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**IN THE
COURT OF APPEALS OF INDIANA**

BRUCE TODD BOWMAN,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 79A04-0810-CR-623

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Joseph Bumbleburg, Judge Pro Tempore
Cause No. 79D01-0806-FD-00030

May 4, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Bruce Todd Bowman (“Bowman”) pleaded guilty in Tippecanoe Superior Court to Class D felony dealing in marijuana and admitted to being a habitual substance offender. He was sentenced to an aggregate term of ten years. Bowman appeals, and argues that the trial court abused its discretion by improperly using his criminal history as a double aggravator and that his sentence is inappropriate based on the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On June 25, 2008, Bowman was stopped for speeding. The officer noticed that Bowman was acting nervous and called in a K-9 unit. The K-9 unit alerted to the possibility of drugs in the car. The officer asked Bowman about the presence of drugs. Bowman admitted to the presence of marijuana in the vehicle. The vehicle was then searched. The search uncovered 118 grams of marijuana in five separate baggies. Bowman was arrested.

On June 26, 2008, the State charged Bowman with Class D felony dealing in marijuana, Class D felony possession of marijuana in excess of thirty grams, four counts of Class D felony possession of marijuana while having a prior conviction for possession of marijuana, and Class A misdemeanor possession of marijuana. On July 10, 2008, the State amended the charging information to include a habitual substance offender enhancement.

On August 13, 2008, Bowman pleaded guilty to Class D felony dealing marijuana and admitted to being a habitual substance offender. The plea agreement made no

sentencing recommendation. On September 12, 2008, the trial court sentenced Bowman to three years for the Class D felony which was enhanced by seven years for a total executed sentence of ten years. Bowman appeals.

Discussion and Decision

Bowman first argues that the trial court double aggravated his sentence based on failed attempts at rehabilitation. Sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the 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. at 491 (citations omitted).

A trial court can abuse its sentencing discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that explains reasons for imposing a sentence where the record does not support the reasons; (3) entering a sentencing statement that omits reasons that are clearly supported by the record and advanced for consideration; and (4) entering a sentencing statement in which the reasons given are improper as a matter of law. Id. at 490-91. If the trial court abuses its discretion in one of these or any other way, remand for resentencing may be the appropriate remedy “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491.

Bowman relies on McCann v. State, 749 N.E.2d 1116 (Ind. 2001), to support his argument that the trial court should not have relied on prior failed attempts at rehabilitation because such an aggravator is merely a restatement of the fact that Bowman has an extensive criminal history. In McCann, our supreme court concluded that the trial court was not clear on whether the failed attempts at rehabilitation was a restatement of the fact the defendant had a criminal record or if it constituted a separate aggravator. In this case, the trial court stated, “[w]ell, implicit in the recommendation of the probation department is, is his record, and I also see that there have been attempts to rehabilitate your client and they have, they haven’t been very successful and the Drug Court hasn’t been very helpful either.” Tr. p. 25 (emphasis added).

The trial court clearly views the failed attempts to rehabilitate as a separate aggravator and is not using Bowman’s criminal history as a double aggravator. Additionally, “[a] single aggravating circumstance is enough to justify an enhancement or the imposition of consecutive sentences.” Williams v. State, 690 N.E.2d 162, 172 (Ind. 1997). Bowman recognizes that his prior criminal history is “worthy of aggravation.” Appellant’s Br. p. 9. The trial court properly used Bowman’s failed attempts to rehabilitate as a separate aggravator and did not abuse its discretion by using Bowman’s criminal history as a double aggravator.

Bowman also argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. A defendant may challenge his sentence under Indiana Appellate Rule 7(B) which provides: “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court

finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The Anglemyer court explained:

It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007). “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.”

Id.

While we recognize that the nature of the offense in itself would not support the sentence imposed, Bowman’s character does. Bowman has been involved with the criminal justice system since 1982 when he was found to have committed what would have been theft had he been an adult. Over the next twenty-six years, Bowman has amassed an extensive criminal history. While we recognize that a large number of these convictions involved substance abuse and could be a result of his paranoid schizophrenia and attempts to self-medicate, we also cannot ignore the numerous treatment opportunities he has received through the judicial system. Bowman has been ordered into treatment by the judicial system on many occasions since he committed his first substance abuse-related offense as an adult in 1987. Bowman’s criminal history does contain a large number of substance abuse-related crimes; yet it also contains a number of crimes that do not necessarily directly relate to his mental illness and its behavioral side effects. Were we to examine his criminal history with a blind eye towards crimes that may have resulted from his mental illness, we would still be persuaded that Bowman’s

sentence was not inappropriate in light of the nature of the offense and the character of the offender.

The trial court did not abuse its discretion when it considered Bowman's prior failed attempts at rehabilitation as an aggravator in addition to his criminal history. Also, Bowman's sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

RILEY, J., and KIRSCH, J., concur.