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IN THE
COURT OF APPEALS OF INDIANA

RICKEY E. GRAHAM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 22A04-0612-CR-757
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Susan L. Orth, Judge
Cause No. 22D01-0607-FB-545

September 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Rickey Graham appeals his sentence following his conviction for Dealing in a Narcotic Drug, as a Class B felony, pursuant to a plea agreement. He presents a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 13, 2006, officers with the New Albany Police Department, acting on a "narcotics tip," arrived at 711 West Market Street in New Albany and spoke with Mark Leone, who was an occupant of the residence. Appellant's App. at 10. The officers had observed a truck owned by Michael Landrum parked behind the house, and they asked Leone whether Landrum was inside. Leone stated that there were three others inside, but he did not identify the other occupants. The officers asked Leone to bring the other occupants to the front door to talk, but Leone only brought Landrum back with him. Landrum stated that he did not know who else was in the house.

When the officers asked Leone whether Graham was inside the house, he said "no," but became "extremely nervous." Id. Leone then went inside the house and came back to the front door with Jessica Hill, who was a known girlfriend of Graham's. The officers knew that there was an outstanding warrant for Graham's arrest. The officers then received consent to enter the house, and they found Graham lying in a bathtub at the back of the house. They arrested Graham on the warrant. And after they obtained written consent from Leone to search the house, officers found "a glass jar of what [was]

believed to be part of a methamphetamine lab." Id. at 11. Officers then obtained a search warrant to conduct a more thorough search of the house, and they found more evidence that methamphetamine was being manufactured in the house.

The State charged Graham with dealing in a narcotic drug, as a Class B felony, and being an habitual offender. After the first day of trial, Graham pleaded guilty to the dealing charge, and, in exchange for that plea, the State dismissed the habitual offender charge. The plea agreement left sentencing open to the trial court's discretion. At sentencing, the trial court identified the following aggravators: Graham's criminal history; the risk that he will commit another crime; the nature and circumstances of the crime, namely, that Graham participated in manufacturing methamphetamine in a crowded neighborhood; a warrant in 2005 for a probation violation; and that Graham is in need of correctional or rehabilitative treatment that can best be provided by commitment to a penal facility. In addition, the trial court found aggravating that this was not the first time Graham had been arrested "for methamphetamine labs," and that Graham had not taken advantage of previous opportunities for drug treatment. Transcript at 358. The trial court did not identify any mitigators and sentenced Graham to twenty years. This appeal ensued.

DISCUSSION AND DECISION

Graham contends that his sentence is inappropriate in light of the nature of the offense and his character. 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

imposed by the trial court." Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Under Appellate Rule 7(B), we assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 142 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Anglemyer, 868 N.E.2d at 494 (quoting Childress, 848 N.E.2d at 1080) (alteration in original).

Graham maintains that his role in the manufacture of methamphetamine "was marginal, at most." Brief of Appellant at 8. In establishing the factual basis for his plea, Graham admitted that he knowingly lent his truck to Leone to go to the store "to go get pills for the manufacturing process." Id. at 9. In essence, Graham asks that we assess the nature of the offense less harshly than the trial court did. In addition, Graham contends that his sentence is inappropriate in light of the "tenuousness of the court's cited aggravators." Id. We address each assertion in turn.

First, with regard to the nature of the offense, the factual basis of the plea established that Graham aided Leone in obtaining "pills" for the manufacture of methamphetamine. Transcript at 309. But, further, the trial court identified as an aggravator the fact that Leone was manufacturing methamphetamine in a residential setting with children in the area. Given the serious hazards inherent in the manufacture

of methamphetamine, we cannot say that Graham's participation in this crime is insignificant.

Second, Graham challenges two of the trial court's listed aggravators, which he describes as "tenuous." In particular, Graham maintains that there was no evidence that he had previously violated probation or that he had ever been arrested "for methamphetamine labs," which the trial court cited as aggravators. However, the presentence investigation report states in relevant part: "[Graham] was on probation at the time of the current offense. [Graham] states that he has previously been on probation with violations (technical) and revocations." Appellant's App. at 79-80. Thus, there is evidence to support the first challenged aggravator. As for the other challenged aggravator, Graham admits that he was previously "arrested at the scene" of a methamphetamine lab, but that he was only charged with possession of marijuana. Brief of Appellant at 9-10. There is no evidence that Graham has previously been arrested for participating in the manufacture of methamphetamine. As such, we agree with Graham that that aggravator is invalid.

But Graham does not challenge any of the other aggravators the trial court identified in support of his enhanced sentence. In particular, the trial court identified Graham's criminal history as aggravating. That history includes drug-related convictions dating back to 1995, three of which were felonies.[1] And Graham does not challenge the following aggravators: the risk that he will commit another crime; the nature and circumstances of the crime, namely, that Graham participated in manufacturing

[1] The presentence investigation report lists Graham's convictions, but does not indicate whether each conviction was a misdemeanor or felony. In his brief on appeal, however, Graham states that he has four prior felony convictions, three of which involved controlled substances.

methamphetamine in a crowded neighborhood; that Graham is in need of correctional or rehabilitative treatment that can best be provided by commitment to a penal facility; and that Graham had not taken advantage of previous opportunities for drug treatment.

With regard to his character, Graham points out that he has had a "long struggle with drug addiction" and that he has never been convicted of a crime of violence. Brief of Appellant at 9. But, again, the trial court observed that he had ignored opportunities to get drug treatment. And Graham's history of drug-related convictions outweighs the significance he asks us to give his lack of violent crime convictions. In light of Graham's criminal history and the other valid aggravators identified by the trial court, we cannot say that his sentence is inappropriate in light of the nature of the offense and his character.[2]

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.

[2] Graham maintains that there are "parallels" between his case and that in Nelson v. State, 792 N.E.2d 588 (Ind. Ct. App. 2003), trans. denied, which require a reduction in his sentence. But the facts of Nelson are distinguishable from those in this case. While we did reduce the defendant's sentence on appeal in Nelson, the primary reason for the reduction was that the defendant's conspiracy and dealing convictions were closely related. Id. at 596-97 ("More importantly, under the facts of this case, we do not condone the imposition of consecutive sentences for Nelson's conspiracy and dealing convictions."). Here, Graham was sentenced on a single conviction, so the reasoning in Nelson does not apply.