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FILED
Nov 12 2009, 10:01 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

ELIZABETH A. BELLIN
Cohen Law Offices
Elkhart, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DONALD C. GREVENSTUK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0905-CR-225
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0807-FA-32

November 12, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Donald C. Grevenstuk appeals his aggregate forty-five-year sentence for two counts of Class A felony dealing in cocaine and one count of Class A felony possession of cocaine with intent to deliver. Grevenstuk argues that his sentence is inappropriate in light of the nature of the offenses and his character. We conclude that his sentence is not inappropriate. We affirm.

Facts and Procedural History[1]

Grevenstuk sold approximately 4 grams of cocaine to a confidential informant on June 17, 2008. He sold another 6.9 grams of cocaine to the informant three weeks later. Police searched Grevenstuk's residence in July 2008 and found, among other things, 19.7 grams of cocaine in a Ziploc bag.

The State charged Grevenstuk with two counts of Class A felony dealing in cocaine[2] (Counts I and II) and one count of Class A felony possession of cocaine with intent to deliver[3] (Count III). Grevenstuk pled guilty pursuant to an open plea agreement.

The trial court found the following aggravating circumstances: Grevenstuk's ten prior misdemeanor convictions and one prior felony conviction; his two failures to appear; that Grevenstuk committed the instant offenses while on probation; that his prior attempts at rehabilitation were unsuccessful; that he had a child support arrearage totaling $15,000; that he had started using drugs at the age of sixteen; that he committed the

[1] These facts are drawn from the guilty plea transcript as well as the probable cause affidavit submitted in connection with Grevenstuk's arrest. Grevenstuk relies on both materials when stating the facts in his appellate brief.

[2] Ind. Code § 35-48-4-1(a)(1)(C), (b)(1).

[3] Ind. Code § 35-48-4-1(a)(2)(C), (b)(1).

instant offenses while under the influence; and that this case involved multiple counts. The trial court found the following mitigators: Grevenstuk's acceptance of responsibility; his age of twenty-three years; and allegations that Grevenstuk suffered from Tourette's Syndrome and Attention-Deficit Hyperactivity Disorder.

The trial court sentenced Grevenstuk to concurrent terms of forty-five years with five years suspended on Count I, thirty years on Count II, and thirty years on Count III. Grevenstuk now appeals.

Discussion and Decision

Grevenstuk argues that his aggregate sentence is "inappropriate in light of the nature of the offense and the character of the offender." Appellant's Br. p. 2, 6.

We should first point out that although Grevenstuk frames his argument as one of inappropriateness, he refers repeatedly to circumstances that "should have been considered as a mitigating factor by the trial court." *Id.* at 10. These latter contentions sound in abuse-of-discretion. *See Anglemyer v. State*, 868 N.E.2d 482, 490-91 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007) (a trial court may abuse its discretion if its sentencing statement "omits reasons that are clearly supported by the record and advanced for consideration"). Grevenstuk also cites standards of review from the abuse-of-discretion context. *See* Appellant's Br. p. 9 ("The Court of Appeals, in reviewing a person's sentence, is 'not limited to the written sentencing statement but may consider the trial court's comments in the transcript of the sentencing proceedings.'" (citing *Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002))). As our Supreme Court has clarified, however, abuse-of-discretion and inappropriateness are separate and distinct

sentencing claims. *See Anglemyer*, 868 N.E.2d at 490-91. Since Grevenstuk has labeled the overall issue as one of inappropriateness, we review his sentence on those grounds alone and decline to address any tacit abuse-of-discretion arguments. *See King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008) (reviewing sentence only for inappropriateness, where appellant interspersed references to the abuse-of-discretion standard).

Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Appellate Rule 7(B), which provides that a 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." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

A. Nature of the Offenses

With regard to the nature of the offenses, Grevenstuk contends that his sentence should be revised because he was caught dealing drugs in the course of two state-sponsored, controlled buys. He further argues that had drug interdiction authorities "not set up two controlled buys with the Defendant, the State would not have had evidence to obtain a search warrant of the Defendant's bedroom, and the Defendant would not have been charged in this case." Appellant's Br. p. 7.

Indiana courts have revised sentences where defendants are convicted of multiple, virtually identical state-sponsored drug deals occurring within a short period of time. *See Gregory v. State*, 644 N.E.2d 543, 545-46 (Ind. 1994); *Beno v. State*, 581 N.E.2d 922, 924 (Ind. 1991); *Williams v. State*, 891 N.E.2d 621, 633-35 (Ind. Ct. App. 2008). But in these cases, our courts have merely revised consecutive sentences to run concurrently, holding that "[c]onsecutive sentences are not appropriate when the State sponsors a series of virtually identical offenses." *Gregory*, 644 N.E.2d at 544; *accord Beno*, 581 N.E.2d at 924; *Williams*, 891 N.E.2d at 633-35. The trial court already ordered Grevenstuk's three terms to be served concurrently, so *Gregory*, *Beno*, and *Williams* are unavailing.

We are not aware of any other circumstances surrounding Grevenstuk's crimes that militate in favor of a downward sentence revision. Accordingly, we find that Grevenstuk's aggregate term of forty-five years is not inappropriate in light of the nature of his offenses.

B. Character of the Offender

With regard to his character, Grevenstuk draws our attention to his youth, history of mental illness, alleged contribution toward his child support obligation, and completion of religious courses while incarcerated pending resolution of this case. Grevenstuk also accepted responsibility and expressed regret for his offenses at the sentencing hearing.

We acknowledge in particular the evidence that Grevenstuk was diagnosed with Attention Deficit Disorder, Attention-Deficit Hyperactivity Disorder, and Tourette's Syndrome. But the evidence also shows that Grevenstuk has refused to take his

prescribed medication since the age of eighteen. Moreover, while mental illness might compel a sentence revision where the illness is intertwined with the offense, we have no concrete indication that Grevenstuk's drug crimes were related to his ADD, ADHD, or Tourette's Syndrome.

We also have a number of other adverse considerations before us: Grevenstuk's extensive criminal record, including one felony and at least nine misdemeanor convictions; an unsuccessful history of attempted rehabilitation; a support arrearage totaling $15,000; and a history of drug use beginning when Grevenstuk was sixteen years old. Finally, Grevenstuk committed the instant offenses while he was on probation from another cause.

Taking into account all of the abovementioned factors and personal characteristics, we cannot say Grevenstuk's aggregate sentence is inappropriate.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.