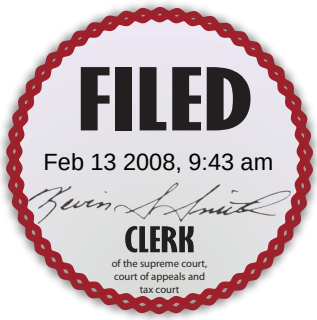

ATTORNEY FOR APPELLANT:

ALISON T. FRAZIER
Dupont, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MARJORIE LAWYER-SMITH
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

EDWARD A. HAWKINS,	)	
	)	
Appellant-Defendant ,	)	
	)	
vs.	)	No. 40A01-0708-CR-354
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0504-FB-81

February 13, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Edward A. Hawkins ("Hawkins") pleaded guilty in Jennings Circuit Court to Class B felony aiding in the manufacture of methamphetamine. Hawkins appeals and claims: that the trial court violated his Blakely rights in imposing sentence, and that his sentence is inappropriate. We affirm.

Facts and Procedural History

On April 14, 2005, police searched the home of Hawkins and his girlfriend after his girlfriend had tested positive for methamphetamine while on home detention. During the search, police discovered marijuana, legend drugs, drug paraphernalia, and several items associated with the manufacture of methamphetamine. On April 20, 2005, the State charged Hawkins with Class B felony aiding in the manufacture of methamphetamine, Class D felony possession of methamphetamine, Class D felony possession of a syringe without a prescription, and Class D felony maintaining a common nuisance. On June 5, 2006, Hawkins entered into a plea agreement with the State whereby he agreed to plead guilty to Class B felony aiding in the manufacture of methamphetamine. In exchange, the State dismissed the remaining charges. Pursuant to the agreement, sentencing was left within the discretion of the trial court.

At a sentencing hearing held on April 26, 2007, the trial court found the following aggravating circumstances: (1) that Hawkins had a criminal history consisting of three felony convictions, three misdemeanor convictions, and two probation revocations; (2) that methamphetamine cleanup was a significant expense borne by taxpayers; (3) that both manufacturing and dealing methamphetamine occurred in Hawkins's home in the presence of Hawkins's teen-aged daughter; and (4) that Hawkins was on probation for a

felony at the time he was arrested for the instant offense. The court found as mitigating factors that: (1) Hawkins had a GED; (2) Hawkins admitted his guilt; (3) Hawkins was cooperative with the police; (4) Hawkins had been admitted to classes at Ball State University; and (5) Hawkins was remorseful. The trial court determined that the aggravating factors far outweighed the mitigating factors and imposed the maximum twenty-year sentence, but ordered that five years be suspended to probation. Hawkins now appeals.

Discussion and Decision

Hawkins first claims that the trial court violated his rights under Blakely v. Washington, 542 U.S. 296 (2004), when it considered as aggravators facts which were neither admitted by him nor proven to a jury beyond a reasonable doubt. Hawkins overlooks the fact that his plea agreement contained the following provision:

> You have been informed that by pleading guilty, you have voluntarily waived the right to have a jury determine the aggravating or mitigating circumstances that can enhance or reduce your sentence above or below the presumptive sentence.

Appellant's App. p. 66. Thus, by pleading guilty under the agreement, Hawkins expressly waived his rights under Blakely. See Williams v. State, 836 N.E.2d 441, 443-44 (Ind. Ct. App. 2005) (holding that defendant waived Blakely rights by pleading guilty under agreement where defendant waived right to jury determination of aggravators and mitigators and consented to judicial fact-finding); see also Blakely, 391 U.S. at 310 (holding that a defendant may waive Blakely/Apprendi rights and that when a defendant

pleads guilty the State is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial fact-finding).

We find Hawkins's citation to Averitte v. State, 824 N.E.2d 1283 (Ind. Ct. App. 2005) to be unavailing. At issue in Averitte was the effect of the defendant's waiver of her right to a jury trial where she was not informed of her Blakely rights. Id. at 1287-88. In contrast, here Hawkins's plea agreement specifically advised him that he had the right to have a jury determine aggravating and mitigating circumstances, and that, by pleading guilty, he was waiving this right. Therefore, because of the explicit waiver contained in the plea agreement entered into by Hawkins, we will not now consider any Blakely-based challenge to Hawkins's sentence.[1]

Aside from his Blakely claim, Hawkins claims that his twenty-year sentence is inappropriate. As an appellate court, we may revise a sentence otherwise authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. It is the defendant's burden to persuade us that his sentence has met the "inappropriateness" standard of review. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). This is a burden which Hawkins has failed to carry.

[1] Even if we were to conclude that Hawkins had not waived his Blakely rights and that the trial court therefore had improperly considered certain aggravators, we would still not reverse the trial court. Hawkins has a significant criminal history, which is properly considered even under Blakely. See Smylie v. State, 823 N.E.2d 679, 682-83 (Ind. 2005) (noting that under Blakely, any facts used to enhance a sentence above the presumptive term, *other than the fact of a prior conviction* and those admitted by a defendant, must be found by a jury beyond a reasonable doubt). This aggravator is alone enough to justify Hawkins's sentence.

Hawkins has a significant criminal history, including three prior felony convictions and three prior misdemeanor convictions. Hawkins has also been given the benefit of probation, only to have it revoked twice. Even more telling is the fact that Hawkins was on probation at the time he committed the instant offense. Despite his previous dealings with the criminal justice system, and despite having previously been shown leniency, Hawkins continued his criminal behavior by participating in the manufacture of methamphetamine in his own home where his daughter lived. Under these facts and circumstances, we cannot say that Hawkins's twenty-year sentence, with five years suspended, is inappropriate.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.