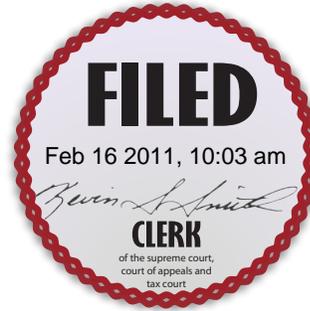


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

EMILY R. MEYER,)

Appellant-Defendant,)

vs.)

No. 35A05-1007-CR-425)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Thomas M. Hakes, Judge
Cause No. 35C01-0904-FA-21

February 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Emily Meyer appeals the sentence imposed following her conviction for Class A felony conspiracy to commit murder. We affirm.

Issue

The sole issue is whether Meyer's thirty-year sentence is inappropriate.

Facts

On February 10, 2009, Meyer was arrested in Huntington County for two counts of Class A felony dealing in a controlled substance, after she had sold drugs to a confidential informant ("CI"). After Meyer bonded out of jail on March 12, 2009, she and Tyson Keplinger began planning to kill the CI. Keplinger approached a friend from a previous time spent in prison and reached an agreement with the friend for him to carry out the killing for \$6,000. Meyer obtained \$1,800 from her grandmother, which she gave to Keplinger to partially pay his friend for the CI's killing. Keplinger also stole checks, some of which he gave to Meyer to further pay for the killing. On April 15, 2009, Meyer, Keplinger, and Keplinger's friend met and discussed the plan to kill the CI, including where the CI worked and his travel route from work to home. Keplinger paid his friend \$230 at this meeting.

Somehow, the State learned of Meyer's plan. On April 16, 2009, the State charged Meyer with Class A felony conspiracy to commit murder and Class A felony attempted murder. In November 2009, Meyer was convicted of the two counts of Class A felony dealing in a controlled substance, and she received an aggregate sentence of

thirty years, with five years suspended.¹ On March 11, 2010, Meyer pled guilty to Class A felony conspiracy to commit murder. On June 14, 2010, the trial court sentenced Meyer to a term of thirty years, to be served consecutive to her dealing in a controlled substance sentence. Meyer now appeals her sentence.

Analysis

Meyer contends that her sentence is inappropriate under Indiana Appellate Rule 7(B) in light of her character and the nature of the offense.² 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.

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

¹ We affirmed her convictions on direct appeal. See Meyer v. State, No. 35A02-1001-CR-69 (Ind. Ct. App. Aug. 31, 2010), trans. denied.

² Meyer’s plea agreement contained a paragraph purporting to waive her right to appeal her sentence. See Creech v. State, 887 N.E.2d 73, 74 (Ind. 2008). At sentencing, the trial court stated its belief that this paragraph would not be enforceable. On appeal, the State does not argue that it is enforceable. We thus will proceed to address the merits of Meyer’s appeal.

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.

Meyer’s thirty-year sentence represents the advisory for a Class A felony. See Ind. Code § 35-50-2-4. Regarding Meyer’s character, she notes that she pled guilty under an open agreement with no cap on sentencing, that she has no criminal history, aside from the drug dealing offense immediately preceding and linked to this offense, and that she testified against Keplinger at his trial. She also contends that the several crimes she committed all were related to a substance abuse problem, for which she previously had voluntarily, but unsuccessfully, sought treatment. We do agree that a guilty plea in many or most cases is entitled to mitigating weight when considering an appropriate sentence. See Marlett v. State, 878 N.E.2d 860, 866 (Ind. Ct. App. 2007), trans. denied. Meyer’s guilty plea is entitled to such weight. We also acknowledge the assistance Meyer provided to the State in prosecuting Keplinger.

With respect to Meyer’s claim regarding her criminal history, it is true that a lack of such history can be significantly mitigating. See Merlington v. State, 814 N.E.2d 269, 273 (Ind. 2004). However, despite Meyer not having been convicted of any offenses prior to the dealing offenses, the fact remains that she does have a criminal history consisting of two Class A felonies, and she was on bond for those offenses when she committed the present crime. As for Meyer’s substance abuse problem, we cannot

conclude that it should warrant a reduction of her sentence. Unfortunately, many crimes are driven by substance abuse, and we do not believe that substance abuse is necessarily a matter that must justify a sentence reduction.

Regarding the nature of the offense, we find it to be egregious. Plotting to kill a potential trial witness is something that should never be taken lightly. Meyer, along with Keplinger, clearly took direct and substantial steps toward carrying out that killing, including utilizing several avenues to raise the money to pay the potential “hit man,” and planning in detail when and where the CI should be killed. It also should be recognized that CIs who agree to work with the police in ferreting out drug dealing in our communities are placing themselves in a hazardous position, and this case illustrates why.

Meyer also argues that in considering the appropriateness of her sentence, we should consider the effective aggregate sentence of sixty years she has received for the dealing convictions and the present conviction. She notes that this sentence exceeds the advisory fifty-five year sentence for murder. See I.C. § 35-50-2-3. Although all three offenses here were related, we decline to view them as one for purposes of sentencing. As the State notes, doing so would potentially nullify the statutory requirement that the sentence for conspiracy to commit murder be served consecutive to the dealing sentences, because she committed the former while on bond for the latter. See I.C. § 35-50-1-2(d). Dealing the drugs was one offense, and plotting to kill the CI was quite another offense entirely. As such, despite some indications of positive character on Meyer’s part, the seriousness of the offense here—plotting to kill a key witness in an attempt to avoid

conviction for two Class A felonies—leads us to conclude that the advisory thirty-year sentence imposed against Meyer is not inappropriate.

Conclusion

Meyer's thirty-year sentence for Class A felony conspiracy to commit murder is not inappropriate. We affirm.

Affirmed.

BAKER, J., and VAIDIK, J., concur.