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**IN THE
COURT OF APPEALS OF INDIANA**

LOLA DARLENE FIER,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 25A03-0702-CR-72

APPEAL FROM THE FULTON CIRCUIT COURT
The Honorable Douglas B. Morton, Judge
Cause No. 25C01-0604-FB-29

December 12, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant appeals from the sentence imposed following her convictions for Class B felony Methamphetamine Delivery¹ and Class D felony Methamphetamine Possession.² We affirm.

FACTS³

At approximately 1:35 p.m. on April 10, 2006, Marshall County Sheriff's Deputy Leslie Dean McFarland stopped a car driven by Angela Hurt, who had recently left Lola Darlene Fier's house in Fulton County. Police found Hurt with 0.51 grams of methamphetamine, and Hurt told them that she had just purchased it from Fier. Hurt agreed to act as an undercover informant.

At approximately 8:00 p.m. that evening, Hurt returned to Fier's house, but Fier did not have any more methamphetamine. The duo left in search of a jar that Fier believed had been left by a county road because the "stuff you make meth was in the jar" but were unsuccessful and returned. Tr. p. 219. Soon thereafter, police executed a search warrant for Fier's house, finding a small plate with powdery residue, foil pieces with residue, a lithium battery, a digital balance, and a methamphetamine pipe in her bedroom. Fier's three children were also asleep upstairs.

The State charged Fier with Class B felony methamphetamine delivery and Class D felony methamphetamine possession, and a jury found her guilty as charged. The trial

¹ Ind. Code § 35-48-4-1 (2006).

² Ind. Code § 35-48-4-6 (2006).

³ We note that the *Statement of the Facts* in Fier's brief fails to include a single citation to the record. We remind counsel of Indiana Appellate Rule 46(A)(6)(a), which requires that "[t]he facts shall be supported by page references to the Record on Appeal or Appendix in accordance with Rule 22(C)."

court sentenced Fier to an aggregate sentence of fourteen years of incarceration, with two years suspended and one of those suspended to probation. The trial court found, as aggravating circumstances, Fier's criminal record, that she became increasingly involved in the local methamphetamine culture, and that her three children had been in her house when drugs were being used.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion in Sentencing Fier

Fier contends that the trial court abused its discretion in sentencing her and that her sentence is inappropriate. Fier's offenses were committed after the April 25, 2005, revisions to Indiana's sentencing scheme. Under this new scheme, "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). We review the sentence for an abuse of discretion. *Id.* An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." *Id.*

A trial court abuses its discretion if it (1) fails "to enter a sentencing statement at all[.]" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons," (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration," or (4) considers reasons that "are improper as a matter of law." *Id.* at 490-91. If the trial court has abused its discretion, we will remand for resentencing "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. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion. *Id.*

Fier challenges all three of the aggravating circumstances found by the trial court, contending that the trial court failed to adequately explain how they were aggravating. Additionally, Fier contends that the trial court’s finding that she had become involved in the local methamphetamine culture was unsupported by the record. As for Fier’s first contention, we believe it to be self-evident that a criminal record, increasing involvement in the local methamphetamine culture, and the presence of children in a house when drugs are being used are aggravating in nature. In the absence of any indication that these circumstances should not be considered aggravating, the trial court did not abuse its discretion in failing to explain itself further.

As for Fier’s second contention, it is based entirely on her denials of increased involvement in the local methamphetamine culture, denials the trial court was not required to credit, and did not. The record indicates that Fier did, indeed, begin using methamphetamine in 2002, and that evidence of methamphetamine manufacture had been found on her property and in a vehicle in which she was traveling. Moreover, after her conviction in this case but prior to sentencing, she pled guilty in Will County, Illinois, to felony criminal drug conspiracy and received a ten-year sentence, a conviction arising out of a December 2004 incident where 2832 pills containing pseudoephedrine were found with her in a vehicle. The trial court did not abuse its discretion in sentencing Fier.

II. Whether Fier's Sentence is Appropriate

We “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.” Ind. 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.” *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006) (citations and quotation marks omitted), *trans. denied*.

The nature of Fier’s offense was just the last in what were frequent sales of methamphetamine to Hurt, at least. Hurt had purchased from Fier in the past and knew exactly where Fier kept the methamphetamine in her house. Moreover, the sale took place in the house she shared with her three children. In light of the apparently frequent drug sales occurring there and the significant amount of drug paraphernalia found in Fier’s bedroom, it seems likely that her children were likely exposed to methamphetamine use, dealing, or both.

Fier is a serial substance abuser who has taken no responsibility for any of her actions, particularly conduct leading to criminal convictions or arrests, preferring to blame most of it on her alleged methamphetamine addiction. Fier testified at length at sentencing regarding how most of her various convictions and/or arrests had resulted from simple misunderstandings. For example, Fier testified that her 2003 conviction for theft of a dog had really been the result of her niece taking the dog. Fier even attempts to

deflect blame for her methamphetamine addiction, but this claim is undercut by the record; Fier initially contended that she first used methamphetamine in her grief following her husband's October 2003 death, but admitted at sentencing that she had, in fact, been using methamphetamine the previous year. In light of the nature of Fier's offense and her character, her fourteen-year sentence is appropriate.

The judgment of the trial court is affirmed.

BAKER, C.J., and DARDEN, J., concur.