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**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS RAYFORD,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A02-0705-CR-393

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0605-FB-236

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Thomas Rayford appeals his fifteen-year executed sentence for two counts of Class B felony dealing in cocaine. We affirm.

Issues

Rayford raises one issue, which we restate as:

- I. whether the trial court properly considered the aggravating and mitigating circumstances when it sentenced him; and
- II. whether his sentence is appropriate.

Facts

On May 22, 2006, the State charged Rayford with two counts of Class B felony dealing in cocaine alleging that he sold cocaine on two separate occasions in December 2005. On September 14, 2006, the State charged Rayford with Class A felony dealing in cocaine alleging that he sold cocaine in June 2006.

On February 12, 2007, Rayford pled guilty to one count of Class B felony dealing in cocaine relating to the May 22, 2006 charging information, and the remaining Class B felony charge was dismissed. Regarding the September 14, 2006 information, Rayford pled guilty to the lesser included offense of Class B felony dealing in cocaine. Pursuant to the guilty plea, Rayford's sentence was capped at fifteen years executed.

On March 5, 2007, the trial court held a sentencing hearing. It sentenced Rayford to fifteen years on each count and ordered the sentences to be served concurrently for a total sentence of fifteen years executed. This sentence was based on Rayford's criminal history, which included juvenile adjudications, probation violations, and convictions for

Class A misdemeanor possession of marijuana, Class D felony intimidation, and Class D felony escape. The trial court also stated, “Mitigation was that he pled guilty which saved the State some time but with the evidence apparently so overwhelming that was deminimus (sic) and it would have been - - not very many witnesses based up on the nature of the offense so it didn’t really save much time.” Tr. 48D03-0609-FA-415 p. 39. Rayford now appeals.

Analysis

Our supreme court recently provided an outline for the respective roles of trial and appellate courts under the 2005 amendments to Indiana’s sentencing statutes. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

I. Abuse of Discretion

Rayford argues that the trial court improperly failed to recognize his guilty plea as a significant mitigating circumstance. He also asserts that the trial court failed to consider his “limited criminal history” as a mitigating circumstance. Appellant’s Br. p. 11.

In sentencing Rayford, the trial court acknowledged his guilty plea but awarded it little mitigating weight because the evidence against him was significant and because it did not save the State much time. Pursuant to Anglemyer, we may not reconsider the trial court's assignment of weight to a particular aggravator. See Anglemyer, 868 N.E.2d at 491. This argument fails.

Rayford also claims that his criminal history was entitled to mitigating weight. We cannot agree. We have previously observed:

Trial courts are not required to give significant weight to a defendant's lack of criminal history. This is especially so when a defendant's record, while felony-free, is blemished.

Stout v. State, 834 N.E.2d 707, 712 (Ind. Ct. App. 2005) (citations omitted), trans. denied. At the time of sentencing, Rayford was twenty-seven years old. Since he was a teenager, Rayford had accumulated two felony convictions, a misdemeanor conviction, probation violations, and juvenile adjudications. This is not a case where the defendant's record was felony free. The trial court did not abuse its discretion in declining to consider Rayford's criminal history as mitigating.

Finally, we note Rayford's argument that, because he had a job and had custody of his son, the trial court abused its discretion by not considering placement in a community corrections program. In discussing the availability of appellate review of sentences pursuant to Indiana Appellate Rule 7(B), our supreme court has stated:

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.

Anglemyer, 868 N.E.2d 482, 491 (Ind. 2007). Because we have decided that the trial court's consideration of the aggravating and mitigating circumstances was not improper as a matter of law, the basis for challenging placement lies in Indiana Appellate Rule 7(B). See Hole v. State, 851 N.E.2d 302, 304 n.4 (Ind. 2006) (noting that under the terms of the plea agreement the trial court had discretion to determine where Hole would serve his sentence and that as such, this discretionary placement was subject to Rule 7(B) review).

The trial court properly considered the aggravators and mitigators in this case. Accordingly, it was within the trial court's discretion to sentence Rayford to fifteen years executed.

II. Appropriateness

Rayford also argues that his sentence is inappropriate. Having concluded the trial court acted within its discretion in sentencing him, we now assess whether his sentence is inappropriate under Indiana Appellate Rule 7(B) in light of his character and the nature of the offense. See Anglemyer, 868 N.E.2d at 491. Although Rule 7(B) does not require us to be “extremely” deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Although the nature of these offenses is not particularly egregious, Rayford's fifteen-year sentence is not inappropriate. First, Rayford's criminal history warrants aggravating his sentence. His criminal history shows frequent interaction with the criminal justice system since he was thirteen years old, including two felony convictions, misdemeanor convictions, probation violations, and juvenile adjudications.

Regarding Rayford's guilty plea, although our supreme court has long held that a defendant who pleads guilty deserves "some" mitigating weight be given to the plea in return, a guilty plea may not be significantly mitigating when the defendant receives a substantial benefit in return, or when the defendant does not show acceptance of responsibility. McElroy v. State, 865 N.E.2d 584, 591-92 (Ind. 2007). Here, Rayford received in substantial benefit in return for pleading guilty. The State dismissed one of the Class B felony charges and reduced the Class A felony charge to a Class B felony. Rayford's sentence was also capped at fifteen years. Without such a cap, he faced up to forty years. We cannot conclude that his guilty plea requires mitigation of his sentence.

Finally, regarding Rayford's challenge to his placement in the Department of Correction, given Rayford's criminal history and the benefit he received by pleading guilty, we cannot conclude that the sentence of fifteen years executed was inappropriate. We affirm Rayford's sentence in all regards.

Conclusion

The trial court did not abuse its discretion in sentencing Rayford to fifteen years executed. His sentence is not inappropriate. We affirm.

Affirmed.

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