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IN THE
COURT OF APPEALS OF INDIANA

JASEN SHAVER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A05-0902-CR-98
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0605-FA-6

October 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Jasen Shaver ("Shaver") appeals his concurrent sentences for Dealing in Methamphetamine, as a Class A felony,[1] Dealing in Cocaine, as a Class A Felony,[2] and Neglect of a Dependent, as a Class D felony.[3] We affirm.

Issues

Shaver presents two issues, which we restate as follows:

I. Whether he waived his rights under Article 1, Section 16 of the Indiana Constitution by entering a plea agreement; and

II. Whether his sentence is inappropriate.

Facts and Procedural History

Kenneth Burgess went to Shaver's home, where Shaver sold him more than three grams of cocaine and more than three grams of methamphetamine. That night, law enforcement officers executed a search warrant for Shaver's residence, where he lived with his wife and at least four minor children – ages eleven, eight, seven, and five. Informed that police would be searching his home, Shaver hid two duffle bags containing 128 grams of methamphetamine, 132 grams of cocaine, 184 grams of psilocybin mushrooms, six pounds of marijuana, three sets of scales, and a police scanner. Shaver also arranged for a person to retrieve $8000 in cash to be used for Shaver's bond.

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[1] Ind. Code § 35-48-4-1.1.

[2] Ind. Code § 35-48-4-1.

[3] Ind. Code § 35-46-1-4.

The State charged Shaver with twenty-two counts. Shaver and the State entered a plea agreement, in which Shaver agreed to plead guilty to Dealing in Methamphetamine, Dealing in Cocaine, and Neglect of a Dependent. The State agreed to dismiss nineteen counts, including sixteen felonies. The plea agreement provided that the three sentences would be served concurrently, with a maximum executed sentence no greater than twenty years.

The trial court entered judgments of conviction and found five mitigating circumstances: Shaver's guilty plea, showing remorse, Shaver's mental health, his cooperation with law enforcement, and the fact that he had five dependent children. It also found five aggravating circumstances: Shaver's criminal history, his illegal alcohol and drug use, his score on the Level of Service Inventory ("LSI-R"), the fact that "the defendant's prior rehabilitation has failed," and "the minimum is non suspendable."[4] Appendix at 95. The trial court sentenced Shaver to concurrent terms of thirty years, thirty years, and three years, with twenty years executed and ten years suspended to probation (five years supervised and five years unsupervised).

Shaver filed multiple motions for modification of sentence, which were all denied by the trial court. The trial court granted Shaver's petition to file a belated appeal.

Shaver now appeals.

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[4] The State acknowledges on appeal that "the trial court erred in identifying Shaver's LSI-R score as an aggravating fact . . . ." Appellee's Brief at 15. Meanwhile, the fact that Shaver was required to execute no less than twenty years was a function of Indiana Code Section 35-50-2-2(b)(1), not an aggravating circumstance.

Discussion and Decision

I. Proportionality of Penalty and Nature of Offense

Shaver argues that his sentence is disproportionate to the nature of his offense, pursuant to Article 1, Section 16 of the Indiana Constitution. "All penalties shall be proportioned to the nature of the offense." IND. CONST. art. 1, § 16.

The State contends that Shaver waived this argument by entering a plea agreement and by failing to raise it before the trial court. Shaver did not file a reply brief.

By bargaining to plead guilty in return for a favorable outcome, an accused "give[s] up a plethora of substantive claims and procedural rights." Creech v. State, 887 N.E.2d 73, 74 (Ind. 2008) (quoting Games v. State, 743 N.E.2d 1132, 1135 (Ind. 2001)). For example, in pleading guilty, the accused waives the privilege against compulsory self-incrimination, the right to trial by jury, the right to confront one's accusers, the right against double jeopardy, as well as the right to direct appeal of the conviction itself. See respectively Boykin v. Alabama, 395 U.S. 238, 243 (1969); Mapp v. State, 770 N.E.2d 332, 334 (Ind. 2002); and Collins v. State, 817 N.E.2d 230, 231 (Ind. 2004). And, while we exercise our power to review and revise sentences pursuant to Indiana Appellate Rule 7(B) where the plea agreement allows the trial court any sentencing discretion whatsoever,[5] that function is, by definition, specific to appellate courts.

"Our courts have long held that plea agreements are in the nature of contracts entered

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[5] See, e.g., Biddinger v. State, 868 N.E.2d 407, 414 (Ind. 2007); and Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

into between the defendant and the State." Lee v. State, 816 N.E.2d 35, 38 (Ind. 2004). Plea agreements bind the State and the defendant. Id. "[W]here a defendant enters a plea of guilty knowingly, intelligently, and voluntarily, there is no compelling reason to set aside the conviction on grounds that the sentence is later determined to be invalid." Id. at 39. "[A] defendant may not enter a plea agreement calling for an illegal sentence, benefit from that sentence, and then later complain that it was an illegal sentence." Collins v. State, 509 N.E.2d 827, 833 (Ind. 1987).

Shaver waived his rights under Article 1, Section 16 of the Indiana Constitution by entering a plea agreement.

II. Appropriateness of Sentence

Shaver argues that his sentence is inappropriate. Under Indiana Appellate Rule 7(B), this "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(B); see IND. CONST. art. 7, § 6. In performing our review, we assess "the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008). This "introduces into appellate review an exercise of judgment that is unlike the usual appellate process, and is very similar to the trial court's function." Id. at 1223. A defendant "'must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080

(Ind. 2006)), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007).

The minimum, advisory, and maximum sentences are respectively: twenty, thirty, and fifty years for a Class A felony; and six months, eighteen months, and three years for a Class D felony. Ind. Code §§ 35-50-2-4 and -7. The trial court sentenced Shaver to the advisory term of thirty years on Dealing in Methamphetamine and Dealing in Cocaine, as well as the maximum, three-year term for Neglect of a Dependent. The sentences were ordered to be served concurrently for an aggregate sentence of thirty years, with ten years suspended to probation (five years supervised and five years unsupervised).

We begin our analysis by noting that, once the trial court accepted the plea agreement, it had no alternative other than to order twenty years to be executed. As Shaver had a prior unrelated felony conviction, he could execute no less than twenty years – the minimum sentence for a Class A felony. See Ind. Code § 35-50-2-2(b)(1). Meanwhile, the plea agreement provided for no greater than twenty years executed. Therefore, the trial court effectively exercised no discretion regarding the imposition of the executed portion of Shaver's sentence. Thus, we review only the trial court's decision to impose an additional ten years, all of which was suspended to probation.

As to the nature of the offense, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Childress, 848 N.E.2d at 1081. Shaver received the advisory term.

On the day of his arrest, Shaver controlled significant amounts of methamphetamine, cocaine, psilocybin mushrooms, marijuana, and other items. He arranged for a person to

retrieve $8000 in cash for use as his bond. He was on probation when he committed the instant offenses.

With respect to Shaver's character, he was convicted of committing Criminal Gang Activity in 1995 and Possession of Marijuana in 2002 and 2005. He was adjudicated a juvenile delinquent for offenses that, if committed by an adult, would be Burglary, Theft, Attempted Theft, and Resisting Law Enforcement.

Based upon our review of this record, we conclude that Shaver's sentence was not inappropriate.

Conclusion

Shaver waived his rights under Article 1, Section 16 of the Indiana Constitution by entering a plea agreement. Furthermore, his sentence is not inappropriate.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.