



## **Case Summary**

In this belated appeal under our former presumptive sentencing scheme, Heather Lace contends that the trial court abused its discretion in sentencing her to forty years for Class A felony possession of methamphetamine in excess of three grams with intent to deliver. Finding no abuse of discretion, we affirm.

## **Facts and Procedural History**

On May 10, 2002, an officer from the Goshen Police Department pulled Lace over in Elkhart County, Indiana, and found 418 grams of methamphetamine in her possession. Lace was apparently on her way to Ohio to sell the methamphetamine for \$10,000. On November 5, 2003, the State charged Lace with Class A felony possession of methamphetamine in excess of three grams with intent to deliver. In December 2004, Lace and the State entered into a plea agreement in which Lace agreed to plead guilty as charged, and the State agreed that the executed portion of her sentence would not exceed forty years. All other terms were left to the discretion of the trial court.

The sentencing hearing was held on January 13, 2005. The trial court found the following aggravating and mitigating circumstances:

I'll leave the crossing of state lines in the capable hands of the federal government. However, there are other aggravators here which deserve to be addressed. The defendant has three previous misdemeanor convictions [two OWIs and one carrying a handgun without a license]. She was on probation as a result of one of those convictions when she committed this offense. She has a subsequent felony conviction for an act which occurred prior to the commission of this offense, and she was on bond with regard to that charge at the time she committed this offense. And the amount of illicit drugs involved was substantial, over a pound of methamphetamine, specifically 418.83 grams.

The defendant contends she is remorseful; I have no way of assessing her sincerity, though Mr. Banik [deputy prosecuting attorney] and

I both noted that in the presentence investigation report, that she was found to have violated the jail rules and subjected to 25 days of disciplinary lockdown, due to making hooch in the jail. This doesn't strike me as conduct which one would expect from someone who is truly remorseful for the commission of this crime, and thus, I am disinclined to afford substantial weight to her purported remorse.

Likewise, I note that she has strong support in the community, but I read those letters carefully and several people made a point of telling me they didn't know about her history. Perhaps if she had shared those facts with them, their support would have been less ardent. I also note that she is truly addicted to illicit drugs; however, once again, there are reasons to discount that addiction as a mitigator. She's been given two opportunities to address her addiction in the past at Oaklawn, and each time she has either been unwilling or unable to successfully address that addiction.

Tr. p. 41-42. The trial court found that the aggravators outweighed the mitigators and sentenced Lace to forty years, which was ten years above the presumptive term. This belated appeal now ensues.

### **Discussion and Decision**

Lace contends that the trial court abused its discretion in sentencing her to forty years. Because Lace committed her offense before the April 25, 2005, revisions to our sentencing statutes, we apply the former presumptive sentencing scheme rather than the current advisory sentencing scheme. *See Gutmuth v. State*, 868 N.E.2d 427, 431 n.4 (Ind. 2007). Sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Rogers v. State*, 878 N.E.2d 269, 272 (Ind. Ct. App. 2007), *trans. denied*. Under the presumptive sentencing scheme, if the trial court imposes an enhanced sentence, it must (1) identify the significant aggravators and mitigators; (2) relate the specific facts and reasons that the court found those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. *Id.*

Lace argues that the trial court “erroneously gave substantial weight” to her criminal history. Appellant’s Br. p. 3. She specifically claims that (1) she did not have a prior felony conviction when she committed this offense, (2) her three prior misdemeanor convictions are neither serious nor related to this offense, and (3) she was not on bond when she committed this offense. Accordingly, she asserts that her “sentence should be no more than the presumptive sentence of thirty years based upon a fair balancing of the valid aggravating and mitigating factors.” *Id.* at 7.

We first note that there are at least two aggravators that Lace does *not* challenge on appeal. She does not dispute that she was on probation when she committed this offense or the significant amount of drugs involved—over 418 grams. These aggravators alone justify her enhanced sentence of forty years.

Nevertheless, we proceed to address Lace’s specific arguments. She first argues that the trial court erroneously found as an aggravator that she had “a prior felony conviction” at the time she committed this offense. *Id.* at 5. Lace, however, misunderstands what the trial court found. Actually, the trial court found that Lace had “a *subsequent* felony conviction for an act which occurred *prior to* the commission of this offense.” (Emphases added). The trial court’s chronology is absolutely correct. That is, Lace was charged with Class D felony possession of cocaine or a narcotic drug on April 10, 2002, which was exactly one month before Lace committed the offense in this case. She was then convicted of the Class D felony on January 8, 2003, which was before Lace’s conviction and sentencing in this case. Although Lace is confusing commission and conviction dates, the trial court properly found as an aggravator that Lace was later

convicted of a felony drug offense which she committed before she committed the offense in this case.

Lace next argues that her criminal history is “neither extensive, grave, nor do[] the specific offenses contained in [her] history relate to the current offense.” *Id.* at 6. Accordingly, Lace asserts that the court abused its discretion “in placing significance” on her prior criminal history. *Id.*

The weight to be placed on an individual’s criminal history “is measured by the number of prior convictions and their seriousness, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense[.]” *Morgan v. State*, 829 N.E.2d 12, 15 (Ind. 2005). In other words, the significance of a criminal history varies based on the gravity, nature, and number of prior offenses as they relate to the current offense. *Id.*

Lace has two misdemeanor OWI convictions from July 1999 (which are unrelated to each other) and one misdemeanor carrying a handgun without a license conviction from February 2002. This offense occurred in May 2002. Although Lace’s prior misdemeanor convictions are not similar to the Class A felony drug conviction in this case, they occurred close in time and reflect an escalating pattern of seriousness. That is, police intercepted Lace on her way to sell \$10,000 worth of methamphetamine just three months after her misdemeanor gun conviction. The trial court did not abuse its discretion in finding and weighing Lace’s criminal history.<sup>1</sup>

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<sup>1</sup> Although we find no error on this issue, Lace makes a sub-argument that this error influenced the court on the weight that it then put on its findings that Lace enjoys strong community support and is addicted to illicit drugs. Specifically, Lace asserts that the court wrongly found that she went to Oaklawn *before* committing the instant offense when in fact she had not. However, a plain reading of the PSI

Finally, Lace argues that the trial court erred in finding that she was on bond for Class D felony possession of cocaine or a narcotic drug when she committed this offense just one month later. Lace's Presentence Investigation Report provides that she was charged with Class D felony possession of cocaine or a narcotic drug on April 10, 2002. The offense in this case occurred on May 10, 2002. At the guilty plea hearing in this case, Lace denied being on bond at the time she committed the offense. Tr. p. 28-29. However, at the beginning of the sentencing hearing, Lace said there were no corrections to be made to her PSI. Tr. p. 36A. The probation officer reported in the "Evaluation/Summary" section that Lace was on bond for Class D felony possession of cocaine or a narcotic drug at the time she committed this offense. Appellant's App. p. 207. At best, there is confusion regarding whether Lace was on bond. Even if the trial court erred by finding that Lace was on bond, there are several valid aggravators and three mitigators that the trial court discounted. We can therefore say with confidence that the trial court would have imposed the same sentence even if it had not considered Lace's bond status. See *Ray v. State*, 838 N.E.2d 480, 494-95 (Ind. Ct. App. 2005), *trans. denied*. The trial court did not abuse its discretion in sentencing Lace to forty years for Class A felony possession of methamphetamine in excess of three grams with intent to deliver.

Affirmed.

BAKER, J., and BARNES, J., concur.

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supports the trial court, and we therefore dismiss this argument. See Appellant's App. p. 207 (Lace's own reference to Oaklawn classes as a result of OWIs), *id.* (referencing addiction treatment at Oaklawn in 2000).