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FILED
Jul 15 2009, 8:43 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

RICHARD ATCHISON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 14A05-0901-CR-37
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DAVIESS SUPERIOR COURT
The Honorable Dean A. Sobecki, Judge
Cause No. 14D01-0602-FB-154

July 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Richard Atchison appeals his fourteen-year sentence for Class B felony conspiracy to commit dealing in methamphetamine. We affirm in part, reverse in part, and remand.

Issues

The issues before us are:

I. whether Atchison's sentence is appropriate; and

II. whether the trial court miscalculated his jail time credit.

Facts

On February 4, 2006, three days after being released from parole, Atchison moved to Indiana from Illinois. Atchison stayed with Bob and Linda Dempsey in rural Daviess County. While staying with Bob and Linda, Atchison used methamphetamine. On February 9, 2006, Bob and Linda gave Atchison fifteen dollars to purchase Coleman fuel and a pack of batteries. The fuel and batteries were to be used as ingredients to manufacture methamphetamine. In return for purchasing the fuel and batteries, Atchison was to receive a cut of the final product.

While Bob and Linda "cooked" the methamphetamine, Atchison left the house and rode through the countryside on a four-wheeler. Sometime during the "cook," a fire started in the Dempsey home. Atchison saw the flames, drove back to the house, and found the house engulfed in flames. Bob and Maggie Howell were standing outside when Atchison arrived. Bob told Atchison that Linda was still in the house. Atchison testified he could hear Linda inside screaming for Bob. Although Atchison tried to get to

Linda, he could not because of the fire's intensity. Bob and Maggie fled through a field. Atchison stayed for a minute or two, but subsequently fled fearing he would be charged with a crime. Linda died in the fire.

Atchison was arrested on February 10, 2006. On February 14, 2006, Atchison was charged with Class B felony conspiracy to commit dealing in methamphetamine and Class B felony dealing in methamphetamine. On January 22, 2008, Atchison pled guilty to Class B felony conspiracy to commit dealing in methamphetamine with sentencing left to the trial court, and the remaining charge was dismissed. On November 6, 2008, the trial court sentenced Atchison to fourteen years executed. Atchison now appeals.

Analysis

I. Sentence

Atchison contends his fourteen-year sentence is inappropriate given the nature of his offense and his character. "Under Indiana Appellate Rule 7(B), this court may revise a sentence that we conclude is inappropriate in light of the nature of the offense and the character of the offender. . . ." Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). When reviewing a sentence under Rule 7(B), we need not be "extremely" deferential to a trial court's sentencing decision. Id. However, Rule 7(B) requires us to give "due consideration" to the trial court's decision because of the unique perspective the trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

Atchison argues that the nature of his offense does not warrant a fourteen-year sentence. In support, he directs our attention to the hierarchy of methamphetamine offenses, asserting he is less culpable than those who deal or manufacture methamphetamine because he merely provided the ingredients necessary to manufacture the methamphetamine but was not directly involved in the manufacturing process. Atchison's argument, however, only compares his offense to other offenses with greater penalties. It tells us nothing about the nature of this particular offense, only that he is less culpable than others who commit more heinous offenses. Although Atchison did not directly participate in the "cooking" process, that does not obviate the fact that Linda Dempsey died as a result of his active role in the conspiracy. As a Class B felony, Atchison's offense carries a sentence range of six to twenty years with an advisory sentence of ten years. See Ind. Code § 35-50-2-5. Although the nature of an offense may justify a lesser sentence under some circumstances, this is not such a circumstance. Atchison has failed to persuade us that his sentence is inappropriate given the tragic results from his role in the conspiracy.

Atchison also argues his sentence is inappropriate in light of his character. First, he contends his lengthy criminal history does not reflect negatively on his character because none of his prior offenses were drug related. See Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999) (concluding that the significance of prior convictions "varies based on the gravity, nature and number of prior offenses as they relate to the current offense."). Atchison, however, stated he committed burglary in Centralia, Illinois "to get

drugs." Appellant's App. p. 222. Here, in order to receive a portion of the final product, Atchison conspired and provided ingredients necessary to manufacture methamphetamine. Atchison has an extensive criminal history, being convicted twice for armed robbery, twice for residential burglary, and once for possessing a firearm as a felon. As the trial court noted, his previous crimes, like his current offense, are dangerous crimes. Even if we were to conclude that his previous offenses are unrelated to his current offense, the sheer number and gravity of them warrant an enhanced sentence. See Ashworth v. State, 901 N.E.2d 567, 576 (Ind. Ct. App. 2009), trans. denied, (citing Miller v. State, 716 N.E.2d 367, 371 (Ind. 1999)).

Atchison next contends that his mental illness is a mitigating factor. At the sentencing hearing, a doctor testified that Atchison likely suffered from mild mental retardation and schizophrenia. In Weeks v. State, our supreme court laid out four factors to consider when weighing the mitigating force of a defendant's mental illness. 697 N.E.2d 28, 30 (Ind. 1998). Those factors include the extent of inability to control behavior, the overall limitation on function, the duration of the illness, and the nexus between the illness and the crime. Id.

We cannot say the evidence regarding Atchison's mental health makes his fourteen-year sentence inappropriate. Atchison's testimony shows that, at the time of the offense, he understood what he was doing and why he did it. When asked whether he helped Bob acquire the fuel and batteries, Atchison responded: "Yeah. I was trading for dope. I would trade two small items for dope. You get more out of it." Tr. p. 111. This

indicates not an inability to control one's behavior, but a refusal. Although the record shows that Atchison is limited because of his illness and that his illness dates back to his childhood, nothing in the record indicates a nexus between Atchison's mental illness and his offense. During the sentencing hearing, the trial court explained that, but for his mental illness, the court would have sentenced Atchison to the maximum of twenty years. In light of Atchison's character and the nature of his offense, we cannot conclude that his fourteen-year sentence is inappropriate.

II. Jail Time Credit

Atchison argues, and the State agrees, that the trial court miscalculated the credit time to which Atchison was entitled. The trial court found that Atchison was entitled to 990 days of credit time. He was arrested on February 10, 2006, and was sentenced on November 6, 2008. Including the date of Atchison's arrest and the date of the sentencing hearing, Atchison is entitled to receive 1,001 days of credit time. The trial court miscalculated the amount of credit time to which Atchison was entitled.

Conclusion

Atchison has not established that his fourteen-year sentence is inappropriate. The trial court, however, miscalculated the amount of credit time Atchison was entitled to receive. We therefore affirm in part, reverse in part, and remand with instructions for the trial court to credit Atchison with 1,001 days of credit time.

Affirmed in part, reversed in part, and remanded.

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