



## **Case Summary**

Daniel L. Lannen appeals his ten-year sentence for Class B felony manufacturing methamphetamine. We conclude that the trial court abused its discretion in not identifying Lannen's guilty plea as a mitigator but that the court did not abuse its discretion in finding the large amount of methamphetamine manufacturing containers as an aggravator. However, we find that, even if the court had considered Lannen's guilty plea as a mitigator, it would have reached the same decision. In addition, we conclude that Lannen's advisory sentence is not inappropriate. We affirm.

### **Facts and Procedural History<sup>1</sup>**

In the summer of 2009 Lannen was a methamphetamine addict who manufactured methamphetamine in a shed outside his Noble County, Indiana, home. Lannen hid his methamphetamine problem from his adult children. As recently as August 23, 2009, Lannen manufactured methamphetamine in the shed. Then, sometime between August 23 and 24, Lannen had a lit torch inside the shed in preparation for burning some things on a burn pile. Nearby was a cup containing an unidentified liquid that Lannen planned to pour on the fire. However, the flame from the torch caught the gases from the liquid. Lannen dropped the cup, and the liquid splattered on Lannen's arm. Both the shed and Lannen caught fire. Lannen was taken to the hospital where he was treated for severe burns to his left arm. The burns spanned from his left hand to his shoulder and required skin grafts.

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<sup>1</sup> Because the factual basis for Lannen's guilty plea contains very few facts, *see* Tr. p. 14-15, both Lannen and the State, as do we, rely on facts from the sentencing hearing and other portions of the record, such as the presentence investigation report to which Lannen did not object.

As part of the fire investigation, the police went to Lannen's home and found thirty-three one-pot vessels, twenty-one HCL generators, eight bottles of drain cleaner, numerous empty boxes of ephedrine pills, and two meth kits that contained items used in the production of methamphetamine. Appellant's App. p. 42.

On October 21, 2009, the State charged Lannen with Class B felony manufacturing methamphetamine. Less than four months later, on February 4, 2010, Lannen, without the benefit of a plea agreement, pled guilty as charged. At the sentencing hearing, Lannen, who had a 1997 conviction for misdemeanor operating while intoxicated, testified that he became involved in methamphetamine because he "let [his] guard down." Tr. p. 23. When the trial court commented that his operation "wasn't a minor thing" but rather was "a fairly major thing," the following colloquy occurred:

MR. LANNEN: I, uh, you mean as far as the amount that they found or  
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THE COURT: (Interrupting) Well yeah as far as, uh, what seemed to  
[be] going on out there.  
MR. LANNEN: Yeah it's, uh —  
THE COURT: (Interrupting) And I don't often get explosions. I do  
get some, but you know you've, you've, uh, you got  
burned pretty bad.  
MR. LANNEN: Yes I did sir. Yes I did. I about lost my arm.

*Id.* at 23-24. Lannen also testified that he was attending Narcotics Anonymous classes and enrolled in college classes. But the trial court was not convinced:

You know you're a poster child for the . . . meth . . . problem that we face today. I mean somebody who has really not been in trouble gets involved, starts trying to make it, has a[n] explosion all the, all, about the only worse thing would, would have been if other people had been around . . . .

*Id.* at 27. Although the State recommended the advisory sentence of ten years with five years suspended, the trial court sentenced Lannen to ten years with no time suspended.

The court reasoned:

Mr. Lannen . . . I don't get cases like this too often where we've got, uh, the size of, of what was located out there. I don't get cases very often where I've got the danger that was posed, uh, obviously to you primarily, uh, because you'll, you'll have the scar[r]ing I guess together with the emotional scar[r]ing, the physical scar[r]ing to remind you your whole life what happened that day and, and remind your family as well of what you did. And I suspect they're, they're not very happy about that, but I also recognize from the letters that they're behind you, uh, which is good. Uh, there is a price to pay. Uh, I, I recognize you have no prior felonies, but given the, the nature of this offense, the fact that you've got no prior felony record I, I don't see this gives me any reason[] to deviate from the, uh, advisory sentence of ten years. Uh, you've got two days credit. And even though there was some recommendation made, uh, this morning to consider suspending part of that sentence, I'm not going to consider that this morning.

*Id.* at 30-31. The court then issued a written sentencing order in which it found two reasons for imposing the advisory sentence: (1) no prior felony record and (2) large amount of methamphetamine manufacturing containers found. Appellant's App. p. 8. Lannen now appeals his sentence.

## **Discussion and Decision**

Lannen makes two arguments on appeal. First, he contends that the trial court abused its discretion in not identifying his guilty plea as a mitigator and in finding the large amount of methamphetamine manufacturing containers as an aggravator. Second, he contends that his ten-year sentence is inappropriate.

### **I. Abuse of Discretion**

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified 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.* One way in which a court may abuse its discretion is by entering a sentencing statement that omits mitigating circumstances that are clearly supported by the record and advanced for consideration. *Id.* at 490-91. Another way a court may abuse its discretion is if the sentencing statement explains reasons for imposing a sentence but the record does not support the reasons. *Id.* A trial court is not obligated to accept a defendant's claim as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000).

Lannen contends that the trial court abused its discretion in not identifying his guilty plea as a significant mitigating circumstance. A defendant who pleads guilty generally deserves "some" mitigating weight to be afforded to the plea. *Anglemyer*, 875 N.E.2d at 220 (citing *McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007)). However, our Supreme Court has recognized that a trial court does not necessarily abuse its discretion by failing to recognize a defendant's guilty plea as a significant mitigating circumstance. *Id.* at 221. Instead, a trial court is required only to identify mitigating circumstances that are both significant and supported by the record, and a guilty plea may not be significantly mitigating when the defendant receives a substantial benefit in return for the plea. *Id.*

Here, Lannen pled guilty as charged without the benefit of a plea agreement. In addition, he pled guilty near the beginning of the criminal process and did not receive a substantial benefit for his plea. We conclude that the trial court abused its discretion in failing to accord some mitigating weight to Lannen's plea. However, if a trial court abuses its discretion in sentencing, "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." *Anglemeyer*, 868 N.E.2d at 491. Because the trial court highlighted, on numerous occasions, the large amount of methamphetamine manufacturing containers found at Lannen's property and the danger he posed, we can say with confidence that the trial court would have sentenced Lannen to the same ten-year term even if it would have properly considered Lannen's guilty plea.

Lannen also appears to argue that the trial court abused its discretion in finding the large amount of methamphetamine manufacturing containers as an aggravator. Lannen asserts that there is no proof that the items seized from his shed—thirty-three one-pot vessels, twenty-one HCL generators, eight bottles of drain cleaner, numerous empty boxes of ephedrine pills—are actually methamphetamine manufacturing containers or connected to methamphetamine manufacturing in any way. We find this argument to be disingenuous, as Lannen admitted to manufacturing methamphetamine on his property as recently as August 23. Tr. p. 14-15 (guilty plea hearing); Appellant's App. p. 43 (probable cause affidavit attached to PSI) ("LANNEN admitted that he had manufactured methamphetamine on his property as recently as the night prior to the fire/explosion,

namely: August 23, 2009.”). In addition, Lannen he did not dispute the trial court’s characterization of Lannen’s methamphetamine operation. Tr. p. 24. Finally, to the extent that some of the items in the shed did not belong to Lannen, Lannen never identified those items. We therefore find that all of the items seized from Lannen can be attributed to him. The trial court did not abuse its discretion in finding the large amount of methamphetamine manufacturing containers as an aggravator.<sup>2</sup>

## II. Inappropriate Sentence

Lannen contends that his ten-year sentence is inappropriate and asks us to “impose a sentence no harsher than that recommended by the State—10 years’ imprisonment with five years suspended.” Appellant’s Br. p. 13. Article VII, Sections 4 and 6 of the Indiana Constitution ‘authorize[] independent appellate review and revision of a sentence imposed by the trial court.’” *Anglemyer*, 868 N.E.2d at 491 (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)). Our appellate authority is implemented through Indiana Appellate Rule 7(B), which allows us to “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.”

A person who commits a Class B felony shall be imprisoned for a fixed term of between six and twenty years, with the advisory sentence being ten years. Ind. Code § 35-50-2-5. Here, the trial court sentenced Lannen to the advisory term of ten years.

As for the nature of the offense, Lannen, a methamphetamine addict, manufactured methamphetamine in a shed on his property. He admitted to

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<sup>2</sup> To the extent that Lannen asserts that there was only a “fire” and not an “explosion,” but the trial court referred to it as an “explosion,” we do not find that the distinction makes a difference given the consequences.

manufacturing methamphetamine as recently as August 23. Sometime between August 23 and 24, while preparing to burn some trash, Lannen introduced a flammable liquid and lit torch into the methamphetamine lab, igniting both himself and the shed. Lannen suffered severe burns, which required skin grafts. Luckily, no one else was injured, and the fire was contained. Although Lannen claimed that he only manufactured methamphetamine for his personal use, the police recovered a significant amount of methamphetamine-related items in his shed, including thirty-three one-pot vessels and twenty-one HCL generators. As the trial court found, Lannen is a “poster child” for the methamphetamine problem which plagues our society today.

As for Lannen’s character, he has only one prior conviction, an OWI from 1997. In addition, at the time of sentencing, Lannen was attending NA classes and enrolled in some college courses. Also, Lannen pled guilty and has the support of many family and friends who submitted letters on his behalf.

Although there are many redeeming aspects to Lannen’s character, we find that the evidence of the large-scale methamphetamine operation and the dangerousness of Lannen’s activity justify his advisory sentence. Lannen has failed to persuade us that his ten-year sentence is inappropriate.

As for Lannen’s argument that *Westlake v. State*, 893 N.E.2d 769 (Ind. Ct. App. 2008), militates in favor of reducing his sentence, we find *Westlake* to be readily distinguishable. *Westlake* was charged with numerous drug charges and neglect of a dependent for dealing significant amounts of drugs from her home, where her six-year-old son also lived. *Id.* at 771. *Westlake* pled guilty to Class B felony dealing in cocaine

and Class C felony neglect of a dependent. *Id.* After Westlake pled guilty, the trial court placed her in its pre-conviction release program, where she was diagnosed, for the first time, with bipolar disorder and received medication and treatment. *Id.* The trial court later accepted the plea agreement but found Westlake guilty but mentally ill. *Id.* The court sentenced her to an aggregate term of fourteen years. *Id.* On appeal, this Court found that, “[u]nder these extremely unusual facts and circumstances,” Westlake’s sentence was inappropriate and reduced it to an aggregate term of seven years with two years suspended to probation. *Id.* at 772-73. We ordered Westlake to serve the executed portion of her sentence on community corrections. *Id.* at 773.

It is true that Lannen, like Westlake, has a relatively minor criminal history, pled guilty, and took steps before trial to improve himself. But Lannen has no mental health issues. We found “extremely significant” the trial court’s decision to find Westlake guilty but mentally ill. *Id.* at 772. We also noted that “[t]he trial court’s further recognition of [Westlake’s] need for continued treatment and the effect that the diagnosis and treatment of her bipolar disorder have had on her personal life are also quite important.” *Id.* Accordingly, we concluded that “[t]he combination of Westlake’s previously undiagnosed bipolar disorder, her comprehensive response to treatment, and resulting stellar success in Tippecanoe County’s excellent pre-conviction program lead us to the conclusion that her sentence is inappropriate.” *Id.* Because the linchpin to reducing Westlake’s sentence was the mental health component, which is not present in this case, we do not find that *Westlake* requires us to reduce Lannen’s sentence.

Affirmed.

MAY, J., and ROBB, J., concur.