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IN THE
COURT OF APPEALS OF INDIANA

LARRY GROLICH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 75A03-0904-CR-143
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STARKE CIRCUIT COURT
The Honorable Kim E. Hall, Judge
Cause No. 75C01-0810-FA-2

September 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Larry Grolich appeals the ten-year sentence imposed by the trial court after he pled guilty to dealing in methamphetamine[1] as a Class B felony. Grolich raises one issue, which we restate as whether Grolich's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 27, 2008, the State charged Grolich with: two counts of Class A felony dealing in methamphetamine; one count of Class C felony possession of methamphetamine; two counts of Class C felony illegal drug lab with possession of a firearm; one count of Class D felony possession of a narcotic drug; one count of Class D felony dumping controlled substance waste; one count of Class D felony maintaining a common nuisance; and one count of Class A misdemeanor possession of marijuana. Thus, the State charged Grolich with nine offenses, eight of which were felonies.

On January 9, 2009, Grolich entered into a plea agreement with the State. Under the agreement, Grolich agreed to plead guilty to one count of Class B felony dealing in methamphetamine, and in exchange, the State would dismiss all other remaining counts. The plea agreement specified that Grolich's executed sentence would be capped at ten years.

At a hearing held on February 27, 2009, Grolich admitted that he knowingly or intentionally manufactured methamphetamine. Based on this, the trial court accepted Grolich's guilty plea. The court then heard evidence regarding sentencing. The State

[1] *See* Ind. Code § 35-48-4-1.1(a).

introduced evidence that at least one scale was found inside Grolich's residence along with plastic sandwich bags with the corners cut off and 469 blister packs of pseudoephedrine, which contained a total of 493.68 grams of pseudoephedrine. The presentence investigation report indicated that Grolich's criminal history consisted of convictions for dealing in marijuana as a Class D felony, possession of marijuana as a Class A misdemeanor, and minor consuming as a Class C misdemeanor. The trial court sentenced Grolich as follows:

> The Court finds that [Grolich] has a history of criminal or delinquent behavior and that previous sentences have been ineffective. The Court finds as aggravating factors [Grolich's] prior criminal record; the quantity of methamphetamine cooking ingredients; and the present offense involves the abuse of illegal drugs and [Grolich] has previous convictions for abuse of illegal drugs. The Court being duly advised now sentences [Grolich] to the Indiana Department of Corrections [sic] . . . for a period of ten (10) years. The Court suspends none of said sentence . . . .

Appellant's App. at 15. Grolich now appeals.

DISCUSSION AND DECISION

Grolich argues that the ten-year sentence imposed by the trial court was inappropriate.

> This court has authority to revise a sentence "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 may "revise sentences when certain broad conditions are satisfied," *Neale v. State*, 826 N.E.2d 635, 639 (Ind. 2005), and recognize the advisory 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). In determining whether a sentence is inappropriate, we examine both the nature of the offense and the character of the offender. *Payton v. State*, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), *trans. denied*. When making this examination, we may look to any factors appearing in the record. *Roney v.*

> *State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied*; cf. *McMahon v. State*, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) ("[I]nappropriateness review should not be limited . . . to a simple rundown of the aggravating and mitigating circumstances found by the trial court."). The burden is on the defendant to demonstrate that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Spitler v. State, 908 N.E.2d 694, 696 (Ind. Ct. App. 2009), *trans. denied*.

Grolich specifically contends that his ten-year sentence, which was the maximum executed sentence permitted under the plea agreement, was inappropriate because he did not commit the worst offense nor was he the worst offender. With regard to the worst offense and worst offender principle, we have previously explained as follows:

> There is a danger in applying [this principle because] [i]f we were to take this language literally, we would reserve the maximum punishment for only the single most heinous offense. In order to determine whether an offense fits that description, we would be required to compare the facts of the case before us with either those of other cases that have been previously decided,--or more problematically--with hypothetical facts calculated to provide a "worst-case scenario" template against which the instant facts can be measured. If the latter were done, one could always envision a way in which the instant facts could be worse. In such case, the worst manifestation of any offense would be hypothetical and not real, and the maximum sentence would never be justified.
>
> This leads us to conclude the following with respect to deciding whether a case is among the very worst offenses and a defendant among the very worst offenders, thus justifying the maximum sentence: We should concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character.

Brown v. State, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), *trans. denied*.

We begin by considering the nature of Grolich's offense. The State initially charged Grolich with the following offenses: two counts of Class A felony dealing in

methamphetamine; one count of Class C felony possession of methamphetamine; two counts of Class C felony illegal drug lab with possession of a firearm; one count of Class D felony possession of a narcotic drug; one count of Class D felony dumping controlled substance waste; one count of Class D felony maintaining a common nuisance; and one count of Class A misdemeanor possession of marijuana. Grolich eventually pled guilty to one count of Class B felony dealing in methamphetamine, and the remaining charges were dismissed by the State.

Indiana Code section 35-50-2-5 provides that 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." Pursuant to the terms of the plea agreement, the trial court sentenced Grolich to ten years. Although ten years was the maximum executed sentence permitted under the plea agreement, Grolich ultimately only received the advisory sentence for his offense. Considering the maximum possible sentence Grolich might have received had he not pled guilty and been convicted of eight felonies and one misdemeanor, Grolich substantially benefitted from entering into a plea agreement that capped his executed sentence at ten years and dismissed the multiple felony and misdemeanor charges filed against him.

In pleading guilty to Class B felony dealing in methamphetamine, Grolich admitted that he manufactured methamphetamine in his home. We have previously noted that manufacturing methamphetamine is an inherently dangerous process that creates a '"substantial risk that someone will be killed."' *Hatcher v. State*, 762 N.E.2d 170, 173 (Ind. Ct. App. 2002) (quoting *People v. James*, 62 Cal. App. 4th 244, 270-71 (1998)),

trans. denied. Thus, Grolich's activities posed a risk not only to himself but also to his neighbors and anyone else who happened to be near his home.

Additionally, we note that evidence introduced by the State indicates that a scale, plastic sandwich bags with the corners cut off, and 469 blister packs of pseudoephedrine were found in Grolich's home. The presence of these items suggests that Grolich was manufacturing methamphetamine for sale and not just for his own personal use. Thus, we conclude that the nature of Grolich's offense was serious.

As to Grolich's character, we note that he has a criminal history that includes convictions for dealing in marijuana as a Class D felony, possession of marijuana as a Class A misdemeanor, and minor consuming as a Class C misdemeanor. As the trial court pointed out, it is significant that Grolich's past and present offenses involve illegal drugs. Additionally, the presentence investigation report and Grolich's testimony at the February 27, 2009 hearing indicate that Grolich has been using methamphetamine for four or five years, that he does not believe he has a substance abuse problem, and that use of methamphetamine has, in Grolich's own words, simply become "part of my daily routine . . . ." *Tr.* at 34. This supports the trial court's finding that Grolich "has failed to appreciate the criminal aspect of such substance abuse, and has failed to participate in substance abuse treatment programs." *Id.* at 40.

After considering the nature of Grolich's offense and his character, we cannot say that the ten-year sentence imposed by the trial court was inappropriate.

Affirmed.

NAJAM, J., and BARNES, J., concur.