

Case Summary

Derick Smith appeals his twelve-year sentence for Class B felony dealing in a schedule II controlled substance. We affirm.

Issues

Smith raises two issues, which we restate as:

- I. whether the trial court abused its discretion in sentencing him; and
- II. whether his twelve-year sentence is appropriate in light of the nature of the offense and his character.

Facts

On February 16, 2007, the State charged Smith with Class A felony dealing in a schedule II controlled substance and Class D felony maintaining a common nuisance. Smith pled guilty to Class B felony dealing in a schedule II controlled substance and the State agreed to dismiss the other charge. Pursuant to the plea agreement, sentencing was left to the discretion of the trial court.

The trial court held a sentencing hearing on August 20, 2008. The State argued that the aggravating factors included Smith's criminal history and past failures to comply with probation and parole. Smith argued that mitigating factors included his guilty plea, the hardship on his family, and the strong support he had from family and friends. He asked for a minimum sentence with all or part of it on home detention. The trial court sentenced Smith to twelve years in the Department of Correction. This appeal followed.

Analysis

I. Abuse of Discretion

We engage in a four-step process when evaluating a sentence. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, the trial court must issue a sentencing statement that includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

Smith argues that the trial court’s failure to give substantial mitigating weight to his guilty plea was an abuse of discretion. The weight given to aggravators and mitigators, however, is not reviewable on appeal. Id. Smith does not argue that there are any deficiencies in the sentencing statement or that the trial court’s selection of aggravators and mitigators was otherwise an abuse of discretion. The trial court selected valid aggravators which were supported by the evidence—that Smith recently violated probation and that Smith had a lengthy criminal history. The trial court also properly found these mitigators—Smith’s guilty plea and the undue hardship to his family. Upon finding the weight of the aggravators to be greater, the trial court added two years to the advisory term of ten years. We conclude the trial court did not abuse its discretion in sentencing Smith.

II. Appropriateness

Smith also argues that his twelve-year sentence is inappropriate in light of the nature of the offense and the character of the offender. See Ind. Appellate Rule 7(B). 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.

Smith does not argue that anything about the nature of this crime warrants a reduction to his sentence. Smith arranged this drug transaction outside of his residence while he was holding a small child, presumably his daughter, when the confidential informant arrived. He sold eight Vicodin pills to the confidential informant later that evening. Smith has not persuaded us to lessen the twelve-year sentence based on the nature of the crime.

Smith argues that his character holds such mitigating weight that the twelve-year sentence is inappropriate. We acknowledge that multiple family members and friends testified on Smith’s behalf at his sentencing hearing, and the trial court did in fact grant the hardship to his family mitigating weight. Smith’s criminal history, however, extends from 1981 and includes multiple serious firearm and drug-related felonies in California and several misdemeanors and one felony operating while intoxicated offense in Indiana.

He has a history of violating terms of probation in both California and Indiana. Smith's character does not warrant a revision to his sentence.

Conclusion

The trial court did not abuse its discretion in sentencing Smith. He has not convinced us that his twelve-year sentence is inappropriate in light of his character and the nature of the offense. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.