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ATTORNEY FOR APPELLANT:

LORINDA MEIER YOUNGCOURT
Lawrence County Public Defender
Bedford, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JASPER L. CHASTAIN,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 47A01-1009-CR-543
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE LAWRENCE SUPERIOR COURT
The Honorable Elizabeth Mann, Senior Judge
Cause No. 47D01-0307-FB-334

July 5, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jasper Chastain ("Chastain") pleaded guilty in Lawrence Superior Court to Class B felony dealing in methamphetamine and was sentenced to fifteen years incarceration. Chastain appeals and argues: (1) that the trial court abused its discretion by failing to give a reasonably detailed sentencing statement, and (2) that his sentence is inappropriate.

We affirm.

Facts and Procedural History

In October 2002, Chastain was living in an apartment in Lawrence County with David Wilkerson ("Wilkerson") and Travis Brimhall ("Brimhall"), both of whom were manufacturing and selling methamphetamine. Chastain helped Wilkerson and Brimhall manufacture methamphetamine. Specifically, Chastain drove Brimhall to the store to purchase the necessary ingredients, and he helped Brimhall remove hundreds of pseudoephedrine pills from their packaging. This methamphetamine manufacturing process ultimately led to an explosion in the apartment. When police investigated the explosion, they discovered the methamphetamine manufacturing operation in the apartment. Chastain admitted that he helped Wilkerson and Brimhall manufacture methamphetamine that was intended for sale.

On July 11, 2003, the State charged Chastain with Class B felony dealing in methamphetamine in the instant cause, Cause No. 47D01-0307-FB-334 ("Cause No. FB-334"). On August 16, 2006, Chastain entered into a plea agreement with the State, in which he agreed to plead guilty as charged in Cause No. FB-334, agreed to plead guilty to Class D felony residential entry in Cause No. 47D01-0305-FD-215 ("Cause No. FD-215"), and admitted to violating the terms of his probation in Cause No. 47D01-0204-FC-

212 ("Cause No. FD-212"). In exchange, the State agreed to dismiss charges in two other cause numbers and dismiss another charge in Cause No. FD-215. Pursuant to the plea agreement, the parties agreed that the executed portion of Chastain's sentence in Cause No. FB-334 would not exceed fifteen years.

At a sentencing hearing held on October 27, 2006, the trial court accepted the plea agreement and sentenced Chastain to fifteen years executed. The trial court ordered this sentence to be served consecutive to the sentence in Cause No. FC-212, in which the trial court ordered Chastain's probation revoked and the remaining sentence to be served as executed time.[1] The court also sentenced Chastain to an eighteen-month sentence in Cause No. FD-215, to be served concurrently with the fifteen years imposed in Cause No. FB-334.

Chastain did not file a timely appeal. In April 2007, Chastain filed a *pro se* petition for post-conviction relief. After counsel was appointed to represent Chastain, he filed a petition for permission to file a belated notice of appeal on September 15, 2010. The trial court granted this motion the same day, and this appeal ensued.[2]

I. Sentencing Statement

Chastain first claims that the trial court abused its discretion by failing to give a reasonably detailed sentencing statement explaining its reasons for imposing sentence. In addressing this claim, we first note that even though Chastain was sentenced after April 25, 2005—the effective date of Indiana's current "advisory" sentencing scheme—he

[1] Three years and 287 days remained to be served in Cause No. FC-212.

[2] In this appeal, Chastain challenges only the fifteen-year sentence imposed in Cause No. FB-334.

committed his offense prior to that date and was therefore entitled to be sentenced under the former "presumptive" sentencing scheme. See Walsman v. State, 855 N.E.2d 645, 650-51 (Ind. Ct. App. 2006); Weaver v. State, 845 N.E.2d 1066 (Ind. Ct. App. 2006), trans. denied.

Sentencing decisions lie within the discretion of the trial court and are reviewed on appeal for an abuse of that discretion. Kien v. State, 782 N.E.2d 398, 410 (Ind. Ct. App. 2003), trans. denied.[3] When a trial court enhances a sentence, it is required to state its specific reasons for doing so. Id. at 411. The trial court's sentencing statement must: (1) identify significant aggravating and mitigating circumstances; (2) state the specific reason why each circumstance is aggravating or mitigating; and (3) demonstrate that the aggravating and mitigating circumstances have been weighed to determine that the aggravators outweigh the mitigators. Id. We examine both the trial court's written sentencing order and the court's comments at the sentencing hearing to determine whether the trial court adequately explained the reasons for the sentence. Id.

Here, the trial court's written sentencing order does not explain the trial court's reasons for imposing a fifteen-year sentence, but the trial court's oral statements during the sentencing hearing adequately explain the court's sentencing decision. At the sentencing hearing, both the State and Chastain's counsel reviewed the pre-sentence investigation report on the record, which showed that Chastain had a minor history of delinquent juvenile behavior and a relatively substantial adult criminal history. Specifically, in 2002, Chastain was convicted of Class C felony forgery in Cause No. FC-

[3] Kien was decided under the presumptive sentencing scheme.

212, and his probation in that case was revoked at the same time he was sentenced in the instant case. Also in 2002, Chastain pleaded guilty to Class A misdemeanor conversion as a lesser included offense of Class D felony theft. Chastain also had several pending criminal charges in Indiana that were disposed of by the plea agreement. He also pleaded guilty to driving under the influence, obstructing an officer, driving without a license, and reckless driving in West Virginia in 2005.

The State argued that there were no mitigating factors, and Chastain admitted that there were no significant mitigating factors for the trial court to consider. Therefore, he cannot now claim that the trial court overlooked any significant mitigating factors. See Webb v. State, 941 N.E.2d 1082, 1089 (Ind. Ct. App. 2011) (where the defendant fails to advance a mitigating factor at the sentencing hearing, we presume that the factor is not significant, and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal), trans. denied.

Chastain did claim, however, that his criminal behavior was rooted in his substance abuse problem. He therefore argued that the trial court should impose the presumptive sentence of ten years or that, at the most, the executed portion of his sentence should not exceed ten years. After listening to the parties' arguments, the trial court stated:

> The Court now finds that based on Mr. Chastain's entire legal history, the fact including unsuccessful attempts at probation, and I'm not going to go list all of his criminal problems, but I incorporate by reference the prior legal history on pages three (3), four (4), and five (5) [of the pre-sentence investigation report], with the note that [defense counsel] made that there is a duplication of the Forgery at the bottom of page three (3) and the top of page four (4), they are indeed the same offense and one conviction. So I

> believe that under the circumstances, a sentence of fifteen (15) years in the Department of Correction is appropriate. None of that sentence is suspended.

Sentencing Tr. p. 18.

The trial court went on to explain to Chastain that there were opportunities in the Department of Correction for educational credit and substance abuse treatment, that Chastain would have to take advantage of those opportunities himself, and that the court thought Chastain had the "mental wherewithal" to do so. Tr. p. 19-20. The trial court also explained that it believed that Chastain was not yet a good candidate for probation. Thus, the trial court identified Chastain's criminal history as an aggravating factor and noted that Chastain had had several, prior unsuccessful attempts at probation in deciding to impose a fifteen-year sentence. Under these facts and circumstances, we cannot say that the trial court abused its discretion by failing to give a reasonably detailed sentencing statement.[4]

Even if we agreed with Chastain the trial court's sentencing statement was insufficient, we would not reverse his sentence. If a trial court's sentencing statement fails to "meet[] the requirements of the law," the court on appeal has several options. Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007). We can remand to the trial court for clarification or a new sentencing statement, or we may exercise our authority to

[4] Chastain did plead guilty, and a defendant's decision to plead guilty is a mitigating factor, but not necessarily a significant mitigating factor. See Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). If a defendant has received a substantial benefit from the plea, or where the evidence is such that the decision is a pragmatic one, the guilty plea does not rise to the level of significant mitigation. Anglemyer v. State, 875 N.E.2d 218, 221 (Ind. 2007). Chastain confessed to the police, and his decision to plead guilty was most likely pragmatic. More importantly, he received a substantial benefit in return for his plea in that the executed portion of his sentence was capped at fifteen years, instead of the maximum of twenty years, and the State agreed to dismiss other pending charges.

review and revise the sentence under Appellate Rule 7(B). Id. If the defendant's sentence is not inappropriate, then we may affirm the sentence despite the improper sentencing statement. See id.; see also Mendoza v. State, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (holding that even if the trial court abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate under Appellate Rule 7(B)). To this end, we address the appropriateness of Chastain's sentence below.

II. Appellate Rule 7(B)

Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence otherwise 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." Although we have the power to review and revise sentences, "[t]he principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008).

Chastain pleaded guilty pursuant to an agreement that capped his executed sentence at fifteen years, and the trial court sentenced Chastain to fifteen years executed pursuant to this agreement. "A defendant's conscious choice to enter a plea agreement that limits the trial court's discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of sentence

reasonableness and appropriateness." Childress v. State, 848 N.E.2d 1073, 1081 (Ind. 2006) (Dickson, J., concurring).

Chastain claims that his crimes are a result of his substance abuse problem, but he does not explain how he took any steps to treat his addiction. See Hape v. State, 903 N.E.2d 977, 1002 (Ind. Ct. App. 2009) (trial court did not err in failing to consider defendant's substance abuse as a mitigating factor), trans. denied; Bryant v. State, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004) (trial court did not err in finding substance abuse as an aggravating factor where defendant was aware of his problem with drugs and alcohol yet did not take any positive steps to treat his addiction); Bennett v. State, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003) (trial court did not err in failing to consider defendant's alcohol abuse problem as mitigating, and could properly have considered such as aggravating, where defendant was aware of problem yet never sought help). Although Chastain's instant offense may have been motivated by his substance abuse, it in no way excuses his behavior.

Chastain also claims that he was remorseful, as evidenced by his decision to plead guilty. But the trial court was in the better position to judge the veracity of Chastain's remorse. See Mead v. State, 875 N.E.2d 304, 309-10 (Ind. Ct. App. 2007) (trial court possesses the ability to directly observe the defendant and is therefore in the best position to determine whether the defendant is genuinely remorseful). Without evidence of some impermissible consideration by the trial court, we will accept its determination as to remorse. Stout v. State, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005).

Considering the nature of the offense, we note that Chastain was involved with the manufacture of methamphetamine for sale. By his own account, this process resulted in an explosion. Turning to the character of the offender, Chastain has a criminal history that is substantial and involves multiple convictions in more than one state. Moreover, he was on probation at the time he committed the instant offense, and he continued to commit more crimes after he committed the instant offense. This does not speak well for Chastain's character. After giving due consideration to the trial court's sentencing discretion, and in light of the nature of the offense and the character of the offender, Chastain has not met his burden of demonstrating that his sentence of fifteen years is inappropriate.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.