



Stephen P. Dooley, II pleaded guilty to three counts of Dealing Cocaine,<sup>1</sup> one as a class A felony and two as class B felonies. After accepting his guilty plea, the trial court sentenced Dooley to an aggregate term of thirty-three years, with eight years suspended to probation. Dooley appeals his sentence, presenting the following restated issues for review:

1. Did the trial court err in finding aggravating circumstances?
2. Is Dooley's aggregate sentence inappropriate?

We affirm.

The facts as admitted by Dooley at the guilty plea hearing are that on January 8, 2007, Dooley sold cocaine weighing more than three grams to a person cooperating with police. He sold cocaine to the same person in separate transactions on January 9 and 10, 2007. He was charged with dealing cocaine as a class A felony as a result of the January 8 transaction and separate counts of dealing cocaine as class B felonies as a result of the January 9 and 10 transactions. He pleaded guilty to those offenses, with the plea agreement leaving sentencing to the trial court's discretion.

Following a sentencing hearing, the trial court found the following aggravating circumstances: (1) Dooley had a history of failing to appear at proceedings in this and other cases; (2) Dooley's criminal history, which included three true findings of juvenile delinquency (one for curfew violation, one for possession of marijuana, and one for theft) and two criminal convictions (one for misdemeanor illegal consumption of alcohol by a minor and one for misdemeanor domestic battery); (3) Dooley was engaged in the business of dealing marijuana around the time he committed the instant offenses; (4) Dooley was \$2300

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<sup>1</sup> Ind. Code Ann. § 35-48-4-1 (West, Westlaw through 2009 1st Special Sess.).

in arrears in paying child support; and (5) Dooley used ecstasy, marijuana, and cocaine while committing the instant offenses and while on bond for the instant offenses awaiting sentencing. The trial court identified the following mitigating circumstances: (1) Dooley was twenty-one years old at the time he committed these offenses; (2) Dooley “accepted responsibility for his criminal conduct, although belatedly”, *Amended Appellant’s Appendix* at 44; (3) Dooley was in need of treatment for addiction; and (4) “all statements of counsel for the Defendant and the Defendant[.]” *Id.* at 44-45.

With respect to each offense, the court determined that the aggravators outweighed the mitigators and therefore that a sentence in excess of the advisory sentence was warranted. Thus, for each offense, the court imposed a sentence three years in excess of the advisory sentence, resulting in a thirty-three-year sentence for the class A-felony offense, with eight years suspended to probation, and thirteen years for each of the class B-felony offenses, with all sentences to run concurrently. The court also imposed fines totaling \$24,000, all suspended. Dooley appeals his sentence.

We observe at the outset that when evaluating certain sentencing challenges pursuant to the advisory sentencing scheme under *Anglemeyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218, we first confirm that the trial court issued the required sentencing statement that included “reasonably detailed reasons or circumstances for imposing a particular sentence.” *Id.* at 491. Second, the reasons or omission of reasons given for choosing a sentence are subject to review on appeal for an abuse of discretion. *Anglemeyer v. State*, 868 N.E.2d 482. The weight given to particular aggravators or mitigators, however, is not subject to appellate review. *Id.* Finally, the merits of a particular

sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B).  
*Id.*

1.

Dooley contends the trial court abused its discretion in finding certain aggravating circumstances. Specifically, he contends that the trial court erred in citing as aggravators his criminal history, that he had a history of failing to appear at proceedings in this and other cases, and that he was dealing marijuana when he committed the instant offenses.

Dooley does not deny that he has a history of true findings of juvenile delinquency and criminal convictions, but merely contends it is not significant and therefore does not constitute a valid aggravating circumstance. Our Supreme Court has stated that the “[s]ignificance [of prior convictions] varies based on the gravity, nature and number of prior offenses as they relate to the current offense.” *Ruiz v. State*, 818 N.E.2d 927, 929 (Ind. 2004) (quoting *Wooley v. State*, 716 N.E.2d 919, 929 (Ind. 1999)). Although only twenty-one years old at the time he committed these offenses, Dooley already had three true findings and two criminal convictions, albeit misdemeanors. Two of those involved substance abuse, one involved a crime of violence, and another involved theft. This record is certainly not the most serious that can be imagined, but in view of his age and the crimes of which he was convicted in the instant case, it is not insignificant. The trial court did not abuse its discretion in identifying his criminal history as a significant aggravating circumstance.

Dooley contends the trial court abused its discretion in identifying as an aggravator that he has a history of failing to appear at court proceedings. He does not deny that he has indeed failed to appear in this and other court proceedings in the past. Rather, he offers

innocent reasons for those absences (e.g., failure to receive notice)<sup>2</sup> or points out that “two of [his] prior failures to appear in other cases were actually out of juvenile cases.” *Appellant’s Brief* at 4. We presume the latter observation is meant to diminish his culpability therefrom. Regardless of what happened in any one particular instance, it cannot be denied that Dooley has failed to appear often enough that, viewed in the aggregate, it is fair to regard this behavior as a pattern – a pattern that reflects poorly on his character and evinces a cavalier attitude toward the court and its authority. These are valid considerations and the court did not abuse its discretion in identifying his pattern of failure to appear as an aggravating circumstance. *See Thorpe v. State*, 524 N.E.2d 795 (Ind. 1988) (finding that trial court was not precluded from considering as an aggravating circumstance the defendant’s attitude as reflected by the fact that he fled from the court’s jurisdiction).

Dooley contends the trial court abused its discretion in finding as an aggravator that he was dealing marijuana when he committed the instant offenses. He contends this finding is unsupported by the record, because although “Dooley admitted that he sold marijuana before the January of 2008 incident[,] ... [t]here was no testimony or evidence that Dooley was actually selling marijuana when he committed these offenses.” *Appellant’s Brief* at 6.

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<sup>2</sup> We summarily reject Dooley’s claim that citing prior failures to appear that were allegedly attributable to lack of notice “impinged on his due process right to notice.” *Appellant’s Brief* at 4.

Dooley mischaracterizes the nature of the aggravator found by the trial court. Dooley testified at the sentencing hearing. Referring to answers he gave when interviewed in conjunction with the presentence investigation report, he explained that the three cocaine transactions upon which the instant convictions were based were unusual for him and that he “wasn’t in the business of selling cocaine.” *Transcript* at 130. He was then asked, “What did you sell?” *Id.* He responded, “Marijuana.” *Id.* at 131. When asked to clarify that he meant thereby that he “sold marijuana before this January of ‘08 incident”, he answered in the affirmative. And finally, “But in this case you sold cocaine?” *Id.* Dooley answered, “Uh-huh.” *Id.*

We believe the best interpretation of the foregoing exchange is that Dooley was indicating that he normally was engaged in selling marijuana, but on these particular occasions he sold cocaine just to help a friend and/or “make a couple bucks.” *Id.* Therefore, Dooley’s claim with respect to the nature of this finding and his claim that it was not supported by the record are incorrect. Although the State did not charge Dooley with dealing marijuana, the trial court was entitled to consider it as an aggravator because, when sentencing, “[a] sentencing judge does not err in considering prior criminal conduct which has not been reduced to conviction and evidence of prior uncharged crimes.” *Lockard v. State*, 600 N.E.2d 985, 987-88 (Ind. Ct. App. 1992), *trans. denied*; *see also Blakely v. Washington*, 542 U.S. 296 (2004) (trial court may enhance a sentence based upon an aggravating factor that was admitted by the defendant). The trial court did not abuse its discretion in finding as an aggravator that, at or about the time of these offenses, Dooley was engaged in the business of selling marijuana.

2.

Dooley contends his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after considering the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Dooley bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

We begin by examining Dooley's character. Although only twenty-one years old at the time of these offenses, Dooley had already experienced repeated contacts with the criminal justice system. In conjunction with his juvenile delinquency cases, the court attempted to help Dooley address his substance-abuse issues, but without success. We note in this regard that while out on bond in the instant case, he continued to use marijuana, cocaine, and ecstasy. He gratuitously offered to sell ecstasy to the cooperating source to whom he eventually sold cocaine in the instant case. Coupled with his past and current predilection for illegal drug dealing and use, Dooley has also displayed a consistently cavalier attitude toward our courts by failing to attend multiple hearings. All the while, he has accumulated a significant child support arrearage. These factors outweigh the mitigators found by the trial court (i.e., Dooley's age at the time he committed these offenses, the fact that he eventually accepted responsibility for his crimes, and his need for drug-addiction

treatment), all of which we find to be in the low range.

Turning now to the nature of his offenses, he participated in a series of cocaine transactions on three separate days. In fact, he expressed a willingness to do more than was asked in that he made unsolicited offers to sell ecstasy to the buyer in these transactions.

In view of the nature of these offenses and Dooley's character, we conclude that the executed sentence imposed by the trial court – i.e., one that is, with a portion suspended to probation, five years less than the advisory sentence for the greatest of the multiple offenses of which Dooley was convicted – is appropriate.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.