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IN THE
COURT OF APPEALS OF INDIANA

BRANDON SCROGGIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0809-CR-543
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE COUNTY SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0801-FB-1

April 1, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Brandon Scroggin challenges the three-year sentence he received after pleading guilty to class D felony possession of cocaine. Specifically, he contends that the court should have considered his guilty plea and personal history as mitigators. In addition, Scroggin makes a brief Indiana Appellate Rule 7(B) argument. We affirm.

Facts and Procedural History

On November 2, 2007, police arrested Scroggin on an outstanding warrant. During a search incident to arrest, officers discovered a folded dollar bill containing cocaine. On January 3, 2008, the State charged Scroggin with three counts of possession of cocaine -- two as class B felonies and one as a class D felony. A few months later, the State added a habitual offender allegation.

On July 8, 2008, Scroggin entered into an agreement to plead guilty to the class D felony count in exchange for the State dismissing the remaining three counts. Per the agreement, sentencing was left open for argument. The agreement also specified that neither misdemeanor treatment nor an alternative sentencing program[1] would be an option. The court took the plea and agreement under advisement and scheduled a sentencing hearing for August 12, 2008.

At the sentencing hearing, the court accepted the guilty plea, entered judgment of conviction of class D felony possession of cocaine, and sentenced Scroggin to a three-year

[1] Scroggin was not eligible for this program because he has a felony conviction for failure to return to lawful detention. Sent. Tr. at 6.

term. During the sentencing hearing and in the sentencing order, the court cited Scroggin's drug addiction as a mitigator and his criminal history as an aggravating circumstance.

Discussion and Decision

Indiana trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id*. If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all *significant* mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id*. So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. *Id*. A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* Under the advisory sentencing scheme, trial courts no longer have any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence. *Id*. at 491.

The court was well aware of the fact that Scroggin pled guilty. However, given the substantial benefit that Scroggin received for his plea, i.e. dismissal of the two class B felonies and the habitual count, the court was not required to assign the guilty plea significant mitigating weight. *See Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). In any event,

the weight the trial court gives to such factors is not subject to appellate review. *Anglemyer*, 868 N.E.2d at 491.

Similarly, the court knew of Scroggin's difficult personal history (as a child, he was left unattended in a high chair for three days, his mother overdosed, he was placed in foster care on two occasions). His background was detailed in the presentence investigation report and brought up by defense counsel. However, a defendant who presents evidence of a troubled childhood is not automatically entitled to a reduction in his or her sentence. *Page v. State*, 615 N.E.2d 894, 896 (Ind. 1993). Again, where, as here, we know the court did not overlook a proposed mitigating circumstance, we are not at liberty to second-guess the weight (or lack thereof) that a court chooses to assign the proposed mitigating factor. Accordingly, we cannot say the court abused its discretion in sentencing Scroggin.

Indiana Appellate Rule 7(B) allows a court on review to revise a sentence if the sentence is inappropriate in light of the nature of the offense and the character of the offender. Although Rule 7(B) does not require us to be extremely deferential to a trial court's sentencing decision, we still give due consideration to that decision. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007) (recognizing the unique perspective a trial court brings to its sentencing decisions); *see also Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008) ("sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference"). The defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate. *Krempetz v. State*, 872 N.E.2d 605, 616 (Ind. 2007).

Regarding the nature of the offense, the advisory sentence is the starting point our legislature has selected as an appropriate sentence for the crime committed. *Anglemyer*, 868 N.E.2d at 494. As a class D felony, possession of cocaine carries an advisory sentence of eighteen months, with a fixed term of between six months and three years. Ind. Code § 35-50-2-7. The court sentenced Scroggin to a three-year term for having possessed cocaine within close proximity to school property. While not the most egregious circumstances, Scroggin's offense is serious.

Moving next to the question of character, we often look at criminal history. Our supreme court has emphasized that "the extent, if any, that a sentence should be enhanced [based upon prior convictions] turns on the weight of an individual's criminal history." *Duncan v. State*, 857 N.E.2d 955, 959 (Ind. 2006). "This 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." *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006).

At the age of twenty-four, Scroggin has already amassed an extensive adult criminal history, which includes three felony convictions, seven misdemeanor convictions, unsuccessful probation, and various failures to appear when required by law. He has committed operating while intoxicated, illegal possession of alcohol, battery, harassment, invasion of privacy, and auto thefts. Strangulation and battery charges are pending in another matter. In addition, Scroggin clearly has unaddressed substance issues. None of these facts reflect positively on his character.

Considering the nature of his offense and his character, Scroggin has failed to persuade us that the three-year sentence is inappropriate.

Affirmed.

RILEY, J., and MATHIAS, J., concur.