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IN THE
COURT OF APPEALS OF INDIANA

ROBYN N. HOGAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1006-CR-309
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0906-FB-62

May 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Robyn N. Hogan appeals her sentence for three counts of Class B felony dealing in cocaine.[1] Hogan claims the trial court abused its discretion in sentencing her to three concurrent twelve-year sentences and her sentence is inappropriate in light of her crimes and character. We affirm.

FACTS AND PROCEDURAL HISTORY

On multiple occasions between May 11, 2009, and June 24, 2009, a confidential informant met Hogan and bought cocaine from her. The State charged Hogan with Class D felony maintaining a common nuisance,[2] Class D felony possession of cocaine,[3] and ten counts of Class B felony dealing in cocaine. Hogan agreed to plead guilty to three counts of Class B felony dealing cocaine in exchange for a sentence cap of twelve years, concurrent sentences, and dismissal of the remaining charges. The court accepted her plea and entered convictions of the three Class B felonies.

At the sentencing hearing, the court found "a significant aggravating factor" in the nature and circumstances of Hogan's crimes, (Tr. at 44; App. at 24), and an aggravator in her violation of the conditions of pretrial release. It found mitigators in Hogan's lack of prior criminal history, her guilty plea, and her pre-sentence rehabilitation efforts while in jail. The court imposed a twelve-year sentence for each count, ordered all three served concurrently, and ordered one year suspended to probation.

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[1] Ind. Code § 35-48-4-1.
[2] Ind. Code § 35-48-4-13.
[3] Ind. Code § 35-48-4-6.

DISCUSSION AND DECISION

"A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years." Ind. Code § 35-50-2-5. Hogan pled guilty to three Class B felonies and the trial court imposed three concurrent twelve-year sentences, with one year suspended to probation. Hogan claims the court abused its discretion and the sentence is inappropriate for her character and offense.

1. Abuse of Discretion

A trial court's sentencing determination is within its discretion, and we will reverse only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). The trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id*. We may find an abuse of discretion if the trial court does not provide a sentencing statement, the sentencing statement is not supported by the record, the sentencing statement omits reasons clearly supported by the record *and* advanced by the defendant, or the trial court's reasons for sentencing are improper as a matter of law. *Id*. at 490-91. In a felony case, the trial court must give a reasonably detailed recitation of the reasons for the sentence imposed. *Id*. at 490. In reviewing sentencing decisions, we consider both the written and oral sentencing statements. *Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002).

Hogan first argues the court erroneously found an aggravator in the nature and circumstances of the crimes because the "court may not use [her multiple offenses], and the

other dismissed offenses, to enhance Hogan's sentence." (Br. of Appellant at 10.)[4] Hogan is incorrect. "The law is settled that the fact of multiple crimes is a valid aggravating factor." *McDonald v. State*, 868 N.E.2d 1111, 1114 (Ind. 2007). Thus, we cannot find an abuse of discretion in the court's decision to find as an aggravator that Hogan sold cocaine on three separate occasions.

She also argues the court abused its discretion by failing to find mitigators in her remorse, addiction, and young age. A trial court abuses its discretion if it overlooks "substantial" mitigating factors that are "clearly supported by the record." *Anglemyer*, 868 N.E.2d at 491. "When a defendant offers evidence of mitigators, the trial court has the discretion to determine whether the factors are mitigating, and it is not required to explain why it does not find the proffered factors to be mitigating." *Johnson v. State*, 855 N.E.2d 1014, 1016 (Ind. Ct. App. 2006), *trans. denied*.

At the time of sentencing, Hogan was twenty-four years old, which is not such a young age that consideration as a mitigator is required. *See Johnson v. State*, 725 N.E.2d 864, 869 (Ind. 2000) (declining to find error in trial court's rejection of age as a mitigator when defendant committed crime at age twenty). The court acknowledged Hogan is an addict, but declined to give her addiction weight because her crimes exceeded what was necessary to support her addiction.[5] As for Hogan's alleged remorse, the court indicated it

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[4] Hogan asserts the trial court imposed an "enhanced" sentence. It did not. *See Marbley-El v. State*, 929 N.E.2d 194, 195 (Ind. 2010) (after legislature amended sentencing statutes in 2005 to create the advisory sentencing scheme, courts may impose any sentence within the range, so there are no "enhanced" sentences).

[5] The court said: "Let's be clear. Most people who are drug addicts don't deal drugs. That's the truth. Most addicts are content just getting their drugs for the day. They don't operate a criminal enterprise as you were

believed Hogan's apology included an explicit denial that she had been dealing cocaine.[6] In light of the court's statements at sentencing, we cannot find an abuse of discretion in the court's determination her alleged remorse and addiction were not mitigators. *See Gibson v. State*, 856 N.E.2d 142, 148 (Ind. Ct. App. 2006) (trial court is in a better position to ascertain defendant's demeanor, credibility, and remorse).

Next, she claims the "court erred in enhancing [her] sentence as a way to communicate a message to other drug dealers." (Br. of Appellant at 11.) The court noted Hogan could have been sentenced to hundreds of years had she not pled guilty:

> So you got a good deal here. But this court is not just about rehabilitation. It's about punishment. And there has to be punishment for what you did. You don't get to walk away on probation after doing what you did. It doesn't work that way. Because if you were allowed to do that, you would go right back out and do it again.
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> * * * * *
>
> And it was your choice, Miss Hogan. You had a chance to give this some thought before you decided to get out there and do all these crimes. The fact that you may not have finished school or have had difficulty obtaining employment, that's no excuse for what you did. And if the various communities feel that even when these individuals are successfully prosecuted, that they get right back on the street, then of what use is the court system and law enforcement if it's all some type of game or fix, for lack of a better word. You get busted. You get a good lawyer. You go before the judge, and you make an argument and you're back out on the street.
>
> Well, it doesn't work that way in this court and before this judge. And it doesn't work that way before my colleagues. We are not politicians. We have no political interest one way or the other in the various politics that go on in our county. We are neutral.

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doing, Miss Hogan." (Tr. at 41.) We also note that Hogan had a prior opportunity to treat her addiction, but she had failed to take advantage of that opportunity.

[6] Hogan said, "I would just like to apologize to the Court. I would also like to say that my addiction got the best of me, caused me to catch them cases. I wasn't dealing. I was only supporting my habit . . . ." (Tr. at 39.) The court responded: "Well, you were most definitely dealing. That's what you plead [sic] guilty to in three counts. Are you trying to tell me now that you weren't? . . . You were dealing cocaine, correct? . . . You admitted to that when you plead [sic] guilty. Anything else?" (*Id*. at 40.)

> This type of conduct hurts everyone, . . . Miss Hogan . . . .But it was you[r] choice. And as adults, we all know that there's a price to pay for bad choices.
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> * * * * *
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> [O]ur communities must be protected from drug dealers. It's just that simple, whether they be male, female, black, white, Hispanic, doesn't matter. You deal drugs, you are gonna go to prison, chance [sic] are. It's just that simple. And it's a choice. There's big money in drug sales. Drug dealers need to be made to understand that there is also big prison time involved.

(Tr. at 43-45.) The State asserts the court was not making an inappropriate political statement, but rather was making additional comments about the nature and circumstances of the crimes. We agree; the court's comments referred to drug dealers generally, but viewed in context we believe the comments were directed to Hogan and were intended to explain why the court believed she deserved a twelve-year sentence because she was a drug dealer.

Finally, Hogan asserts our ability to conduct appellate review has been frustrated by the trial court's failure to assign a "relative weight," (Br. of Appellant at 9), to the aggravator it found in her violation of pre-trial release and to all three mitigators it found. She also claims the trial court did not give adequate mitigating weight to her lack of criminal history, guilty plea, and rehabilitation, because those mitigators entitled her to a sentence below the advisory. However, our Indiana Supreme Court has instructed that our review of sentencing for abuse of discretion does not include a review of the relative weight or value assigned to mitigating and aggravating factors. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). Moreover, trial courts are not required to give mitigators as much weight as defendants would. *Rascoe v. State*, 736 N.E.2d 246, 248-49 (Ind. 2000). Thus, we cannot find an abuse of discretion in the errors Hogan asserts regarding the weighing or balancing of the

aggravators and mitigators. *See Anglemyer*, 868 N.E.2d at 491.

2. Inappropriateness of Sentence

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (citing Ind. Appellate Rule 7(B)). We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied.* The appellant bears the burden of demonstrating her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

When considering the nature of the offense, the advisory sentence is the starting point for determining the appropriateness of a sentence. *Anglemyer*, 868 N.E.2d at 494. Then we consider whether there is anything more or less egregious about the offense that makes it different from the "typical" offense accounted for by the legislature when it set the advisory sentence. *Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008), *trans. denied*. The advisory sentence for a Class B felony is ten years, with a range of six to twenty years. Ind. Code § 35-50-2-7.

Hogan asserts her "sentence was greater than the advisory sentence but there does not appear to be any justification or rationale for an enhanced sentence." (Br. of Appellant at 15.) While twelve years exceeds the advisory sentence for one Class B felony, Hogan's twelve-year sentence is for not one, but rather *three* Class B felonies. We decline Hogan's invitation to hold an aggregate sentence for three counts is inappropriate simply because it

exceeds the advisory sentence for one count.

The trial court found the nature and circumstances of Hogan's crimes a significant aggravator: "This defendant committed multiple offenses of dealing in cocaine in a very short period of time. She was actively engaged in drug trafficking, trafficking on a very intense and brisk level." (Tr. at 45.) We cannot find a twelve-year sentence inappropriate punishment for three Class B felonies.

When considering the character of the offender, one relevant fact is the defendant's criminal history. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The significance of criminal history in assessing a defendant's character varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id*.

In 2000, Hogan admitted a juvenile allegation of truancy and, in 2001, she was alleged to have violated the probation she was required to serve therefor. In 2004, the State filed three misdemeanor charges against Hogan, but those had not been disposed at the time of the presentence investigation report. In 2007, Hogan was charged with assisting a criminal, *see* Ind. Code § 35-44-3-2. She was out on bond awaiting trial on that charge when she committed this offense, which reflects poorly on her character. *See Rich*, 890 N.E.2d at 54 (committing "offenses while on probation is a substantial consideration in our assessment of his character"). Hogan did not complete treatment for her cocaine addiction in 2007 and, in 2008, she failed to appear when charged with driving infractions.

In light of Hogan's character and her convictions of three counts of Class B felony dealing in cocaine, we see nothing inappropriate about an aggregate sentence of twelve years.

CONCLUSION

Hogan has not demonstrated the trial court abused its discretion or assigned a sentence inappropriate for her character and offenses. Accordingly, we affirm her three concurrent twelve-year sentences for three counts of Class B felony dealing in cocaine.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.