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IN THE COURT OF APPEALS OF INDIANA

ANTHONY RENSHAW,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 07A04-0610-CR-620
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BROWN CIRCUIT COURT
The Honorable Judith A. Stewart, Judge
Cause No. 07C01-0404-FB-168

August 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Anthony Renshaw appeals his sentence imposed after pleading guilty to class B felony attempted dealing in methamphetamine. We affirm.

Issue

Renshaw raises one issue, which we restate as whether his sentence is appropriate.

Facts and Procedural History

On April 13, 2004, Renshaw was charged with class B felony attempted dealing in methamphetamine, class D felony possession of chemical reagents or precursors with intent to manufacture methamphetamine, and class A misdemeanor driving while suspended. While on bond, Renshaw committed a class A felony dealing in methamphetamine in Johnson County, and was convicted and sentenced. On October 6, 2004, Renshaw filed a motion to suppress evidence seized from the impoundment of his vehicle, which the trial court denied on January 27, 2005.

On December 5, 2005, Renshaw pled guilty to class B felony attempted dealing in methamphetamine pursuant to a plea agreement.[1] The State agreed to dismiss the remaining counts, and sentencing was left open with any executed portion not to exceed ten years.

On August 28, 2006, a sentencing hearing was held. The trial court found that Renshaw's criminal history was an aggravating circumstance and that his remorse and the improbability that he would commit another crime were mitigating circumstances. The trial court found that the mitigating circumstances outweighed the aggravating circumstance and sentenced Renshaw to six years executed.

Renshaw appeals.

Discussion and Decision

Renshaw pled guilty to a class B felony.[2] At the time Renshaw committed his offense, the trial court was authorized to impose a presumptive sentence of ten years, to which up to ten years could be added for aggravating circumstances and up to four years subtracted for mitigating circumstances. Ind. Code § 35-50-2-5.[3] Pursuant to the plea agreement, the executed portion of the sentence could not exceed ten years. Renshaw takes issue with the imposition of his six-year executed sentence and asks this Court to suspend his sentence entirely.[4] Under Article 7, Section 6 of the Indiana Constitution, we have the authority to review and revise sentences.

The determination of the appropriate sentence is within the trial court's discretion, and we will reverse only upon an abuse of discretion. *Sipple v. State*, 788 N.E.2d 473, 479 (Ind. Ct. App. 2003). An abuse of discretion occurs if the trial court's decision is clearly against

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[1] Ind. Code § 35-48-4-1(a); Ind. Code § 35-41-5-1(a).

[2] We note that Renshaw committed this offense before *Blakely v. Washington*, 542 U.S. 296, 303 (2004), but was sentenced after Indiana's sentencing scheme was amended in response thereto. However, neither party has explicitly stated whether it is relying on the sentencing system, and the corresponding standard of appellate review, in effect when Renshaw committed his offense or when he was sentenced. Generally, the statute in effect at the time of the offense is the statutory basis for sentencing. *Gutermuth v. State*, 868 N.E.2d 427, 431 n.4 (Ind. 2007); *see also White v. State*, 849 N.E.2d 735, 741 (Ind. Ct. App. 2006), *trans. denied*. Consequently, we will apply the sentencing system in effect at the time Renshaw committed his offense. In any event, given the nature of his claims, the application of the amended sentencing statute would not change the result.

[3] Indiana Code Section 35-50-2-5 was amended effective April 25, 2005, to require a fixed term between six and twenty years, with an advisory sentence of ten years.

[4] Although Renshaw phrases the issue in terms of appropriateness, he neither cites Indiana Appellate Rule 7(B) nor presents an argument on grounds provided by the rule.

the logic and effect of the facts and circumstances before the court. *McRoy v. State*, 794 N.E.2d 539, 542 (Ind. Ct. App. 2003).

Renshaw argues that the trial court failed to consider a mitigating circumstance clearly before it at sentencing; namely, his guilty plea. While a sentencing court must consider all evidence of mitigating circumstances presented by a defendant, the finding of mitigating circumstances rests within the sound discretion of the court. *Bacher v. State*, 722 N.E.2d 799, 803 (Ind. 2000). Generally, a defendant who pleads guilty extends a benefit to the State and accepts some responsibility for the crime, and thus his plea deserves to have some mitigating weight. *Scott v. State*, 840 N.E.2d 376, 382-83 (Ind. Ct. App. 2006), *trans. denied*. However, the mitigating weight assigned to a defendant's guilty plea varies from case to case, and it is not necessarily a significant mitigating circumstance. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). A guilty plea is not a significant mitigating circumstance where the evidence against the defendant is such that the decision to plead guilty is merely a pragmatic one. *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*. Where a guilty plea fails to demonstrate a defendant's acceptance of responsibility or to confer a benefit on the State, it is not a significant mitigating circumstance. *Francis v. State*, 817 N.E.2d 235, 238 n.3 (Ind. 2004). Additionally, when a defendant has already received a benefit in exchange for the guilty plea, a trial court does not have to give the plea significant weight. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999).

Here, Renshaw did not agree to plead guilty until twenty months after the State charged him and ten months after the trial court denied his motion to suppress. Apparently,

Renshaw's decision to enter a guilty plea was a pragmatic one made after it was clear that the evidence against him would not be excluded. Further, the State expended resources challenging Renshaw's motion to suppress. Renshaw also received a benefit in pleading guilty: the State dismissed two charges, a class D felony and a class C misdemeanor charge; and the State agreed to limit the executed portion of his sentence to ten years. Finally, to the extent that the guilty plea reflected Renshaw's acceptance of responsibility, we observe that the trial court considered his remorse as a mitigating circumstance. Accordingly, we cannot say that the trial court abused its discretion in failing to find Renshaw's guilty plea a mitigating circumstance. *See Gillem v. State*, 829 N.E.2d 598, 605 (Ind. Ct. App. 2005) (holding that the trial court did not abuse its discretion in according no weight to the defendant's guilty plea where the defendant did not plead guilty until two years after his offense, thus causing the State to spend significant time and resources on the case), *trans. denied*.

Renshaw also argues that the trial court improperly considered the classification of his crime as an aggravating circumstance that prevented suspension of his six-year sentence. At sentencing, the trial court stated,

> And rather than give you an aggravated sentence, I'm going to give you a mitigated one. But I cannot, Mr. Renshaw, give you a completely mitigated sentence. Not on a class B felony. Not with the criminal history that you have. And not when you commit another crime while you're on bond for ours. I can't. The sentence will be the minimum six years. It will be executed.

Tr. at 94. Whether the trial court was actually relying on the classification of the offense as an aggravating circumstance is unclear. Focusing on the substance of the trial court's statement, it essentially boils down to the effect that a reduced sentence would depreciate the

seriousness of the crime. Although this factor does not serve as a valid aggravating factor supporting an enhanced sentence, we note that it may serve to support a refusal to impose less than the presumptive sentence. *Pickens v. State*, 767 N.E.2d 530, 533 (Ind. 2002). Therefore, it does not appear unreasonable that this factor, or a statement to the same effect, be used to refuse a request to suspend a sentence that is already less than the presumptive. In any event, the trial court relied on other proper aggravating circumstances in declining to suspend any part of Renshaw's sentence. Renshaw's criminal history, although consisting of no felonies, did include offenses that put the public at risk, including operating while intoxicated. Also, Renshaw committed a class A felony while on bond from this offense for which he was convicted and sentenced. Given these aggravating circumstances, we cannot say that the trial court abused its discretion in sentencing Renshaw to a six-year executed sentence.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.