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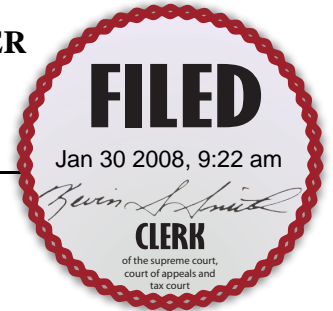
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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES COOK,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 34A04-0709-CR-521

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Jr., Judge
Cause No. 34D01-0602-FA-155

January 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

James Cook appeals his guilty plea and thirty-year sentence for Class A felony possession of cocaine. We affirm.

Issues

Cook presents three issues for our review, which we restate as:

- I. whether he can challenge his guilty plea on direct appeal;
- II. whether the trial court abused its discretion in sentencing him; and
- III. whether his thirty-year sentence is appropriate.

Facts

In February 2006, Cook was serving in-home detention for a Class B felony possession of cocaine conviction. Confidential sources informed Howard County Sheriff's officers that Cook was selling cocaine from his home during this time. Officers conducted surveillance of Cook's home for approximately two weeks. After obtaining a search warrant, officers recovered 7.3 grams of cocaine, marijuana, scales, cash, and other drug paraphernalia from the home. Cook's home was located within 1000 feet of an elementary and a middle school in Kokomo.

The State charged Cook with Class A felony dealing in cocaine, Class A felony possession of cocaine, and Class A misdemeanor possession of marijuana on February 20, 2006. He pled guilty to Class A felony possession of cocaine on the morning of trial. The State dismissed the other two charges. The trial court sentenced Cook to thirty years

in the Department of Correction, with ten years suspended on supervised probation. This appeal followed.

Analysis

I. Challenge to the Guilty Plea

Cook contends that the State did not provide a sufficient factual basis to support his conviction for Class A felony possession of cocaine. He argues the testimony does not properly establish that he possessed cocaine within 1000 feet of a school with children present. This issue is not properly before us on direct appeal. “A person who pleads guilty cannot challenge the propriety of any resulting convictions on direct appeal; he or she is limited on direct appeal to contesting the merits of a trial court’s sentencing decision where the sentence is not fixed by the plea agreement.” Starr v. State, 874 N.E.2d 1036, 1037 (Ind. Ct. App. 2007), trans. denied. We will not consider this claim, as it could only be brought, if at all, through post-conviction relief and not by direct appeal.

II. Abuse of Discretion

We engage in a four-step process when evaluating a sentence under the current “advisory” sentencing scheme. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a

particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

The trial court pronounced a detailed oral sentencing statement along with an abbreviated written statement. The trial court identified Cook's criminal history as an aggravating factor and the fact that he pled guilty as a mitigating factor. It found that these factors balanced and assigned the Class A felony advisory sentence of thirty years, with ten suspended. See Ind. Code § 35-50-2-4. Cook contends the trial court did not properly weigh the aggravators and mitigators in determining his sentence. He seems to contend that his limited criminal history deserved less aggravating weight and his plea deserved more mitigating weight. Anglemyer, however, expressly directs that we are not to conduct such a re-weighing. Anglemyer, 868 N.E.2d at 482.

Cook also seems to contend that the trial court failed to recognize his substance abuse as a mitigator and that his addiction entitled him to a reduced sentence. Cook did readily admit his drug addiction to the trial court, but such a condition and an admission of the same are not mandatory mitigating factors. See Iddings v. State, 772 N.E.2d 1006, 1018 (Ind. Ct. App. 2002), trans. denied, (“[A] history of substance abuse is sometimes found by trial courts to be an aggravator, not a mitigator.”) The trial court properly considered the aggravators and mitigators in this case. It was within the trial court's discretion to sentence Cook to thirty years, with ten suspended.

III. Appropriateness

Having concluded the trial court acted within its discretion in sentencing him, we now assess whether his sentence is inappropriate under Indiana Appellate Rule 7(B) in

light of his character and the nature of the offense. See Anglemyer, 868 N.E.2d at 491. Although Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Cook makes no claim regarding the nature of the crime, but contends that his sentence is inappropriate in light of his character. Cook pled guilty, but such a plea does not automatically entitle him to a reduced sentence. Although our supreme court has long held that a defendant who pleads guilty deserves “some” mitigating weight be given to the plea in return, a guilty plea may not be significantly mitigating when the defendant receives a substantial benefit in return, or when the defendant does not show acceptance of responsibility. McElroy v. State, 865 N.E.2d 584, 591-92 (Ind. 2007). Cook received a benefit for pleading guilty because the State dismissed the additional Class A felony count and Class A misdemeanor count pending against him. It should also be noted that Cook pled guilty on the morning of his trial, so any savings of time, preparation, and expense by the State is minimal.

We also find it troubling that while serving in-home detention for another cocaine related conviction, Cook continued to engage in drug selling. Although his criminal history is minimal, he was serving a sentence for a similar offense committed just two years earlier. We cannot see how this merits reducing the weight of his criminal history.

See Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006) (“The weight is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant’s culpability.”) Cook took advantage of the court’s leniency in the prior sentence and continued to commit drug offenses. This situation reflects poorly on his character. We conclude that Cook’s character is by no means outstanding and does not warrant a reduction to Cook’s sentence. Nor do we believe the nature of the offense has particularly exceptional elements warranting either a reduction or enhancement of the sentence. Cook has not persuaded us that his thirty-year sentence is inappropriate.

Conclusion

Cook cannot challenge his guilty plea on direct appeal. The trial court did not abuse its discretion in sentencing Cook, and the thirty-year sentence is appropriate. We affirm.

Affirmed.

SHARNACK, J., and VAIDIK, J., concur.