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**IN THE
COURT OF APPEALS OF INDIANA**



RYAN STAMM,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 48A04-1011-CR-727

APPEAL FROM MADISON CIRCUIT COURT
The Honorable Rudolph R. Pyle III, Judge
Cause No. 48C01-0910-MR-605

May 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Ryan Stamm appeals following his convictions, pursuant to a guilty plea, for Felony Murder (Count I);¹ Class D felony Resisting Law Enforcement (Count II);² Class A misdemeanor Criminal Recklessness (Count III);³ and Class C felony Carrying a Handgun Without a License (Count V),⁴ for which he received an aggregate sixty-year sentence in the Department of Correction. Upon appeal, Stamm claims that the trial court should not have accepted his guilty plea and that its denial of his motion to withdraw his guilty plea constitutes an abuse of discretion. In addition, Stamm contends that the trial court abused its discretion in its consideration of various aggravating and mitigating factors and that his sentence is inappropriate in light of the nature of his offenses and his character. We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual basis entered at Stamm's September 3, 2010 plea hearing, on October 24, 2009, Stamm and Jessica Smink agreed that Stamm would acquire some controlled substances, principally Xanax, for her. Stamm, Smink, and one Vincent Brown drove to the home of one Michael Dickey in Pendleton to obtain the drugs. Smink and Brown stayed in the car while Stamm entered Dickey's home. While inside, Stamm helped Dickey count out pills which he later distributed to Smink. At some point Stamm shot Dickey three times, including once in the forehead. Dickey later died of his injuries.

¹ Ind. Code § 35-42-1-1(3) (2009).

² Ind. Code §§ 35-44-3-3(a)(3), 35-44-3-3(b)(1)(A) (2009).

³ Ind. Code §§ 35-42-2-2(b)(1), 35-42-2-2(c)(1) (2009).

⁴ Ind. Code §§ 35-47-2-1(a), 35-47-2-23(c)(2)(B) (2009).

Officers later attempted to take Stamm into custody. Stamm initially complied by beginning to exit his car. He subsequently changed his mind, however, and drove away from the officers at speeds of up to 120 miles per hour. Stamm ignored traffic signals and stop signs and placed other motorists at substantial risk of injury. Authorities subsequently apprehended Stamm and found a handgun in his vehicle. Stamm, who had a prior felony conviction at the time, did not have a license to carry the handgun.

On October 29, 2009, the State charged Stamm with murder (Count I), Class D felony resisting law enforcement (Count II), Class A misdemeanor criminal recklessness (Count III), and Class A misdemeanor carrying a handgun without a license, enhanced to a Class C felony (Counts IV and V). On June 30, 2010, the State amended Count I to include felony murder and added three additional counts: Class A felony robbery (Count VI), Class C felony conspiracy to commit dealing in a controlled substance (Count VII), and Class C felony dealing in a controlled substance (Count VIII). On September 3, 2010, Stamm entered into a plea agreement whereby he agreed to plead guilty to felony murder in Count I, amended Counts II through V, and the Class C conspiracy and dealing charges in Counts VII and VIII, which were renumbered Counts VI and VII due to the State's dropping the robbery charge in Count VI.⁵ The plea agreement further provided that the sentences imposed would run concurrently and that the sentences in Counts I, VI, and VII "[would] reflect the constitutional and case law prohibition against double jeopardy[.]" Appellant's App. p. 98.

⁵ The State filed an information reflecting these further amended charges on October 3, 2010.

Upon entering his plea, Stamm admitted to the charges and to the above factual basis. The trial court outlined the possible range of the sentence for each conviction Stamm was facing, and Stamm indicated that he understood this range. The trial court found that Stamm's plea was freely and voluntarily given, and it took the matter under advisement.

On September 6, 2010, Stamm, *pro se*, wrote a letter to the trial court indicating that he wished to withdraw his guilty plea. On September 8, 2010, Stamm, by counsel, filed a petition to withdraw his request to withdraw his guilty plea. On October 18, 2010, Stamm filed another petition to withdraw his guilty plea. In his petition Stamm alleged that he was not guilty of the crimes charged.

At the October 20, 2010 hearing on his motion to withdraw, Stamm testified that he had had only a short time to consider the plea before entering into it, and that he had not been adequately informed that certain of his convictions would necessarily merge, with or without a plea. In his view, this demonstrated that his plea was not knowing or voluntary. In addition, Stamm testified that he had not, in fact, delivered the Xanax pills to Smink, which he claimed undermined his drug and felony murder convictions.

The trial court rejected Stamm's motion to withdraw, observing that it had thoroughly explained to Stamm the range of penalties he faced. The trial court additionally questioned Stamm's credibility, given that his motion to withdraw was based upon the claim that he had been untruthful at the plea hearing.

On October 21, 2010, the trial court sentenced Stamm to concurrent terms of sixty years for felony murder, three years for resisting law enforcement, one year for

criminal recklessness, and eight years for carrying a handgun without a license, for an aggregate sixty-year sentence. The trial court further concluded that Stamm's conviction for Class A misdemeanor carrying a handgun without a license in Count IV merged with his Class C felony conviction for that offense in Count V and that his convictions for conspiracy to commit dealing and dealing in Counts VI and VII merged into his felony murder conviction in Count I.⁶

Upon reaching this sentence, the trial court found as separate aggravators Stamm's prior criminal history, his prior probation violations, the fact that he was on probation at the time of the instant offense, and that he was in need of correction and/or rehabilitation best provided by a penal facility. The trial court found as a mitigator Stamm's admission to a history of substance abuse. This appeal follows.

DISCUSSION AND DECISION

I. Direct Appeal

Stamm first argues that the trial court should not have entered judgments of conviction because, notwithstanding his guilty plea, he maintained his innocence shortly after the plea hearing. To the extent this is a direct challenge to his convictions, Stamm waived that challenge by pleading guilty. "A person who pleads guilty is not permitted to challenge the propriety of that conviction on direct appeal." *Collins v. State*, 817 N.E.2d 230, 231 (Ind. 2004). Of course, Stamm is correct that a trial court cannot accept a guilty plea from a defendant who contemporaneously maintains his innocence. *See*

⁶ The written order states, contrary to the court's oral statement, that Count VII merges into Count II, rather than Count I. Given the plea agreement's treatment of Counts I, VI, and VII, this appears to be a typographical error in the written order.

Beech v. State, 702 N.E.2d 1132, 1135 (Ind. Ct. App. 1998) (citing *Ross v. State*, 456 N.E.2d 420, 423 (Ind. 1983)). But the proper procedure for making a challenge on this ground is through a motion to withdraw a guilty plea or some other collateral challenge, which Stamm has also pursued in this appeal. We decline to address Stamm’s direct challenge to the propriety of his convictions.

II. Motion to Withdraw

Stamm also challenges his convictions by claiming that the trial court abused its discretion in denying his motion to withdraw his guilty plea. After a guilty plea is entered, but before a sentence is imposed, a defendant may move to withdraw his guilty plea for any fair and just reason unless the State has been substantially prejudiced by its reliance upon the plea. *See* Ind. Code § 35-35-1-4(b) (2009); *Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001). The defendant must prove by a preponderance of the evidence that the withdrawal is necessary to correct a manifest injustice. *See* Ind. Code § 35-35-1-4(b). Absent such a showing, the decision to grant or deny the motion is solely within the trial court’s discretion. *Id.* Accordingly, we review the trial court’s denial of a motion to withdraw guilty plea for an abuse of discretion. *Brightman*, 758 N.E.2d at 44. In determining whether a trial court abused its discretion in denying a motion to withdraw a guilty plea, we will consider the statements made by the defendant during the guilty plea hearing to decide whether the defendant’s plea was made “freely and knowingly.” *Id.* (quoting *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995)). On appeal, the trial court’s ruling has a presumption of validity. *See id.* We will not reverse the trial court’s ruling if it was based on conflicting evidence. *Johnson v. State*, 734 N.E.2d 242, 245 (Ind. 2000).

At the plea hearing, the State entered its factual basis, including the allegation that Stamm had given Smink the Xanax pills he obtained from Dickey, which supported Stamm's dealing charges and served as the underlying crime in his felony murder charge. Stamm admitted to this allegation, to shooting Dickey while obtaining the drugs, and to all of the charges contained in the plea agreement, without equivocation.

Stamm now requests that we find error in the trial court's refusal to permit him to withdraw his plea based upon a contrary story, namely that he had acquired the pills only for himself rather than to "deal" to Smink and that he had shot Dickey in self-defense. Given Stamm's statements of guilt at the plea hearing, especially in light of his withdrawal of his first petition to withdraw his plea, the trial court was free to discredit Stamm's subsequent versions of the events in question. We will not reassess the trial court's credibility findings and therefore reject Stamm's challenge to the denial of his motion to withdraw his guilty plea on this ground.

Stamm also based his petition to withdraw his plea upon the claim that he did not have enough time to discuss the terms of his sentence, including the range of possible penalties, with his attorney prior to entering the plea. While Stamm may have been under some time pressure at the time of his plea, he was fully apprised of the potential sentence he was facing and cannot be said to have lacked the requisite knowledge or voluntariness upon entering the plea. At the hearing on his motion to withdraw, Stamm did not dispute that he had discussed the full range of penalties with his attorney immediately prior to entering his plea, nor did he contend that his attorney misinformed him in the matter. Moreover, during the plea hearing, the trial court similarly discussed the potential range

of sentences for each count Stamm faced and indicated that, although multiple convictions could result in consecutive sentences, Stamm would receive concurrent sentences pursuant to his plea agreement. To the extent Stamm claims he did not fully understand the implications of going to trial because he did not know that certain of his convictions must necessarily run concurrently, the trial court was not required to credit his claim on this ground. Moreover, there is no showing that Stamm's alleged misunderstanding was attributable to misinformation or lack of information from Stamm's attorney or the court such that his plea in the face of such misunderstanding must constitute a manifest injustice. We find no abuse of discretion.

III. Sentence

A. Abuse of Discretion

Stamm challenges his sentence by claiming that the trial court abused its discretion in considering various sentencing factors. Stamm's offenses were committed after the April 25, 2005 revisions to Indiana's sentencing scheme. Under the current sentencing scheme, "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemyer v. State (Anglemyer I)*, 868 N.E.2d 482, 491 (Ind. 2007), *modified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 2007). We review the sentence for an abuse of discretion. *Id.* at 490. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." *Id.*

A trial court abuses its discretion if it (1) fails "to enter a sentencing statement at all[,] (2) enters "a sentencing statement that explains reasons for imposing a sentence—

including a finding of aggravating and mitigating factors if any—but the record does not support the reasons,” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration,” or (4) considers reasons that “are improper as a matter of law.” *Id.* at 490-91. If the trial court has abused its discretion, we will remand for resentencing “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. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found is not subject to review for abuse of discretion. *Id.* We may review both oral and written statements in order to identify the findings of the trial court. *See McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007).

1. Mitigator

Stamm contends that the trial court abused its discretion in failing to name his guilty plea as a significant mitigating factor. The Indiana Supreme Court has held that a defendant who pleads guilty deserves “some” mitigating weight be given to the plea in return. *Anglemyer v. State*, (*Anglemyer II*), 875 N.E.2d 218, 220 (Ind. 2007). The significance of a guilty plea as a mitigating factor varies from case to case. *Id.* at 221. For example, a guilty plea may not be significantly mitigating when it does not demonstrate the defendant’s acceptance of responsibility or when the defendant receives a substantial benefit in return for the plea. *Id.* An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating

evidence is not only supported by the record but also that the mitigating evidence is significant. *Id.* at 220-21.

Here, although Stamm pled guilty, he waited until the Friday before the Tuesday start of trial, at which point the State had already expended a great deal of resources on his case. In addition, following his plea, Stamm reasserted his innocence, demonstrating that the plea cannot be construed as a genuine effort to take responsibility for his crimes. Further still, as a term of his guilty plea, Stamm was guaranteed that the sentences for all of his crimes would be served concurrently, so his plea can be considered a fairly strategic move. The trial court was within its discretion in declining to consider Stamm's plea to be a significant mitigating factor.

2. Aggravators

Stamm also claims that the trial court improperly used as aggravating factors his prior probation violations and the fact that he is in need of correction or rehabilitation best provided by a penal institution. According to Stamm, these factors are derivative of his criminal history and cannot serve as separate aggravators in addition to his criminal history.

Probation stands on its own, apart from criminal history, as a separate aggravator. *See Ryle v. State*, 842 N.E.2d 320, 323 n.5 (Ind. 2005). While a criminal history aggravates a subsequent crime because of recidivism, probation further aggravates a subsequent crime because the defendant was still serving a court-imposed sentence. *Id.* Here the trial court was within its discretion to conclude that Stamm's past failure to comply with probation as well as his probationary status while committing the instant

crime supported two separate aggravators, neither of which was part and parcel of his history of criminal convictions.

However, the trial court used Stamm's "need for correction or rehabilitation" as yet another aggravator. The Supreme Court has held that a defendant's need for correction or rehabilitation cannot serve as an aggravator separate from the defendant's criminal history. *Williams v. State*, 838 N.E.2d 1019, 1021 (Ind. 2005). Under *Williams*, such a factor may only serve as "legitimate observation about the weight to be given to facts[.]" *see id.* (internal quotation omitted), and there is nothing in the record suggesting that the trial court considered it to be anything but a separate aggravating factor. *Williams* was based upon the presumptive sentencing scheme, however, not the advisory scheme applicable in this case, so there is some question as to whether it still applies. *See McMahon v. State*, 856 N.E.2d 743, 751 n.8 (Ind. Ct. App. 2006) (observing that, although criminal history and fact of unsuccessful attempts at rehabilitation could not be used as separate aggravators under presumptive sentencing scheme, claim of error on this ground is not available to defendants sentenced under advisory sentencing scheme).

In any event, to the extent the trial court abused its discretion in considering Stamm's need for correction or rehabilitation as a separate aggravating factor, it is unnecessary to remand for resentencing because we are convinced the trial court would have imposed the same sentence even without this aggravator. Three aggravators remain—Stamm's criminal history, the fact that he violated his probation in the past, and the fact that he was on probation at the time of the instant crime—and we have found no

abuse of discretion in the court's finding of only one mitigator. A single aggravator is sufficient to support an enhanced sentence. See *Trusley v. State*, 829 N.E.2d 923, 927 (Ind. 2005). In light of these aggravators, we find no abuse of discretion in the trial court's imposition of an enhanced sentence for felony murder and maximum concurrent sentences in remaining Counts II through V. See *Anglemyer I*, 868 N.E.2d at 491.

B. Appropriateness

Stamm's last challenge is to the alleged inappropriateness of his sentence. Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." *Id.* (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that 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." We exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires that we give "due consideration" to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant's burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

Stamm was convicted of felony murder, which carries a sentencing range of from forty-five to sixty-five years, with the advisory sentence being fifty-five years. See Ind. Code § 35-50-2-3 (2009). Stamm received sixty years. Stamm was also convicted of one

Class C felony, one Class D felony, and one Class A misdemeanor, for which he received maximum sentences of eight years, three years, and one year, respectively. *See* Ind. Code §§ 35-50-2-6; 35-50-2-7; and 35-50-3-2 (2009). These lesser sentences were to be served concurrent to the sentence for felony murder. Stamm's aggregate sentence, therefore, was sixty years.

The violent nature and circumstances of the instant crime support Stamm's sentence. Stamm shot his victim in the forehead during the course of a drug deal, killing him, and he fled from police, endangering the public at large, in an attempt to avoid capture. Stamm's lack of moral character similarly supports the imposition of a sixty-year sentence. Stamm's criminal history includes convictions for myriad offenses, including both felony and misdemeanor criminal recklessness, as well as possession of a handgun without a permit, criminal conversion, giving false information to an arresting agency, possession of marijuana, and public intoxication. Stamm additionally has a history of violating his probation, including during the course of the instant crime. Stamm's continuing disregard for the law and his demonstrated willingness to place others at risk, even if due to substance abuse, warrant an enhanced sentence. We are not persuaded that Stamm's sixty-year sentence is inappropriate.

The judgment of the trial court is affirmed.

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