

STATEMENT OF THE CASE

Defendant-Appellant Josh R. Crager appeals the sentence the trial court imposed for his conviction for possession of methamphetamine within 1000 feet of a public park, a Class B felony. Ind. Code § 35-48-4-6.1(b)(2) (2006). We affirm.

ISSUE

Crager raises one issue, which we restate as whether Crager's sentence is inappropriate in light of the nature of the offense and the character of the offender.¹

FACTS AND PROCEDURAL HISTORY

Crager lived in an apartment that was part of his parents' home in Corunna, Indiana. His parents' home was located within 1000 feet of Corunna Public Park. On

¹ In a footnote in the Appellee's Brief, the State asserts that Crager waived his right to appeal his sentence in the parties' plea agreement. Appellee's Br. p. 3, n.1. A defendant may waive the right to appellate review of his sentence as part of a written plea agreement. *Creech v. State*, 887 N.E.2d 73, 75 (Ind. 2008). In Crager's case, the plea agreement provides that he "knowingly, intelligently, and voluntarily *waives* his or her right to challenge the sentence on the basis that it is erroneous." Appellant's App. p. 71 (emphasis in original). Crager's plea agreement does not explicitly discuss Indiana Appellate Rule 7(B). This Court has upheld provisions in plea agreements that purport to waive one's right to argue on appeal that a sentence is inappropriate, but those provisions addressed Appellate Rule 7(B). *See Akens v. State*, 929 N.E.2d 265, 266 (Ind. Ct. App. 2010) (determining that the defendant had waived the right to appeal his sentence because the plea agreement stated, "Defendant hereby waives the right to appeal any sentence imposed by the Court, including the right to seek appellate review of the sentence pursuant to Indiana Appellate Rule 7(B), so long as the Court sentences the defendant within the terms of this plea agreement."); *Brattain v. State*, 891 N.E.2d 1055, 1057 (Ind. Ct. App. 2008) (determining that the defendant had waived his sentencing appeal because the plea agreement stated "Defendant further waives the right (under Indiana Appellate Rule 7 and I.C. 35-38-1-5 or otherwise) to review of the sentence imposed.").

Plea agreements are in the nature of contracts entered into between the defendant and the State. *Valenzuela v. State*, 898 N.E.2d 480, 482 (Ind. Ct. App. 2008), *trans. denied*. We construe any contract ambiguity against the party who drafted it, which in the case of plea agreements is the State. *Id.* at 483. In this case, it is arguable that a claim that a sentence is "erroneous" is different from a claim that a sentence is "inappropriate." We conclude that the waiver provision in Crager's plea agreement is ambiguous with respect to review of the sentence pursuant to Appellate Rule 7(B) and consider Crager's claim on the merits.

February 23, 2009, the police executed a search warrant for the home and found methamphetamine and items related to the production of methamphetamine in Crager's apartment. The State charged Crager with several methamphetamine-related offenses, and he pleaded guilty to possession of methamphetamine within 1000 feet of a public park. The parties' plea agreement capped the executed portion of Crager's sentence at eight years. Subsequently, the trial court sentenced Crager to ten years, with four years suspended to probation.

DISCUSSION AND DECISION

Crager's sentencing challenge is governed by Indiana Appellate Rule 7(B), which provides, in relevant part, "The 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."

To assess the appropriateness of the sentence, we look first to the statutory range established for the class of the offense. The advisory sentence for a class B felony is ten years, with a minimum of six years and a maximum of twenty years. Ind. Code § 35-50-2-5 (2005). In this case, the trial court sentenced Crager to the advisory sentence of ten years but suspended four years to probation.

We then look to the nature of the offense and the character of the offender. The nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation in it. *See Gauvin v. State*, 883 N.E.2d 99, 105 (Ind. 2008) (noting that the defendant's crimes against a child were "heinous and cruel"). The character of the offender is found in what we learn of the offender's life and conduct.

See generally Houser v. State, 823 N.E.2d 693 (Ind. 2005) (reviewing the defendant's childhood, history of drug abuse, diagnosis of mental illness, and extensive criminal history).

An inappropriate sentence is not an erroneous sentence. It is a sentence authorized by statute, but one we find inappropriate and revise in light of the offense and the character of the offender. In reviewing a sentence, we give due consideration to the trial court's decision and its more direct knowledge of the offense and the offender. *See Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009) (stating, "[a]s in all sentencing, . . . we give considerable deference to the ruling of the trial court"). The burden is on the defendant to persuade us that the sentence of the trial court is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review here of the nature of the offense shows that during the execution of the search warrant the police found items and materials used in the manufacture of methamphetamine. The presence of what appeared to be a clandestine methamphetamine laboratory in Crager's apartment renders the nature of the offense more serious than a case where only methamphetamine was found.

Crager contends that the amount of methamphetamine that he possessed was not entered into the record, and for that reason he should receive a lesser sentence. We disagree. The probable cause affidavit includes one officer's estimation that more than three grams of methamphetamine was present in Crager's apartment. Crager also argues that there is no evidence that children were placed in harm's way as a result of his offense. We again disagree. The probable cause affidavit provides that children were

playing in the park nearby at the time the police executed the search warrant. Therefore, this case presents the precise risk of harm—the presence of methamphetamine near areas where children congregate—that Indiana Code section 35-48-4-6.1(b) was intended to prevent.

Our review of the character of the offender shows that the police found materials and items used to manufacture methamphetamine in Crager's apartment, which was attached to his parents' home. Such behavior endangered Crager's family and does not reflect well on his character. Crager asserts that his criminal history, which the trial court cited as an aggravating factor, is minor and remote in time from his current conviction. He is correct that his last criminal conviction was in 1999 for battery. However, Crager has conceded that he used methamphetamine regularly for approximately one year prior to his arrest, which undercuts his claim that he has a law-abiding nature. Thus, Crager has failed to convince us that his sentence is inappropriate in light of the nature of the offense and the character of the offender.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

BARNES, J., and CRONE, J. concur.