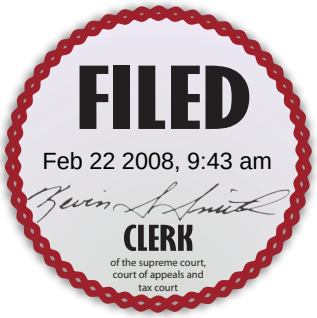

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IN THE
COURT OF APPEALS OF INDIANA

DONALD WEBB,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0706-CR-346
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William E. Young, Judge
Cause No. 49G20-0610-FA-206058

February 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Donald Webb appeals his sentence following his convictions for Dealing in Cocaine, as a Class B felony; Conspiracy to Commit Robbery, as a Class B felony; and Resisting Law Enforcement, as a Class A misdemeanor. He presents a single issue for our review, which we restate as whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

During a hearing on May 23, 2007, Webb pleaded guilty to dealing in cocaine, as a Class B felony; conspiracy to commit robbery, as a Class B felony; and resisting law enforcement, as a Class A misdemeanor. The trial court established the factual basis for each conviction as follows:

> THE COURT: Count One reads as follows: "That Dejuan Baker, also known as Michael Hamiter, Donald Webb, also known as Eric Williams, and Guan Davis, on or about October 24, 2006, did knowingly possess and attempt to deliver a controlled substance, that is, cocaine." Do you understand that charge?
>
> THE DEFENDANT: Yes, sir.
>
> * * *
>
> THE COURT: Count four reads as follows: "That Dejuan Baker, also known as Michael Hamiter, Donald Webb, also known as Eric Williams, and Guan Davis, on or about October 24, 2006, did, with the intent to commit the felony of Robbery, agree with each other to commit said felony of Robbery, which is to knowingly, while armed with a deadly weapon, that is, handguns, take from the person or presence of Jason Bradbury property, that is, United States currency, by putting Jason Bradbury in fear or by using or threatening the use of force on Jason Bradbury, and Guan Davis, while performing the following overt act in furtherance of the agreement, directed Jason Bradbury to a location where Dejuan Baker, also known as

> Michael Hamiter, and Donald Webb, also known as Eric Williams, were present for the purpose of committing said Robbery. Do you understand that charge?
>
> THE DEFENDANT: Yes, sir.
>
> * * *
>
> THE COURT: Count 11 reads as follows: "That Donald Webb, also known as Eric Williams, on or about October 24, 2006, did knowingly and forcefully resist, obstruct or interfere with R. Foster, a law enforcement officer empowered by the Indianapolis Police Department, while R. Foster was lawfully engaged in the execution of his duties as a law enforcement officer. Do you understand that charge?
>
> THE DEFENDANT: Yes, sir.

Transcript at 13-15. In exchange for his guilty plea, the State agreed to dismiss several other charges, including dealing in cocaine, as a Class A felony; robbery, as a Class B felony; possession of cocaine, as a Class C felony; possession of cocaine and a firearm, as a Class C felony; and carrying a handgun without a license, as a Class A misdemeanor.

Webb's plea agreement included a sentencing cap of twenty years. At the sentencing hearing, the trial court stated:

> The Court has reviewed the file, the PSI, the statement of the attorneys, statement of the Defendant. The Court would note for the record that the Defendant does have a history of criminal, delinquent activity. Specifically, there was the Class C felony possession of cocaine for which he received a Community Corrections sentence on and [sic] which he was serving at the time of this event.
>
> The Court notes the mitigating factor that the Defendant has accepted responsibility. However, the effect of that mitigator is substantially lessened because he accepted responsibility to a reduced offense from an A felony to a B felony. The A felony would have been a nonsuspendible 20 to 50 years. So he's already received a substantial benefit for his cooperation to plead guilty.

> The two charges left, he faces a potential penalty of 6 to 41 years, but by agreement the penalty is limited to 20 years. The Court imposes 20 years at the Department of Correction.

Transcript at 19-20. This appeal ensued.

DISCUSSION AND DECISION

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)), clarified in part on other grounds, 875 N.E.2d 218 (Ind. 2007) (alteration original). 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, 147 (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).

Webb contends that, in imposing sentence, the trial court improperly considered the penalty he might have faced had he not pleaded guilty.[1] In support of that contention, Webb directs us to Swain v. State, 870 N.E.2d 1058 (Ind. Ct. App. 2007). In Swain, we

[1] Webb also contends that the trial court gave too much weight to his criminal history as an aggravator and erred when it did not give "any evaluation or weighing of aggravating and mitigating circumstances." Brief of Appellant at 11. But "the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence." Anglemyer, 868 N.E.2d at 491. As such, we do not address Webb's contentions on these issues.

reiterated that "a sentence cannot be enhanced based on facts that distinguish a lesser offense the State agrees to accept in exchange for a guilty plea from the more serious offense with which the State originally charged the defendant[.]" Id. at 1059-60. Webb maintains that that rule applies here by analogy and prohibits the trial court from considering his potential sentence had he not pleaded guilty.

But the State argues that the trial court did not improperly rely on the potential sentence. The State points out that in explaining why it did not assess Webb's acceptance of responsibility more mitigating weight, the trial court merely observed that Webb had already received a substantial benefit by pleading guilty. Because the trial court's oral sentencing statement supports that contention, we agree with the State.

Regardless, any error is harmless. "[E]ven if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate." Mendoza v. State, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007), trans. denied. Approximately four months before the instant offenses, Webb was convicted and sentenced for possession of cocaine, as a Class C felony. The trial court imposed 730 days probation, to be served in Community Corrections. Thus, Webb was on probation at the time of the instant offenses, which reflects very poorly on his character.

Indeed, Webb's only argument in support of his good character on appeal is that he accepted responsibility for the instant offenses and stated to the trial court "that he wants to do the right thing and turn his life around." Brief of Appellant at 10. Webb does not direct us to any other evidence of his good character. We agree with the trial

court that Webb received a substantial benefit for his guilty plea. Webb's pragmatic decision to plead guilty is not, therefore, deserving of much credit. Likewise, his self-serving statement of his intention to "turn his life around" falls flat given that he committed the instant offenses while on probation for a recent drug possession conviction.

Finally, the nature of the instant offenses supports Webb's twenty-year sentence. Webb admitted to conspiring with Baker and Davis to commit robbery while armed with a deadly weapon and in the course of a drug deal, and he resisted a lawful arrest. The risks to life and limb inherent in the robbery are such that we cannot say Webb's twenty-year sentence is inappropriate.

Affirmed.

BAILEY, J., and CRONE, J., concur.