

Case Summary and Issues

Following a guilty plea, Mark R. Roggenkamp appeals his fifty-year sentence, with forty years executed, for conspiracy to deal methamphetamine, a Class A felony. Roggenkamp argues that the trial court improperly found and balanced the aggravating and mitigating circumstances, and that his sentence is inappropriate given his character and the nature of the offense. Concluding that the trial court properly sentenced Roggenkamp, and that the sentence is not inappropriate, we affirm.

Facts and Procedural History

During the period between 2000 and May 2002, Roggenkamp, Michael Rice, and Richard Holmberg were involved in a methamphetamine operation in which they purchased high-grade methamphetamine from California, transported it to Tippecanoe County, Indiana, and distributed it to local users and other dealers. Sometimes one of the three would bring the methamphetamine back by plane, and sometimes, they would ship it. During this period, twelve to sixteen shipments consisting of roughly two pounds of methamphetamine reached Tippecanoe County. To put this amount in perspective, the probable cause affidavit indicates that Roggenkamp sold “eightballs” (1/8 of an ounce) for \$170. Therefore, these two-pound shipments had a street value of over \$45,000.¹

The Lafayette Police Department conducted a number of controlled buys and executed at least two search warrants in conjunction with its investigation of Roggenkamp. The

¹ At the sentencing hearing, Brian Brown, of the Lafayette Police Department, testified that, when bought by the gram, methamphetamine sold for around \$100. Using these figures, the shipments had a street value of over \$90,000.

searches uncovered substantial evidence relating to the distribution of methamphetamine and other illegal drugs. In early May, 2002, the State charged Roggenkamp with twenty counts: conspiracy to deal methamphetamine, a Class A felony, three counts of dealing methamphetamine, Class A felonies, three counts of possession of methamphetamine, Class A felonies, possession of methamphetamine, a Class B felony, conspiracy to deal a controlled substance, a Class B felony, dealing a controlled substance, a Class B felony, three counts of possession of a controlled substance, Class C felonies, maintaining a common nuisance, a Class D felony, dealing marijuana, a Class D felony, possession of marijuana, a Class D felony, two counts of possession of marijuana, Class A misdemeanors, and two counts of reckless possession of paraphernalia, Class A misdemeanors. On February 19, 2004, Roggenkamp pled guilty to conspiracy to commit dealing in methamphetamine pursuant to a plea agreement. In exchange for Roggenkamp's guilty plea, the State agreed to drop all remaining charges pending against Roggenkamp,² and it was stipulated that the executed portion of Roggenkamp's sentence would not exceed forty years. Roggenkamp also agreed to provide a statement disclosing his knowledge of criminal activity in Tippecanoe County, and to testify at subsequent hearings and trials. On April 9, 2004, the trial court held a sentencing hearing. At this hearing, the trial court made the following statement regarding aggravating and mitigating circumstances:

I find as mitigating circumstances the fact that you obtained the responsibility for your actions by entering a plea of guilty and also that you have cooperated fully with law enforcement in this matter. As an aggravating circumstance i[s]

² Roggenkamp also had charges pending under another cause number.

your criminal history. Mr. Roggenkamp you've got starting back in 1980, driving while intoxicated, 1986 dealing in cocaine a felony, and then to that case there were two petitions to revoke probation filed, 1989 a misdemeanor possession of controlled substance, in 1990 a misdemeanor petty theft, 1990 misdemeanor petty theft, 1990 use of a controlled substance as a misdemeanor, '91 possession of controlled substance as a misdemeanor, '91, second '91 case possession of controlled substance as a misdemeanor, '93 another misdemeanor possession of controlled substance and then this case in 2002. That very extensive criminal history is an aggravating circumstance that outweighs those mitigating circumstances all by itself. The nature and the circumstance of this crime is also an aggravating circumstance. And I am convinced that you are in need of correctional or rehabilitative treatment that can only be provided by commitment to a penal facility because of the petitions to revoke probation that have been filed.

Transcript at 35. On May 21, 2004, the trial court issued its sentencing order containing the following statement:

The Court states for mitigating circumstances the Defendant has taken responsibility for his actions and co-operated with law enforcement. For aggravating circumstances the Defendant has a criminal history, and the Defendant is in need of correctional or rehabilitative treatment due to the seriousness and the circumstances of the crime.

Appellant's Appendix at 48. The trial court sentenced Roggenkamp to fifty years, and suspended ten years to probation.

On March 16, 2006, Roggenkamp filed a pro se petition for post-conviction relief. On March 17, 2006, the trial court appointed counsel to represent Roggenkamp. On July 12, 2006, Roggenkamp, by counsel, filed a motion to withdraw his petition for post-conviction relief. On August 1, 2006, Roggenkamp filed a pro se verified petition for permission to file belated appeal, which the trial court denied on August 4, 2006. Roggenkamp filed a pro se motion to reconsider on August 29, 2006, and the trial court granted Roggenkamp's motion on October 2, 2006. Roggenkamp now appeals.

Discussion and Decision

I. Propriety of Roggenkamp's Sentence

Roggenkamp first argues that the trial court improperly sentenced him as it considered invalid aggravating circumstances and abused its discretion in balancing the aggravating circumstances against the mitigating circumstances. We disagree.

Sentencing determinations are within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. Henderson v. State, 848 N.E.2d 341, 344 (Ind. Ct. App. 2006). We will find the trial court abused its discretion only when its decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

Under the presumptive sentencing scheme, which applies to Roggenkamp,³ if the trial court imposes a sentence in excess of the statutory presumptive sentence, it must identify and explain all significant aggravating and mitigating circumstances and explain its balancing of the circumstances. Rose v. State, 810 N.E.2d 361, 365 (Ind. Ct. App. 2004). Although the trial court has an obligation to consider all mitigating circumstances identified by a defendant, it is within the trial court's sound discretion whether to find mitigating circumstances. Newsome v. State, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), trans. denied. We will not remand for reconsideration of alleged mitigating factors that have debatable nature, weight, and significance. Id. Also, the trial court is not required to weigh the mitigators as heavily as would the defendant. Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002). A single aggravator may be the basis for an enhanced sentence. Payton v. State, 818

N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied.

A. Aggravating Circumstances

Roggenkamp first argues that the trial court improperly found the aggravating circumstances of the nature and circumstances of the crime and the fact that Roggenkamp needed rehabilitative treatment best provided by a penal facility. Roggenkamp argues that the trial court's finding and consideration of these factors violated his Sixth Amendment rights under Blakely v. Washington, 542 U.S. 296, 303-04 (2004) (holding that where facts are used to increase a defendant's sentence beyond a statutory maximum, the facts must be either admitted by the defendant or found by a jury beyond a reasonable doubt). Here, Roggenkamp's sentence was entered before Blakely was decided, and he filed his appeal as a belated appeal. Therefore, his sentence is not subject to Blakely. Gutermuth v. State, 868 N.E.2d 427, 428 (Ind. 2007). The trial court's consideration of aggravators not admitted by him was not improper.

Here, the trial court found three aggravating circumstances: (1) Roggenkamp's criminal history; (2) the nature and circumstances of the crime; and (3) Roggenkamp's need of correctional and rehabilitative treatment that can be provided only by commitment to a penal facility based on prior petitions to revoke probation. The trial court specifically stated that it found Roggenkamp's criminal history, by itself, to outweigh the mitigating circumstances.

We recognize that "a criminal history suffices by itself to support an enhanced

³ Roggenkamp committed the offenses and was sentenced prior to April 25, 2005, the date when the

sentence.” Battles v. State, 688 N.E.2d 1230, 1235 (Ind. 1997). However, this principle “does not mean that any single aggravator will suffice in all situations.” Deane v. State, 759 N.E.2d 201, 205 (Ind. 2001). Roggenkamp’s criminal history, as the trial court noted, is substantial. It consists of nine convictions: a felony conviction for dealing cocaine, five misdemeanor convictions for possession of a controlled substance, two misdemeanor convictions for petty theft, and a misdemeanor conviction for driving under the influence.

The trial court also found as an aggravating circumstance the fact that the State had previously filed petitions to revoke probation against Roggenkamp.⁴ These petitions were filed in 1994 and 1996. A trial court may consider recent violations of probation as an aggravating circumstance. Ind. Code § 35-38-1-7.1(a)(6); Cox v. State, 780 N.E.2d 1150, 1160 (Ind. Ct. App. 2002). As long as the trial court explains why a defendant requires treatment in a correctional facility for a period in excess of the presumptive sentence, the need for correctional treatment best served by commitment to a penal facility is a proper aggravating circumstance. Armstrong v. State, 742 N.E.2d 972, 980-81 (Ind. Ct. App. 2001). The trial court specifically noted Roggenkamp’s prior failures to complete probation. We cannot say that the trial court abused its discretion in finding this aggravating circumstance.

The trial court also found that the nature and circumstances of the crime constituted an aggravating circumstance. The trial court specifically noted “the trail of destruction of

new “advisory” sentencing scheme came into effect.

⁴ When sentencing Roggenkamp, the trial court stated: “And I am convinced that you are in need of correctional or rehabilitative treatment that can only be provided by commitment to a penal facility because of the petitions to revoke probation that have been filed.” Tr. at 35. The pre-sentence report indicates not only that petitions were filed, but also that Roggenkamp’s probation was actually revoked.

human lives that was followed in [Roggenkamp's] way.” Tr. at 34. The fact that Roggenkamp's distribution of high-grade methamphetamine led to harm to others in the community is a circumstance that was within the trial court's discretion to consider. See Bunch v. State, 760 N.E.2d 1163, 1169-70 (Ind. Ct. App. 2002), aff'd in relevant part, 778 N.E.2d 1285 (Ind. 2002) (trial court properly considered death of person to whom defendant convicted of dealing cocaine supplied drugs as a circumstance of the crime entitled to aggravating weight).

B. Mitigating Circumstances

With regard to Roggenkamp's guilty plea, we have long recognized that “a defendant who willingly enters a plea of guilty has extended a substantial benefit to the state and deserves to have a substantial benefit extended to him in return.” Williams v. State, 430 N.E.2d 759, 764 (Ind. 1982), appeal dismissed, 459 U.S. 808 (1982). However, “a guilty plea is not inherently considered a significant mitigating circumstance.” Primmer v. State, 857 N.E.2d 11, 16 (Ind. Ct. App. 2006), trans. denied (emphasis in original). The significance of a guilty plea may be reduced if the defendant receives a significant benefit in return for the plea. See Patterson v. State, 846 N.E.2d 723, 729 (Ind. Ct. App. 2006).

Here, Roggenkamp received a substantial benefit in return for his plea, as the State dropped nineteen counts under the same cause number as the crime to which Roggenkamp pled guilty, and ten charges, including another Class A felony, under another pending cause number. Roggenkamp acknowledged this benefit at his sentencing hearing, as he stated, “I do appreciate the plea because if I had two fifty year A's pending I would never see the light

of day probably.” Tr. at 11. Under these circumstances, Roggenkamp’s guilty plea appears to be a pragmatic decision, and not merely willingness to accept responsibility for his crimes. See Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied. Therefore, it would be entitled to little mitigating weight.

With regard to Roggenkamp’s cooperation with authorities, the trial court clearly considered this mitigating factor, but merely assigned it less weight than would Roggenkamp. It was within the trial court’s discretion to do so. Just as Roggenkamp’s decision to plead guilty may be viewed as a pragmatic one, so may his decision to cooperate with authorities. See Glass v. State, 801 N.E.2d 204, 209 (Ind. Ct. App. 2004). Indeed, the plea agreement specifically required that Roggenkamp provide a statement regarding his knowledge of criminal activity and testify at subsequent hearings and trials.

C. Balancing

As discussed above, the trial court properly found three aggravating circumstances, including Roggenkamp’s extensive criminal history, which the trial court found to be entitled to considerable weight. Both of the mitigating circumstances were worthy of reduced weight. We conclude that the trial court acted within its discretion in determining that the aggravating circumstances of Roggenkamp’s criminal history, his need for rehabilitative treatment in a penal facility based on his prior revocations of probation, and the nature and circumstances of the crime outweighed the mitigating circumstances of his guilty plea and cooperation with authorities, and in sentencing Roggenkamp to fifty years with forty years executed.

II. Appropriateness of Roggenkamp's Sentence

When reviewing a sentence imposed by the trial court, we “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(B). We have authority to “revise sentences when certain broad conditions are satisfied.” Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). When determining whether a sentence is inappropriate, we recognize that the presumptive sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006).

The presumptive sentence for a Class A felony is thirty years, with a maximum sentence of fifty years, and a minimum sentence of twenty years. See Ind. Code § 35-50-2-4 (now referring to the “advisory” sentence). Here, the trial court gave Roggenkamp the maximum sentence, but suspended ten years, so the sentence Roggenkamp will execute is ten years above the presumptive.

In Evans v. State, 725 N.E.2d 850, 851-52 (Ind. 2000), our supreme court found a fifty-year sentence for dealing cocaine to be manifestly unreasonable and remanded with instructions that the trial court sentence the defendant to the presumptive thirty-year sentence.

Our supreme court noted that the defendant was only nineteen years old, and had a criminal history of three juvenile adjudications and a misdemeanor conviction. Id. at 851; see also Love v. State, 741 N.E.2d 789, 795 (Ind. Ct. App. 2001) (noting that where the trial court sentenced the defendant to fifty years for dealing cocaine, “the trial court has effectively

determined that Love is beyond rehabilitation at age nineteen”). The court also noted that the defendant had refused to sell cocaine to a confidential informant based on concern for the informant’s family. Evans, 725 N.E.2d at 851.

In Weiss, 848 N.E.2d at 1071, on the other hand, our supreme court concluded that an executed sentence of forty years was not inappropriate where the defendant pled guilty to dealing methamphetamine, unlawful possession of a firearm, and to being an habitual offender.⁵ The court noted that the record showed the defendant had not merely engaged in a single act of dealing, but “was involved in a large-scale drug operation.” Id. The court went on to recognize the defendant’s criminal history consisting of five drug-related offenses and stated: “The record makes clear that Weiss is a serial criminal whose primary interest is financial gain through the sale of drugs. His repeated contacts with the criminal justice system have had no impact on persuading him to reform.” Id.

With regard to the nature of the offense, the amount of methamphetamine that Roggenkamp conspired to distribute far exceeded the three grams necessary to satisfy the elements of the offense.⁶ Ind. Code § 35-48-4-1(b)(1); see Kendall v. State, 825 N.E.2d 439, 452 (Ind. Ct. App. 2005), aff’d in relevant part, 849 N.E.2d 1109, cert. denied, 127 S.Ct. 1370 (2007) (forty-year sentence for dealing cocaine was not inappropriate where defendant was caught with over 300 grams of cocaine and was using a residence as a crack house). In

⁵ The trial court sentenced the defendant to twenty years for dealing methamphetamine, enhanced by twenty years for his status as an habitual offender, and twenty years for the firearm charge, served concurrently. Id.

exchange for Roggenkamp's guilty plea, the State dropped almost thirty counts, under two separate cause numbers, relating to the possession or distribution of controlled substances, methamphetamine, and marijuana. See Weiss, 848 N.E.2d at 1072 (noting in its analysis of the nature of the offense that the State refrained from filing additional charges as part of the plea agreement). Like in Weiss, it is clear that Roggenkamp's offense was not a one-time act, but was an ongoing criminal enterprise that supplied the Lafayette area with high-grade methamphetamine for roughly two years. Roggenkamp's sentence is not inappropriate based on the nature of the offense.

In regard to Roggenkamp's character, like in Weiss, the record clearly indicates that Roggenkamp is a career drug-dealer who has been undeterred by previous contacts with the criminal justice system. Roggenkamp is in his fifties, and we do not extend to him the mitigation given to the youthful defendants in Evans and Lee. Although, as Roggenkamp points out, several of his friends and relatives submitted letters emphasizing the positive traits of his character, his criminal history and the magnitude of his drug operation leave us convinced that his sentence is not inappropriate.

Conclusion

We conclude that the trial court properly sentenced Roggenkamp and that his sentence is not inappropriate based on the nature of the offense and Roggenkamp's character.

Affirmed.

SULLIVAN, J., and VAIDIK, J., concur.

⁶ Roggenkamp also committed these acts within 1,000 feet of a public park, another statutory element

elevating the offense from a Class B felony to a Class A felony. Ind. Code § 35-48-4-1(b)(3)(B).