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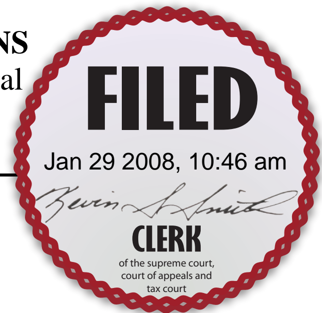

IN THE COURT OF APPEALS OF INDIANA

ANTHONY L. LOFTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0707-CR-587
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0607-FA-11

JANUARY 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Anthony L. Lofton appeals the sentence imposed after he pled guilty to dealing in cocaine, a Class A felony, and battery resulting in serious bodily injury, a Class C felony. We affirm.

ISSUE

Lofton raises one issue for our review, which we restate as: Whether the sentence imposed was inappropriate in light of the nature of the offense and the character of the offender.

FACTS AND PROCEDURAL HISTORY

On March 15, 2006, Lofton sold cocaine to a confidential informant at a Tippecanoe County Village Pantry store. The store was located within one thousand feet of a daycare center.

On June 6, 2006, Lofton was involved in a fight over money in a drug deal. In the course of the fight, Lofton caused serious lacerations to two victims by hitting them in the head with a hammer.

Lofton was arrested and charged with counts pertaining to both incidents. With regard to the sale of cocaine, Lofton was charged with two counts of dealing cocaine, as Class A felonies, and two counts of possession of cocaine, as Class B felonies. With regard to the fight, Lofton was charged with two counts of robbery while armed resulting in serious bodily injury, as Class A felonies; two counts of battery by means of a deadly weapon, as Class C felonies; two counts of battery resulting in serious bodily injury, as Class C felonies; and one count of theft, as a Class D felony.

Lofton pled guilty to one count of dealing in cocaine, a Class A felony, and one count of battery resulting in serious bodily injury, a Class C felony. He entered into a plea agreement which provided that the remaining counts in both cases would be dismissed and that the sentences would be concurrent with the total sentence not to exceed twenty-seven years.

The trial court sentenced Lofton to twenty-seven years on the Class A felony of dealing in cocaine.[1] Twenty of those years were to be served in the Department of Correction, two years in Community Corrections, three years on supervised probation, and two years on unsupervised probation.[2]

Additional facts will be disclosed below.

DISCUSSION AND DECISION

Lofton apparently has no quarrel with the legality of this sentence. Ind. Code § 35-38-1-1.7(d) permits a trial court to impose any sentence that is authorized by statute and permissible under Indiana's Constitution. However, Lofton contends that the forty-year sentence is inappropriate given the nature of the offense and the character of the offender. *See* Indiana Rule of Appellate Procedure 7(B). More specifically, Lofton asserts that the trial court improperly considered arrests and dismissed charges in assessing his character. He further asserts that the offense of selling cocaine is "less

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[1] Ind. Code § 35-50-2-4 provides that a person who is convicted of a Class A felony can be imprisoned for a period between twenty and fifty years, with the advisory sentence being thirty years. Because of a prior felony narcotic conviction in Illinois, Lofton's sentence could not be suspended below the minimum sentence of twenty years. *See* Ind. Code § 35-50-2-1. Accordingly, Lofton's argument is applicable only to the community corrections time and the supervised and unsupervised probation.

[2] In addition to his twenty-seven year sentence, Lofton was sentenced to a concurrent sentence of four years on the battery count. Lofton does not appeal this portion of his sentence.

serious than many Class A cocaine dealing incidents, because it involved a sale of $100.00 worth of cocaine to a confidential police informant during a controlled buy." Appellant's Brief at 7.

In *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on rehearing*, 875 N.E.2d 218 (2007), our supreme court held that trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id*. If the recitation includes the 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*. Sentencing decisions are subject to review on appeal for an abuse of discretion. *Id*. One way in which a trial court may abuse its discretion is to fail to enter a sentencing statement at all. *Id*. Another, is to enter a sentencing statement that explains reasons for imposing a sentence and the record does not support the reasons, the statement omits reasons clearly supported by the record, or the reasons given are improper as a matter of law. *Id*. at 490-91. To the extent that Lofton urges us to review the trial court's weighing of aggravating and mitigating factors for an abuse of discretion, we note that *Anglemyer* precludes us from doing so. *Id.* at 491.

In *Anglemyer*, our supreme court noted that identification of aggravators and mitigators remains "an integral part of the trial court's sentencing procedure." *Id*. at 490. The court stated that appellate review of sentences dictates that the reviewing forum "be told of [the trial court's] reasons for imposing the sentence," notification that "necessarily

requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime . . . ." *Id*.

Although App. R. 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*. In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Weiss v. State*, 848 N.E.2d 1070, 1072 (Ind. 2006). However, an appellant "must persuade the appellate court that his or her sentence has met this inappropriateness standard of review." *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Here, the trial court specifically articulated the reasons for the sentence imposed. The trial court found Lofton's criminal history and his abuse of alcohol and illegal substances to be aggravating factors. In reference to Lofton's criminal history, the trial court noted that Lofton had one felony conviction, one misdemeanor conviction, four juvenile contacts, ten cases filed and dismissed, and five cases not yet disposed of. The trial court opined, "At age twenty-two, that's a significant criminal history. . . ." Tr. at 38. The trial court also identified the following as mitigators: (1) Lofton took responsibility for his actions by pleading guilty; (2) Lofton had a minor child that is dependent on him; (3) Lofton had a difficult childhood; and (4) Lofton had strong family support. The trial court determined that the aggravators outweighed the mitigators. The

court's sentencing statement satisfies the general requirement of *Anglemyer* that a trial court make a reasonably detailed recitation of its reasons for imposing a sentence.

Lofton argues that the trial court impermissibly considered prior arrests as evidence of criminal conduct. He acknowledges that a lengthy arrest record can be considered in the proper context as relevant to the defendant's character when the trial court concludes that the record is an indication that the defendant will commit another crime. *See Tunstill v. State*, 568 N.E.2d 539, 545 (Ind. 1991). However, he argues that the trial court did not place his arrest record in the required context.

Although an arrest record by itself is not evidence of a defendant's criminal history, it is appropriate to consider such a record as a reflection of the defendant's character, because it may reveal that he has not been deterred even after having been subjected to police authority. *Rutherford*, 866 N.E.2d at 873. Lofton's juvenile criminal record shows a charge of felony attempted robbery wit that charge being dismissed. Lofton was later charged with felony attempted robbery and placed on probation for a year. As an adult, Lofton was convicted of possessing or selling narcotics and sentenced to probation. He was also charged with gambling and possession of cannabis and those cases are still pending. Several other charges in Illinois were "stricken off leave," and Lofton was convicted of operating a vehicle while never receiving a license and placed on probation. In addition, Lofton was charged with possession of a controlled substance, manufacturing and delivering cocaine, and other offenses which were either dismissed or are pending. Lofton's criminal history shows he has not been deterred by repeated contact with police, and it is such that it cannot be ignored when evaluating his character

for App.R. 7(B) purposes. *See Johnson v. State*, 837 N.E.2d 209, 218 (Ind. Ct. App. 2005), *trans. denied*.

In considering both Lofton's character and the nature of the offense, we observe that the sentence imposed was less than the thirty-year advisory sentence, and when taking into account the suspended portion, only two years more than the minimum twenty-year sentence. Given Lofton's history of recurring involvement in legal activity, we cannot say that the trial court's sentence is inappropriate.[3]

CONCLUSION

For the reasons stated in this opinion, revision of Lofton's sentence under App.R. 7(B) is not warranted.

Affirmed.

BARNES, J., and MATHIAS, J., concur.

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[3] Lofton minimizes the impact of dealing cocaine within 1000 feet of a daycare center. We cannot say that the nature of the offense requires us to conclude that the sentence imposed was inappropriate.