



Deshawn Green appeals his sentence for Class B felony possession of cocaine.<sup>1</sup>

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On April 3, 2007, Detective William Roberson went to Jefferson Crossing Apartments to execute a warrant for Green's arrest. After arresting Green, Detective Roberson searched Green and found a bag of cocaine in his pants pocket. Detective Roberson read Green his *Miranda* rights. Green indicated he understood his rights and wanted to cooperate. Green consented to a search of the apartment, as did his mother, who also lived there. Green told the police there was more cocaine in a pair of pants in his bedroom. Detective Brad Reed found approximately 3.7 grams of cocaine.

On April 26, 2007, Green was charged with possession of cocaine as a Class A felony.<sup>2</sup> The information alleged the cocaine was in excess of three grams and was possessed within 1000 feet of a family housing complex. On July 2, 2008, the State added a charge of possession of cocaine as a Class B felony, alleging only that the cocaine was possessed within 1000 feet of a family housing complex.

Green pled guilty to the Class B felony, and the State agreed to dismiss the Class A felony. The State also dismissed "four other cases against him including three additional [Class] A felonies."<sup>3</sup> (Tr. at 23.) Green's plea agreement left sentencing to the discretion of the trial court.

---

<sup>1</sup> Ind. Code § 35-48-4-6(b)(2)(B)(iii).

<sup>2</sup> Ind. Code § 35-48-4-6(b)(3)(B)(iii).

<sup>3</sup> The record does not include a written plea agreement; therefore, the nature of these charges is unclear. However, they appear to correspond to charges listed in the pre-sentence investigation report. Under cause number 34D02-0612-FA-269, Green was charged with Class A felony dealing in cocaine, Class A

A sentencing hearing was held on September 24, 2008. Several witnesses testified Green's parenting skills had been improving, he has a good relationship with his five children, and he spends significant time helping care for them. Green's mother and grandfather testified Green had matured and had become a great help to them. Green apologized to the court for his past behavior and said, "I didn't realize that my actions affected my family and my children because when I do time I didn't realize that they do time as I do too . . . ." (*Id.* at 22.)

The trial court imposed a twenty-year sentence, with fifteen years executed and five years suspended to probation.<sup>4</sup> The court's rationale was as follows:

I feel so much for the family of these kids that appear in here, but I still have a job to do, Mr. Green, and one thing that I noted is how everybody says you take care of these children, but I noticed that you were convicted of Nonsupport of a Child in 2000 and then violated three times on that, and from what I understand today from what I've heard, I doubt that you've been financially responsible for many of those children at any time. Put that hand in hand with the fact that you're paying out good money for your cocaine habit instead of using that money to support your children, Lord knows where you got it, but you know. Given your background and your history here in front of me, very, very long for a young man of 27 years, and from what I've just said normally I would give you the full 20 years, order you to serve 20 years, but I do consider the [e]ffect this will have on your children. Fortunately most of 'em are pretty young and you'll still have a job to do with 'em when you get out, but in consideration of that and to a certain extent I think [defense counsel] makes a good point in that the last year and a half you haven't been arrested again, but that gets very minimal consideration.

(*Id.* at 26-27.)

---

felony possession of cocaine, Class D felony maintaining a common nuisance, and Class D felony neglect of a dependent. Under cause number 34D02-0704-FA-97, he was charged with Class A felony conspiracy to commit dealing in cocaine. All these charges were dismissed on the same date.

<sup>4</sup> "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.

## DISCUSSION AND DECISION

### 1. Recognition of Mitigators

Green argues the trial court abused its discretion by not recognizing his guilty plea as a mitigating circumstance. Sentencing decisions rest within the sound discretion of the trial court and are reviewed for abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g on other grounds*, 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 trial court. *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 both significant and clearly supported by the record.” *Id.* at 493.

The trial court did not acknowledge Green’s guilty plea in its sentencing statement. “Where the State reaps a substantial benefit from the defendant’s act of pleading guilty, the defendant deserves to have a substantial benefit returned.” *Sensback v. State*, 720 N.E.2d 1160, 1164 (Ind. 1999). However, a guilty plea “is not automatically a significant mitigating factor.” *Id.* at 1165. “[A] guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one.” *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied* 855 N.E.2d 995 (Ind. 2006).

Green pled guilty to one Class B felony, and the State dismissed several other charges, including four Class A felonies. This is a substantial benefit. Furthermore, the State had strong evidence of Green’s guilt. After cocaine was found on his person in a

search incident to arrest, Green consented to a search of his apartment and directed officers to additional cocaine. Green's guilty plea was pragmatic, and he has not established that it is a significant mitigator. Accordingly, we find no abuse of discretion.

2. Appropriateness of Sentence

In the alternative, Green argues his sentence is inappropriate. He asserts his statement at sentencing demonstrates remorse and notes the testimony that he "had begun to be a better father and had started on the road back from problems with the criminal justice system." (Appellant's Br. at 8.)

Although a trial court may have acted within its lawful discretion, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review of sentences. *Id.* at 491. This authority is implemented through Ind. 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 defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

The facts before us do not indicate Green's offense was worse than a typical Class B felony possession of cocaine. Nevertheless, in light of Green's character, we cannot say his sentence is inappropriate. At twenty-seven years of age, Green already had a substantial criminal and juvenile record. Between 1996 and 1997, when Green was a minor, he committed receiving stolen property (a Class C felony if committed by an adult), criminal confinement (a Class D felony if committed by an adult), battery on four

separate occasions (two that would be Class A misdemeanors if committed by an adult, and two that would be Class B misdemeanors), invasion of privacy (a Class B misdemeanor if committed by an adult), and a curfew violation. He received probation for each of these true findings. Green also has convictions of criminal gang activity (a Class D felony), nonsupport of a child (a Class D felony), battery resulting in bodily injury (a Class A misdemeanor), invasion of privacy (a Class B misdemeanor), and illegal consumption of an alcoholic beverage (a Class C misdemeanor). Green was placed on probation, home detention, or community corrections for several of these offenses, and the record reflects he violated the terms of these placements at least four times. Green has received lenient treatment on several occasions, which has not proven effective.

Green told the interviewer who prepared the pre-sentence investigation report (“PSI”) that

he does use Marijuana occasionally, and has used as recently as a month prior to this interview. The defendant reported no history of substance abuse treatment. He has been in the Alcohol and [D]rug Program in the past, however, and has also has several alcohol and drug related charges.

(Appellant’s App. Vol. 2 at 9.) The PSI was ordered on February 26, 2008, and was completed on April 2, 2008. The chronological case summary indicates Green posted bond on June 23, 2007, and his bond was revoked on September 12, 2008. Therefore, it appears Green was using marijuana while on bond. As noted in the PSI, Green has several drug-related charges that have been dismissed, including Class A felony dealing in cocaine, Class A felony possession of cocaine, Class A felony conspiracy to commit

dealing in cocaine, Class D felony maintaining a common nuisance, Class D felony possession of cocaine, and Class A misdemeanor possession of marijuana.<sup>5</sup> Although a record of arrests is not criminal history, in Green's case, it is evidence of ongoing involvement with drugs. *See Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) (record of arrest, without more, may not be considered evidence of criminal history, but may indicate that defendant is not deterred by police authority and is likely to commit another offense). Contrary to Green's assertion that he has "demonstrated a recognition of his problem with cocaine," (Appellant's Br. at 6), we find no indication in the record that he has acknowledged this problem. Therefore, we cannot say his sentence is inappropriate.

Affirmed.

BAKER, C.J., and BARNES, J., concur.

---

<sup>5</sup> These charges were filed under four different cause numbers between 2005 and 2007.