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IN THE
COURT OF APPEALS OF INDIANA

ROBERT GRISSOM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A01-0704-CR-148
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No. 03C01-0608-FC-1638

September 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Robert Grissom ("Grissom") appeals his sentence for possession of methamphetamine as a Class D felony. He contends that the trial court failed to find several proper mitigating circumstances, that the trial court erred under Indiana Code § 35-50-2-1.3 by ordering his above-advisory sentence to run consecutively to his sentence in another cause, and that his sentence is inappropriate. Finding that the trial court did not abuse its discretion by rejecting Grissom's proposed mitigators, that Grissom's claim regarding consecutive sentences has been foreclosed by our Supreme Court's recent opinion in *Robertson v. State*, 871 N.E.2d 280 (Ind. 2007), and that Grissom's sentence is not inappropriate, we affirm the judgment of the trial court.

Facts and Procedural History

On July 13, 2006, police responded to a call from a Travelodge hotel in Columbus, Indiana, where Grissom was not responding to knocks at his door. When police entered Grissom's room, they allegedly found Grissom in possession of methamphetamine and two handguns. The State charged Grissom with Possession of Methamphetamine and a Firearm, a Class C felony. Pursuant to a plea agreement, Grissom pled guilty to the lesser included offense of Possession of Methamphetamine as a Class D felony.[1] In sentencing Grissom, the trial court found no mitigating circumstances but identified the following aggravating circumstances: (1) Grissom's criminal history; (2) Grissom's history of probation violations; (3) Grissom was on probation when he committed the current offense; and (4) Grissom "has received previous treatment outside the penal

[1] Ind. Code § 35-48-4-6.1(a).

facility and has not been successful." Appellant's App. p. 31. The trial court sentenced Grissom to thirty-three months in the Indiana Department of Correction, with fifteen months suspended to probation. The court also ordered that "[s]aid sentence shall be consecutive to any sentence under 41D03-0309-FD-114 and 03D02-0310-CM-1411." *Id*. Grissom now appeals.

Discussion and Decision

Grissom raises three issues on appeal: (1) whether the trial court failed to find several proper mitigating circumstances; (2) whether the trial court erred in ordering Grissom's above-advisory sentence to run consecutively to his sentence in another case; and (3) whether his sentence is inappropriate in light of the nature of his offense and his character.

Because Grissom committed his crime on July 13, 2006, he was sentenced under Indiana's current advisory sentencing scheme, which went into effect on April 25, 2005. This scheme provides, in part, that a court may impose any sentence that is authorized by statute and permissible under the Indiana Constitution "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d) (2005). Our Supreme Court recently weighed in for the first time on the scope of appellate review of sentences under the amended statutes. *See Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *reh'g pending*. Grissom filed his brief before *Anglemyer* was handed down. Therefore, we begin with a brief recap of the principles enunciated therein before turning to the contentions of the parties.

The *Anglemyer* Court first concluded that "under the new statutory regime Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense." *Id*. at 490. This statement "must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." *Id*. "If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating." *Id*.

On appeal, there are two ways to challenge one's sentence. First, a defendant could argue that the trial court abused its discretion in imposing the sentence. *Id*. "An abuse of discretion occurs if the decision is 'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" *Id*. (citations omitted). A trial court can abuse its sentencing discretion in several ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that explains reasons for imposing a sentence where the record does not support the reasons; (3) entering a sentencing statement that omits reasons that are clearly supported by the record and advanced for consideration; and (4) entering a sentencing statement in which the reasons given are improper as a matter of law. *Id*. at 490-91. If the trial court abuses its discretion in one of these or any other way, remand for resentencing may be the appropriate remedy "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Id*. at 491.

The second possible recourse for a defendant appealing his sentence is Indiana Appellate Rule 7(B), which provides: "The 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 *Anglemyer* Court explained:

> It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

Id. With this framework in mind, we turn to Grissom's specific arguments.

I. Mitigating Circumstances

Grissom contends that the trial court should have found several proper mitigating circumstances. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal for an abuse of discretion. *Id*. at 490. As noted above, one way in which a trial court can abuse its discretion under Indiana's advisory sentencing scheme is by entering a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration[.]" *Id*. at 491. "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." *Banks v. State*, 841 N.E.2d 654, 658 (Ind. Ct. App. 2006), *trans. denied*. The trial court need not consider alleged mitigating factors that are highly disputable in nature, weight, or significance. *Id*. "When a trial court fails to find a mitigator clearly

supported by the record, however, a reasonable belief arises that the trial court improperly overlooked that factor." *Id*.

Grissom first argues that the trial court should have found as a mitigating circumstance the fact that he has "taken positive steps in getting a treatment plan in place while in jail[.]" Appellant's Br. p. 6. However, the only evidence to which Grissom directs us in support of this argument is a single, half-page letter, apparently written by him, discussing a possible drug treatment program. There is no indication that Grissom has actually taken any meaningful "steps" toward enrolling in such a program. Therefore, this alleged mitigator is not clearly supported by the record, and the trial court did not abuse its discretion in failing to find it.

Grissom next asserts that the trial court should have considered the fact that he "ha[s] a job arranged following his release[.]" *Id*. Again, however, the only evidence Grissom cites in support of this mitigator is his self-serving, half-page letter, the last line of which states, "My brother can get me a job at Holiday Inn 40 hrs a week." Appellant's App. p. 30. There is no indication that Grissom actually has a job waiting for him upon his release. This alleged mitigator is not clearly supported by the record, and the trial court did not abuse its discretion in failing to find it.

Finally, Grissom maintains that the trial court should have found his guilty plea as a mitigating circumstance. It is true that "a defendant who pleads guilty deserves to have some mitigating weight extended to the guilty plea in return." *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005). However, "a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea[.]" *Wells*

v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*. Here, Grissom did receive a substantial benefit in exchange for his guilty plea: the State agreed to drop his possession of methamphetamine charge from a Class C felony, which carries a maximum penalty of eight years, to a Class D felony, which carries a maximum penalty of three years. As such, the trial court did not abuse its discretion in failing to find Grissom's guilty plea to be a significant mitigating circumstance.

II. Consecutive Sentences

Grissom also argues that the trial court erred as a matter of law in ordering his above-advisory sentence for the current offense to run consecutively to his sentence in Cause No. 41D03-0309-FD-114.[2] He directs us to Indiana Code § 35-50-2-1.3(c)(1), which provides, in pertinent part, "In imposing consecutive sentences in accordance with IC 35-50-1-2, a court is required to use the appropriate advisory sentence in imposing a consecutive sentence or an additional fixed term." (Formatting altered). Grissom contends that Indiana Code § 35-50-2-1.3(c)(1) required the trial court, in ordering consecutive sentences, to impose the advisory sentence of one-and-a-half years for possession of methamphetamine as a Class D felony. Grissom relies upon *Robertson v. State*, 860 N.E.2d 621, 625 (Ind. Ct. App. 2007), *opinion vacated*, 871 N.E.2d 280 (Ind. 2007), where a panel of this Court held that Indiana Code § 35-50-2-1.3(c)(1) prohibits a trial court from "deviat[ing] from the advisory sentence for any sentence running consecutively." However, on August 8, 2007, after Grissom filed his brief, the Indiana Supreme Court reversed this Court's decision, holding instead that "under the sentencing

[2] In that case, Grissom pled guilty to aiding in attempted theft as a Class D felony.

laws from April 25, 2005, a court imposing a sentence to run consecutively to another sentence is not limited to the advisory sentence. Rather, the court may impose any sentence within the applicable range." *Robertson*, 871 N.E.2d at 281-82. In light of our Supreme Court's holding in *Robertson*, the trial court did not err in ordering Grissom's above-advisory sentence of thirty-three months for possession of methamphetamine as a Class D felony to run consecutively to Grissom's sentence in Cause No. 41D03-0309-FD-114.

III. Inappropriateness

Finally, Grissom contends that his sentence is inappropriate in light of the nature of his offense and his character under Indiana Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied*, *cert. denied*, 126 S. Ct. 1580 (2006). The defendant has the burden of persuading us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). After due consideration of the trial court's decision, we cannot say that Grissom's sentence is inappropriate.

As the State concedes, there was nothing particularly egregious about the nature of Grissom's offense. However, Grissom's character is of greater concern. He has a criminal history that includes a felony conviction for aiding in attempted theft and misdemeanor convictions for illegal consumption and illegal storage/transport of

anhydrous ammonia, the latter of which is methamphetamine-related. Grissom also has a history of probation violations. Most notably, Grissom was on probation when he committed the current offense. This fact reveals a blatant disregard for the law on Grissom's part. Finally, Grissom does not challenge the trial court's finding that he "has received previous treatment outside the penal facility and has not been successful." Appellant's App. p. 31. Grissom has failed to persuade us that his thirty-three month sentence with fifteen months suspended to probation is inappropriate.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.