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IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER R. HARDY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A04-1105-CR-233
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0906-FB-14
Cause No. 20D03-0805-FA-30

December 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Christopher R. Hardy ("Hardy") pled guilty to and was convicted of Dealing in Methamphetamine, as a Class A felony[1]; Dealing in Methamphetamine, as a Class B felony[2]; Possession of Methamphetamine, as a Class D felony[3]; and Maintaining a Common Nuisance, as a Class D felony[4]. He now appeals, arguing that his sentence was inappropriate in light of the nature of his offenses and his character.

We affirm.

Facts and Procedural History

On October 18, 2007, at a home in Elkhart County, Hardy manufactured more than three grams of methamphetamine. On May 1, 2008, Hardy was charged with Attempted Dealing in Methamphetamine, as a Class A felony, and Dealing in Methamphetamine, as a Class B felony, under Cause Number 20D03-0805-FA-30 ("Cause FA-30"). On June 7, 2010, the State amended its charging information, charging Hardy only with Dealing in Methamphetamine, as a Class A felony.

On March 11, 2009, at a different residence in Elkhart County, police executed a search warrant while Hardy was away. Hardy had been using the residence to manufacture methamphetamine and on that day manufactured less than three grams of the drug. Hardy had also stored already-produced methamphetamine at the residence. On June 8, 2009,

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[1] Ind. Code § 35-48-4-1.1(a)(1)(A) & (b)(1).
[2] I.C. § 35-48-4-1.1(a)(1)(A).
[3] I.C. § 35-48-4-6.1(a).
[4] I.C. § 35-48-4-13(b)(2)(B).

Hardy was charged with Dealing in Methamphetamine, as a Class B felony; Possession of Methamphetamine; and Maintaining a Common Nuisance, all under Cause Number 20D03-0906-FB-14 ("Cause FB-14").

On March 17, 2011, Hardy pled guilty to the charges in FA-30 and FB-14. The trial court ordered a presentencing report, and on April 14, 2011, a sentencing hearing was conducted. At the conclusion of the hearing, the trial court sentenced Hardy to forty years imprisonment for Dealing in Methamphetamine, as a Class A felony, as charged in FA-30, less 731 days of credit time and 731 days of good time credit. With respect to the charges in FB-14, the trial court sentenced Hardy to fifteen years imprisonment for Dealing in Methamphetamine, as a Class B felony; two years imprisonment for Possession of Methamphetamine; and two years imprisonment for Maintaining a Common Nuisance. The trial court ordered the sentences in FB-14 run concurrently with each other, and further ordered that those sentences be run consecutively to the sentence in FA-30 because they were unrelated incidents. This yielded an aggregate sentence of fifty-five years imprisonment, all to be served in the Department of Correction.

Hardy filed notices of appeal in FA-30 and FB-14. Upon Hardy's motion, on June 23, 2011, this court ordered the appeals in FA-30 and FB-14 consolidated under a single Cause Number for this appeal.

Discussion and Decision

Hardy appeals his fifty-five year aggregate sentence. Under 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." It is the defendant's burden to persuade this court that his sentence "has met th[e] inappropriateness standard of review." Anglemyer, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007).

In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

> Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana 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. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to "leaven the outliers." Id. at 1225. "Whether we regard a sentence as appropriate at the end of the day turns on our sense of 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." Id. at 1224.

Hardy was convicted of four offenses in two different cause numbers, which we consider together as a consolidated appeal. Hardy was convicted of Dealing in Methamphetamine, as a Class A felony, which carries a minimum sentence of twenty years, a maximum sentence of fifty years, and an advisory sentence of thirty years, I.C. § 35-50-2-4; he was sentenced to forty years imprisonment. Hardy was also convicted of Dealing in Methamphetamine, as a Class B felony, which carries a sentencing range of six to twenty years imprisonment, with an advisory sentence of ten years, I.C. § 35-50-2-5; he was sentenced to fifteen years. Hardy's convictions for Possession of Methamphetamine and Maintaining a Common Nuisance, both as Class D felonies, carry a sentencing range of six months to three years, I.C. § 35-50-2-7(a); Hardy was sentenced to two years for each. Hardy now requests that we vacate his sentences and remand this matter to the trial court for resentencing.

Hardy was arrested on October 18, 2007, and went uncharged until May 2008, when the State filed its information in FA-30, charging him with Dealing in Methamphetamine, as a Class A felony. In the interim, Hardy moved his methamphetamine manufacturing to another location and continued to both produce and use the drug. After his 2009 offenses, Hardy was charged with and pled guilty to the Class B felony charge of Dealing in Methamphetamine and the Class D felony charges of Possession of Methamphetamine and Maintaining a Common Nuisance. Given the repetitious nature of these offenses and Hardy's failure to cease engaging in the manufacturing and use of methamphetamine, we cannot conclude that the nature of his offenses weighs in his favor.

As to his character, we observe that at the time of his sentencing Hardy was forty-nine years old. As a youth, Hardy was subject to three juvenile adjudications—one for Burglary, and two for Forgery. As an adult, in 1981 Hardy was convicted of Possession of a Bomb; he received probation, which was revoked in 1982 after he violated its terms. Also in 1981, Hardy was convicted of misdemeanor Criminal Conversion and Possession of Marijuana. In 1982, Hardy was convicted of Burglary, as a Class B felony, for which he completed his sentence in 1988. Hardy had no other encounters with the criminal justice system until 2007, when he committed the first of the instant offenses.

While in jail awaiting trial, Hardy took and completed courses on managing his finances and adjusting to life after being released from incarceration. During this period, Hardy also sought treatment for his methamphetamine addiction. This treatment was not provided by Elkhart County jail; Hardy obtained treatment at his own expense, and credits the State with saving his life by arresting and incarcerating him. However, while Hardy pled guilty and acknowledged at his sentencing hearing that he "shouldn't have been doing" methamphetamine (Tr. 36), he stated at his sentencing hearing that his girlfriend introduced him to methamphetamine use and appeared to assign to her some portion of the blame for his offenses.

While Hardy has taken steps to cease using drugs and to improve himself in other respects, these changes do not so counterbalance his prior criminal history and continued criminal conduct after his 2007 arrest as to make his sentence here inappropriate under Rule 7(B).

Affirmed.

BAKER, J., and DARDEN, J., concur.