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IN THE
COURT OF APPEALS OF INDIANA

GLORIA J. CULLOM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0902-CR-60
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0805-FB-38

July 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Gloria Cullom appeals following her conviction for Dealing in Cocaine as a Class B Felony,[1] for which she was sentenced to a term of six years of incarceration with two years suspended to probation. Upon appeal, Cullom contends that the trial court abused its discretion by failing to provide a detailed sentencing statement to justify her sentence. We affirm.

FACTS AND PROCEDURAL HISTORY

On approximately April 2, 2008, Cullom delivered 0.6 grams of cocaine to a confidential source at 774 Martin Luther King Drive in Gary. Cullom knew that the cocaine was a controlled substance and that it was illegal to possess and deliver cocaine. On May 23, 2008, the State charged Cullom with six counts of dealing in cocaine, a Class B felony (Counts I-IV, VI, IX), one count of possession of cocaine, a Class D felony (Count X), and one count of possession of marijuana, a Class A misdemeanor (Count XI), based on her actions on April 2 and subsequent dates.

On October 15, 2008, pursuant to a plea agreement, Cullom pled guilty to Count I, dealing in cocaine as a Class B felony. As an additional term of the plea agreement, the parties agreed to leave Cullom's sentence to the trial court's discretion. During a January 8, 2009, sentencing hearing, the trial court engaged Cullom in a lengthy colloquy regarding her history of drug use and the effect such use has had on her grandchildren. Subsequently, the trial court sentenced Cullom to six years of incarceration, with two years suspended to probation. The trial court's order specified that the presentence investigation report ("PSI")

[1] Ind. Code § 35-48-4-1 (a) (2007).

as well as arguments were considered. This appeal follows.

DISCUSSION AND DECISION

Cullom contends that the trial court abused its discretion when it sentenced her. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on other grounds on reh'g*, 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 court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* (quotation omitted).

> One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering 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, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy 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 490-491.

While sentencing statements are not required to contain a finding of aggravating or mitigating factors, they need to include a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." *Mendoza v. State*, 869 N.E.2d 546, 555-56 (Ind. Ct. App. 2007). We examine both the written sentencing order and the trial court's comments at the sentencing hearing to determine whether the trial court adequately explained

the reasons for its sentence. *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007). Under this standard, we look through the record to find the trial court's statement of reasons based upon facts which are peculiar to Cullom and the crime she committed to determine the reasonableness of her sentence. *See Page v. State*, 424 N.E.2d 1021, 1023 (Ind. Ct. App. 1981). Here, Cullom contends that the trial court abused its discretion when it imposed her sentence without stating any reasons for its sentence or considering any mitigating factors.

While neither the sentencing order nor the trial court's comments at the sentencing hearing provide an extensive recitation of reasons for imposing Cullom's sentence, the trial court did indicate that it relied on Cullom's PSI and the arguments presented by the parties. Based on the content in the PSI, as well as the lengthy colloquy between the court and the defendant, the record arguably reveals the trial court's reasons for imposing the sentence it did. Through several questions, the court directed its attention to Cullom's drug use and the welfare of her grandchildren. The court also acknowledged that while awaiting trial, Cullom had entered and completed programs recommended by the court.

Nonetheless, even without a trial court sentencing order that meets the requirements of the law, we have the authority to review and revise the sentence under Indiana Appellate Rule 7(B). *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007). Indiana Appellate Rule 7(B) 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." Ind. Appellate Rule 7.

> Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making

> sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied. The defendant has the burden of persuading us that his or her sentence is inappropriate.

Fonner v. State, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007) (citations and quotation marks omitted).

We are unpersuaded that Cullom's sentence is inappropriate in light of the nature of her offense and her character. Significantly, the trial court sentenced Cullom to the minimum sentence allowed by statute[2]. With respect to the nature of Cullom's offense and the sentence imposed by the trial court, we conclude that the sentence was appropriate. Cullom dealt drugs out of her home in the presence of her two young grandchildren, who were in her care. Although Cullom claims that she has a great concern for her grandchildren's well-being while they remain in foster care, her actions jeopardized their safety and welfare. Cullom acknowledges that she hurt the children with her drug use and drug dealing.

As for Cullom's character, she has had a history of drug abuse and a prior conviction for cocaine possession. While her remorse and acceptance of responsibility reflect favorably upon her character, she has continued to jeopardize herself and family through drug dealing and abuse. Given the nature of the offense and Cullom's character, we cannot say that a minimum sentence of six years, only four of which are executed, is inappropriate.

The judgment of the trial court is affirmed.

CRONE, J., and BROWN, J., concur.

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[2] Ind. Code section 35-50-2-5 (2007) permits a fixed term of between six and twenty years, with the advisory sentence being ten years, for Class B felonies.