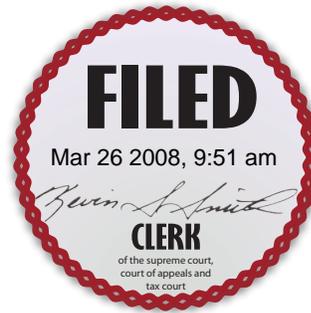


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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OTIS L. REED, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 20A03-0708-CR-387  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable George Biddlecome, Judge  
Cause No. 20D03-0609-FB-49

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**March 26, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Otis L. Reed appeals his sentence, pursuant to a guilty plea, for delivery of cocaine, as a class B felony.

We affirm.

### ISSUE

Whether Reed's sentence is inappropriate.

### FACTS

On July 13, 2006, while at his place of employment, Reed approached a confidential police source and offered to sell cocaine to the source. On July 14, 2006, the source contacted Reed and agreed to buy an "eight ball" (1/8 of an ounce) of cocaine for \$180.00. Reed sold 2.3 grams of cocaine to the source at his workplace. On September 29, 2006, the State charged Reed with one count of delivery of cocaine, as a class B felony.<sup>1</sup>

Reed's jury trial commenced as scheduled on May 14, 2007. After the parties had engaged in extensive *voir dire*, Reed entered into a plea agreement with the State. In exchange for Reed's plea of guilty to delivery of cocaine, as a class B felony, the State agreed to dismiss three additional charges pending against him. Also, under the plea agreement, sentencing was left to the discretion of the trial court. The trial court took the plea under advisement pending the completion of a pre-sentence investigation report.

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<sup>1</sup> Ind. Code §35-48-4-1.

At Reed's sentencing hearing on May 31, 2007, the trial court accepted the plea agreement. In imposing its sentence, the trial court made the following statement:

On the defendant's plea, the Court finds the defendant guilty of Delivery of Cocaine, a class B felony, [and] sentences the defendant to the Indiana Department of Correction for a period of 15 years.

As aggravating circumstances, the Court finds that the defendant has suffered two prior felony convictions and three previous misdemeanor convictions. The Court also finds as an aggravator the fact that the defendant has failed to appear for court proceedings on at least one occasion in the past. The Court also finds as an aggravator the fact that the defendant was at the time this pre-sentence investigation report was prepared, in arrears in the payment of child support in the amount of \$2,391.

The Court finds mitigators as well. The defendant's plea of guilty and acceptance of responsibility is a mitigator; however, the Court declines to give substantial weight to that mitigator, noting that the plea of guilty came during the course of the trial, thus minimizing the benefit the State realized as a result of it, and also noting that the defendant received benefits in exchange for his guilty plea, specifically, the dismissal of additional charges.

The Court finds that the defendant's employment record is laudable and is a mitigator; however, the fact that the defendant sold illicit drugs on his employer's premises diminishes the weight that the court accords to that mitigator.

[T]he defendant's expressions of remorse are a mitigator, but the Court declines to give substantial weight to those self-serving expressions. Finally, the defendant's supportive family is a mitigator.

The Court finds that the aggravators cited by the Court outweigh those mitigators, thus justifying the enhanced sentence imposed this date.

(Tr. 79-80). Reed now appeals.

Additional facts will be provided as necessary.

## DECISION

Reed contends that his sentence is inappropriate in light of the nature of the offense and his character. Specifically, he cites the “relatively small amount of cocaine” at issue, and the fact that his last drug offense was committed in 1996. Reed’s Br. at 3. He argues further that the fifteen-year sentence imposed by the trial court is inappropriate given his consistent work history, supportive family, acceptance of responsibility, and expression of remorse. Lastly, he adds,

. . . Reed has never had the benefit of formal drug rehabilitation. While Reed did not recognize any problems with cocaine addiction, based upon his history, it appears that addictions treatment may very well be of benefit for Reed.

Reed’s Br. at 3-4. We are not persuaded.

Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007).

Our review of the nature of the offense reveals that while at his workplace, Reed sold 2.3 grams of cocaine to a confidential police source for \$180.00. In our review of the character of the offender, we observe that Reed has been convicted of three misdemeanors and two felonies. The latter convictions were for possession of cocaine or a narcotic drug, and dealing in cocaine or a narcotic drug. Thus, the underlying arrest is

Reed's third cocaine-related arrest. He has previously been granted the luxury of probation, and was even sentenced to serve a ten-year prison term for dealing cocaine.

Reed's criminal history, alone, provides a sufficient basis for his enhanced sentence. *See Buchanan v. State*, 699 N.E.2d 655, 657 (Ind. 1998). Moreover, we agree with the trial court's finding that two of the applicable mitigating factors were diminished in weight by Reed's own conduct: (1) his employment history was diminished by his drug-dealing at his workplace; and (2) his acceptance of responsibility came late and he received significant benefit from the dismissal of other pending charges. Further, after considering Reed's remorse, the trial court declined to give it substantial weight, deeming it a "self-serving expression[ ]." (Tr. 80). *See O'Neil v. State*, 719 N.E.2d 1243, 1244 (Ind. 1999) (trial court did not abuse its discretion in declining to find remorse to be a mitigating factor after discussing defendant's remorse at the sentencing).

Lastly, as to Reed's contention that the trial court disregarded his drug problems, the presentence investigation report (PSI) reveals that Reed denies being addicted to cocaine, and claims that he has not abused the drug in at least ten years. In light of that fact, his assertion that "addictions treatment may very well be of benefit," is speculative and self-serving at best. Reed's Br. at 3-4. It is indeed unfortunate, particularly for his supportive family, that Reed is apparently disinclined towards rehabilitation. He has been afforded numerous opportunities, but has failed repeatedly to mend his ways.

After due consideration of the trial court's decision, we conclude that Reed's enhanced sentence of fifteen years is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.