Class B felony unlawful possession of a firearm by a serious violent felon, Class A misdemeanor criminal recklessness, and Class D felony possession of marijuana under Cause No. 84D03-0408-FA-2260 (Cause No. 2260). In November 2005, Sinn pled guilty to Class B felony dealing in methamphetamine and Class B felony unlawful possession of a firearm by a serious violent felon. Pursuant to the plea agreement, the other charges were dismissed. The trial court sentenced Sinn to an aggregate term of twenty years with twelve years executed, eight years suspended, and six years of probation. While in the DOC, Sinn had a major conduct report for possession of intoxicants. Tr. p. 88. It appears that Sinn was released to probation in May 2009 after leaving the DOC and participating in a Community Transition Program.

In October 2009, while Sinn was on probation in the above case, the State charged him with Class D felony resisting law enforcement, Class D felony battery resulting in bodily injury, Class B misdemeanor disorderly conduct, Class B misdemeanor public intoxication, and habitual offender enhancement under Cause No. 84D03-0910-FD-3398 (Cause No. 3398).

The Vigo County Probation Department promptly filed a notice of probation violation in Cause No. 2260 based on the new charges that the State filed against Sinn in Cause No. 3398.

Meanwhile, Sinn's jury trial in Cause No. 3398 was rescheduled several times to late April 2011. In March 2011, the State charged Sinn with Class D felony possession of marijuana, Class D felony maintaining a common nuisance, and habitual substance offender enhancement under Cause No. 84D03-1103-FD-830 (Cause No. 830).

On April 26, 2011, Sinn entered into a plea agreement for all three cause numbers. Specifically, Sinn admitted that he violated his probation in Cause No. 2260. He also pled guilty to Class D felony possession of marijuana and Class D felony maintaining a common nuisance and admitted to being a habitual substance offender in Cause No. 830. Pursuant to the plea agreement, the State dismissed all charges in Cause No. 3398 and the parties agreed that the sentences in Cause Nos. 2260 and 830 would run consecutively.<sup>1</sup>

A sentencing hearing was held in May 2011 for Cause Nos. 830 and 2260. The twenty-six-year-old Sinn testified that he had a drug problem since the age of twelve,

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<sup>1</sup> The State also dismissed a driving while suspended charge in another cause number. Tr. p. 5. In addition, the record reveals that in February 2010, while Sinn was still on probation in Cause No. 2260, he was arrested for operating while intoxicated in yet another cause number. Sinn was convicted of OWI in November 2010.

which started with methamphetamine and then extended to alcohol and marijuana. Sinn explained that the only time he received alcohol and drug treatment was when he was fifteen or sixteen years old. Nevertheless, Sinn admitted having a good upbringing. When talking about his soon-to-be-born twins, Sinn said, “I just want to raise them the way I was raised, which was great.” Tr. p. 40.

In pronouncing his sentence, the trial court made numerous observations about Sinn. Specifically, the trial court observed that Sinn had nine juvenile arrests, four adult arrests, and a number of juvenile adjudications and convictions for “serious crimes.” *Id.* at 79. The court noted that one of his juvenile arrests was waived to adult court because it was armed robbery. The court calculated that since the age of seventeen, Sinn had received twenty-six years of sentences, with ten executed. And the court counted that since May 2009, Sinn had been arrested three times. As a result, the court said that “[p]robation isn’t a solution here. It’s, it hasn’t worked. It absolutely has not worked.” *Id.* at 81. Accordingly, the court identified as aggravators Sinn’s significant criminal history and the fact that he committed two offenses while on probation. Appellant’s App. p. 25. The court noted that Sinn’s offenses were “to a certain extent . . . substance related, they’re not all substance offenses, but his substance abuse, addiction, have caused these to happen, and that’s, that’s clear.” Tr. p. 82.

As for mitigators, the trial court agreed that Sinn was “smart” and had “intellect” and “family support.” *Id.* at 82-83. In fact, Sinn was close to obtaining a bachelor’s degree. Instead of finding these things mitigating, however, the trial court observed that “[Sinn] shouldn’t be in [the defendant’s] chair because of what [he does have].” *Id.* at

83. As for Sinn's argument that he was likely to respond to short-term imprisonment or probation, the court stated:

He's failed so far and the only thing that I can see that's changed from today, from today as opposed to the last time that Mr. Sinn was here, is the fact that he's now expecting to be a father. Whether that's enough to change his life, I don't know, but it wasn't enough to change his life to commit these crimes that he's committed since he found out his girlfriend's pregnant with twins; those happened after that and not before.

*Id.* at 85.

As for Sinn's argument that his character and attitude show that he is unlikely to commit another crime, the court "reject[ed] that argument wholeheartedly" because "[n]othing's worked so far. I, I have nothing in front of me that leads me to conclude that, that he's gonna turn around himself at this point." *Id.* Importantly, the judge noted that in his eight years of experience, "[Sinn's] record is about as bad as it gets . . . . [He's] had the most serious crimes committed, [he] get[s] in trouble again and again and again. I mean, there's very little left to say." *Id.* at 86.

The court did find two mitigators, though. Appellant's App. p. 25. It acknowledged that imprisonment will be a hardship to Sinn's girlfriend and soon-to-be-born children because they will be deprived of his financial support but nevertheless responded, "[U]nfortunately that's the choice that [he's] made." *Id.*; Tr. p. 86. In addition, although the trial court acknowledged that Sinn pled guilty, it ultimately concluded that he received a significant benefit from the plea. Appellant's App. p. 25. The court found that Sinn "is a danger to the community and himself, and that an extensive executed sentence is warranted under the facts and circumstances presented." *Id.* Accordingly, for Cause No. 830, the trial court sentenced him to two years for each

of the two Class D felonies, to be served concurrently, and a four-year enhancement for being a habitual substance offender. And for Cause No. 2260, the probation violation case, the trial court sentenced him to seven years of his previously-suspended sentence for the two Class B felonies. The court ordered the sentences in the two cause numbers to be served consecutively, for an aggregate term of thirteen years.

Sinn now appeals his sentence.

### **Discussion and Decision**

Sinn makes two arguments on appeal. First, he contends that the trial court abused its discretion in failing to find his substance abuse as a mitigator. Second, he contends that his thirteen-year sentence is inappropriate in light of the nature of the offenses and his character.

#### **I. Abuse of Discretion**

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, 490 (Ind. 2007), *clarified 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.* We can review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id.* at 491. One way in which a court may abuse its discretion is by entering a sentencing statement that omits mitigating circumstances that are clearly supported by the record and advanced for consideration. *Id.* at 490-91. However, a trial court is not obligated to accept a

defendant's claim as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000).

Sinn argues that the trial court failed to identify his substance abuse as a mitigator. While we have recognized that a history of substance abuse may be a mitigating circumstance, we have held that when a defendant is aware of a substance-abuse problem but has not taken appropriate steps to treat it, the trial court does not abuse its discretion by rejecting the addiction as a mitigating circumstance. *Hape v. State*, 903 N.E.2d 977, 1002 (Ind. Ct. App. 2009), *trans. denied*. Indeed, a history of substance abuse is sometimes found by trial courts to be an aggravator, not a mitigator. *Iddings v. State*, 772 N.E.2d 1006, 1018 (Ind. Ct. App. 2002), *trans. denied*.

Here, it is apparent from the record that Sinn knew for some time that he had a substance-abuse problem but did little or nothing to treat it. Rather, Sinn repeatedly used drugs and allowed it to affect his conduct. For example, Sinn testified that he used marijuana whenever it would not result in a "dirty urinalysis." Tr. p. 53. The trial court recognized that Sinn had a problem, which no doubt contributed to his significant criminal record, but still did not find it mitigating. The trial court did not abuse its discretion when it did not recognize Sinn's substance abuse as a significant mitigating circumstance.

## **II. Inappropriate Sentence**

Sinn contends that his aggregate sentence of thirteen years is inappropriate in light of the nature of the offenses and his character. Our rules authorize revision of a sentence "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.” Ind. Appellate Rule 7(B). “[A] defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review.” *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 a myriad of other factors that come to light in a given case. *Id.* at 1224.

In a plea agreement covering three cause numbers, Sinn pled guilty to two Class D felonies, admitted to violating his probation for two prior Class B felonies, and admitted to being a habitual substance offender. A person who commits a Class D felony shall be imprisoned for a fixed term of between six months and three years, with the advisory sentence being one and one-half years. Ind. Code § 35-50-2-7. In addition, the court shall sentence a person found to be a habitual substance offender to an additional fixed term of at least three years but not more than eight years, “to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3.” *Id.* § 35-50-2-1(f). The parties agreed to cap Sinn’s habitual substance offender enhancement to four and one-half years,



Tr. p. 25, and the trial court sentenced him to two years for each Class D felony, four years for being a habitual substance offender, and seven years for violating his probation.

As for the nature of the offenses, Sinn violated his probation in Cause No. 2260 (the dealing and SVF case) by committing the battery-related offenses shortly after being released to probation and having the benefit of a Community Transition Program. And he was charged with the marijuana and common nuisance offenses in Cause No. 830 while his jury trial in the battery case was pending. Sinn said that he received 471 grams of marijuana in exchange for work he performed and that it was for his personal use. Tr. p. 54.

As for Sinn's character, his criminal record speaks for itself. At the age of twenty-six, he is both a serious violent felon and a habitual substance offender. In the words of the trial court, his record "is about as bad as it gets." *Id.* at 86. Although Sinn blames his criminal conduct on "his lifelong battle with the demons of addictions," Appellant's Br. p. 8, he has taken very few steps to address his problem. Despite his substance-abuse problems, he claims that he "shines with promise of something better." *Id.* He notes that he is close to finishing his bachelor's degree and his girlfriend is expecting twins. The trial court did not find these persuasive, as Sinn jeopardized both of them by engaging in criminal conduct yet again. Despite the numerous chances that Sinn has been given, including two stays in the DOC, probation, and the Community Transition Program, Sinn continues to reoffend. As the trial court found, there is simply nothing in the record that leads us to believe that this time will be any different. And because of this, Sinn has failed to persuade us that his thirteen-year sentence is inappropriate.

Affirmed.

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