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**IN THE
COURT OF APPEALS OF INDIANA**

BRIAN CAMPBELL,)
)
Appellant-Defendant,)
)
vs.) No. 45A03-0705-CR-204
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Judge
Cause No. 45G04-0603-FA-15

October 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Brian Campbell pled guilty to dealing cocaine,¹ as a Class B felony, and to the use of a firearm during a controlled substance offense,² also as a Class B felony. He was sentenced to fourteen years on each offense, to be served concurrent with each other. Campbell contends that the sentence is inappropriate based on the nature of the offense and his character.

We affirm and remand with instructions.

FACTS AND PROCEDURAL HISTORY

On March 3, 2006, Campbell and a companion sold .89 grams of cocaine to an informant for \$50.00. While executing a search warrant six days later, Gary police found Campbell and his companion in possession of a half-gram of cocaine and a .38 caliber handgun.

Campbell was charged with dealing in cocaine, maintaining a common nuisance, and use of a firearm in a controlled substance offense. Pursuant to a plea agreement, the charge of maintaining a common nuisance was dropped, and Campbell pled guilty to the other two charges. While no sentence was fixed, it was agreed that the sentences would be served concurrent with each other.

Campbell now appeals his sentence.

DISCUSSION AND DECISION

A sentencing decision is within the sound discretion of the trial court and is reviewed on appeal only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind.

¹ See Ind. Code § 35-42-5-1.

² See Ind. Code § 35-50-2-13.

2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences drawn therefrom. *Id.* We can only review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id.* at 491.

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). Campbell contends that his sentence of fourteen years is inappropriate in light of the nature of the offense and his character and that it should be revised to ten years. We disagree.

As to the nature of the offense, the State concedes, and we agree that the facts of this case are not particularly egregious. As to Campbell's character, however, the evidence shows that he has a long criminal history which includes six misdemeanors (including battery, intimidation, disorderly conduct, criminal mischief, and carrying a concealed weapon) and one felony (residential entry) as an adult. Furthermore, Campbell's repeated offenses, all occurring four to nine months apart, show that he has failed to be rehabilitated despite previously lenient sentences. In addition, his previously ordered probation was partially revoked.

The maximum sentence for all the original charges could have been fifty-eight years.

The maximum sentence as a result of the plea agreement to the Class B felony could have been twenty-five years (ten-year advisory sentence plus up to ten years permissible enhancement for a Class B felony plus the additional enhancement of up to five years for the use of a firearm during the commission of a controlled substance offense).

In light of the above evidence, we do not believe that Campbell's sentence of fourteen years for Class B felony dealing in cocaine, enhanced by the use of a handgun during the commission of a substance offense, is inappropriate.

As the State notes, the plea agreement accepted by the trial court addresses the use of a firearm in a controlled substance offense as a separate felony. It is, however, an enhancement rather than a separate offense. Ind. Code § 35-50-2-13. Appellate courts are duty bound to correct an illegal sentence. *Hull v. State*, 799 N.E.2d 1178, 1181 (Ind. Ct. App. 2003). However, a defendant may not enter into a plea agreement which calls for an illegal sentence, receive the benefit such as dropped charges, and then complain. *Lee v. State*, 816 N.E.2d 35, 40 (Ind. 2004).

Affirmed and remanded with instructions for the trial court to correct the record to reflect that Campbell pled guilty to dealing cocaine enhanced by the use of a firearm rather than two separate offenses.

ROBB, J., and BARNES, J., concur.