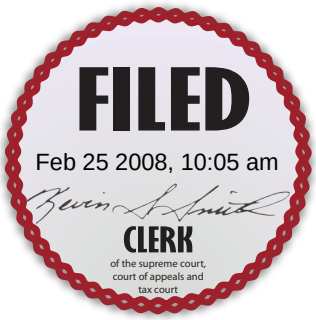

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IN THE
COURT OF APPEALS OF INDIANA

MARK A. CHANDLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 67A01-0708-CR-372
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew L. Headley, Judge
Cause No. 67C01-0608-FA-82

February 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Mark Chandler appeals his convictions and forty-year sentence for Class C felony possession of methamphetamine, Class A felony dealing in methamphetamine, and Class B misdemeanor possession of a switchblade knife. We affirm.

Issues

Chandler raises two issues for our review, which we restate as:

I. whether the trial court abused its discretion by admitting evidence seized by police from Chandler's car; and

II. whether the trial court properly sentenced Chandler.

Facts

On the evening of August 13, 2006, Officer Virgil Lanning of the Putnam County Sheriff's Department was approached by a hysterical woman who claimed she needed to escape from a man who was trying to kill her. Lanning was in a Cloverdale gas station parking lot standing near his police cruiser at the time. The woman, who eventually identified herself as Carrie Fields of Terre Haute, told Lanning that she was trying to get away from Chandler. She explained that she joined him for a trip to Greencastle, but when it was time to take her home, he instead got a hotel room. He suggested she get into a hot tub with him and take some little red pills. She refused and he agreed to take her home. The couple went to a McDonalds drive through before beginning the trip home. While in the car in the McDonalds' parking lot, Chandler threatened Fields with a switchblade knife and told her he wanted to kill her and throw her in a river. She threw her drink at him and ran from his car toward Officer Lanning at the nearby gas station.

Shortly after, Officer Matt Demmings found and approached Chandler in the same gas station parking lot. Officer Demmings had Chandler get out of the car, and he patted him down and Mirandized him. Chandler asked Demmings if this was "about a girl." Tr. p. 179. Chandler said that she did not want to have sex and that was "okay with him." Id. Demmings arrested Chandler for confinement and intimidation. He contacted Officer Robert Sibbitt to conduct an inventory of Chandler's vehicle before it was towed.

Upon opening the driver and passenger doors to perform the inventory search, Officers Lanning and Sibbitt testified that they noticed a narcotic smell inside the car. Tr. pp. 15, 27. Sibbitt opened the glove compartment in an attempt to find the car's registration and discovered a baggie with a substance that looked like methamphetamine. Lanning noticed a glass vial with the same substance in plain view in the center console of the car. At that point, the pair decided to deploy Lanning's canine. The dog alerted at the trunk, the driver's door handle, and the rear seat. Officers looked behind the rear seat and found a safe. They then applied for a search warrant.

A warrant was issued to search Chandler's car and hotel room.[1] The car was towed to the jail impound lot and searched there pursuant to the warrant. The safe contained $1500 in cash and approximately 54 grams of methamphetamine, along with ledgers, condoms, red pills, and Chandler's social security card and car title. A search of the hotel room uncovered digital scales, a glass pipe, measuring spoons, and alligator

[1] The warrant and probable cause affidavit are not included in the record on appeal.

clips. During monitored phone calls from jail, Chandler indicated to a female friend that she needed to get his car, hide it, and "go through the car with a fine tooth comb." Tr. p. 138. Comments he made to another officer after the search indicated that they missed three "eight balls." In response to these comments, officers obtained a second warrant and found three additional bags of methamphetamine and red pills under the back seat.

Chandler moved to suppress the evidence found in the car and in the hotel, contending that the items were obtained in an illegal search.[2] The trial court denied the motion and found that the search of the vehicle was a proper inventory search and also a search incident to arrest.

At trial, Officer Lanning testified that as he began to perform the inventory search he located suspected narcotics on the center console and in the glove compartment. He then testified regarding the use of the drug dog and the evidence recovered in the car and the hotel room pursuant to the warrant. Counsel for Chandler did not object to this testimony and waited until the State moved to admit a picture of the safe to object. The trial court overruled the objection. Counsel continued to object to the admission of each exhibit reflecting the items of the search, and the trial court overruled the objections.

A jury found Chandler guilty of Class A felony dealing in methamphetamine, Class C felony possession of methamphetamine, and Class B misdemeanor possession of a switchblade knife.

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[2] The motion to suppress is not included in the record.

The trial court held a sentencing hearing on June 25, 2007. It sentenced Chandler to forty years for dealing in methamphetamine, eight years for the possession of methamphetamine, and 180 days for possession of the switchblade knife, to be served concurrently. The trial court ordered thirty-eight years executed and two suspended. This appeal followed.

Analysis

I. Admission of Evidence

The State contends that Chandler has waived any arguments regarding the admission of the evidence seized from his car and hotel room because he did not timely object to testimony regarding that evidence. The trial court's denial of a motion to suppress is insufficient to preserve the issue for appeal. See Carter v. State, 754 N.E.2d 877, 881 n.8 (Ind. 2001), cert. denied. The defendant must reassert his or her objection at trial contemporaneously with the introduction of evidence to preserve any error for appeal. Id. "Not until evidence is admitted at trial over a specific objection can a party assert an error on appeal." Hightower v. State, 866 N.E.2d 356, 364 (Ind. Ct. App. 2007), trans. denied.

Prior to any objection by Chandler, Officer Lanning testified that drugs and drug paraphernalia had been found in Chandler's car and in the hotel room. Specifically, Lanning testified that sandwich baggies, a ledger, a large amount of cash, and two large bags of methamphetamine were recovered from the car. Digital scales, a glass pipe, measuring spoons, and alligator clips were recovered from the hotel room. Following this testimony, Chandler objected only when the State attempted to admit photographs of

the seized items. This objection was untimely to preserve the suppression issue for appeal. Any argument on appeal that the items seized in the search were inadmissible was waived. See Lundquist v. State, 834 N.E.2d 1061, 1067 (Ind. Ct. App. 2005) (finding that defendant waived appellate review of issue where he did not object to initial testimony about marijuana found, but objected later to the introduction of actual marijuana).

Waiver notwithstanding, we find that search did not violate Chandler's Fourth Amendment rights or his rights under Article 1, §11 of the Indiana Constitution. Regardless of whether the initial sightings of the baggie and vial of methamphetamine resulted from an inventory search or a search incident to arrest, the ultimate searches of the car and hotel room came after a canine sniff and were made pursuant to warrants.

As officers initiated the inventory search, a vial of suspected methamphetamine was in plain sight and the baggie was found in the glove compartment. See Moore v. State, 637 N.E.2d 816, 819-820 (Ind. Ct. App. 1994), (finding that opening the glove compartment pursuant to standard police procedure during an inventory search did not render the search pretextual), trans. denied, cert. denied, 513 U.S. 1165, 115 S. Ct. 1132, (1995), Opening the glove compartment was reasonable in an attempt to locate and record the car's registration. Despite Chandler's arguments that there was not sufficient testimony or evidence in the form of logs and police policies to establish a valid inventory search, we conclude that the officers acted reasonably. In any event, officers were only in the initial stages of the inventory search when it was cut short by the discovery of suspected narcotics.

Although the drug dog was already on the scene, as Officer Lanning was a canine handler, it was not utilized until after the officers had reasonable suspicion of the presence of illegal drugs. A sniff by a trained narcotics dog is not a search within the meaning of the Fourth Amendment under certain circumstances. James Myers v. State, 839 N.E.2d 1146, 1149, 1153 (Ind. 2005) (holding that a canine sniff during a valid traffic stop did not intrude upon Fourth Amendment interests); John Myers v. State, 839 N.E.2d 1154, 1158 (Ind. 2005) (holding that a canine sniff of an unoccupied parked car in a high school parking lot during a sweep at a high school did not violate defendant's constitutional rights), cert. denied, 126 S. Ct. 2295 (2006). This was not a sniff in conjunction with a traffic stop, Chandler was already in custody and the car was left to the care of the officers. The officers here obtained search warrants for the car and hotel room following the dog's alerts on the car. "[T]he alert of a trained dog can provide probable cause necessary to obtain a search warrant." Neuhoff v. State, 708 N.E.2d 889, 891 (Ind. Ct. App. 1999). Officers did not continue to search the car until the warrant arrived. The items seized thereafter were obtained pursuant to valid warrants and properly admitted into evidence. Defendant has not established that the trial court abused its discretion by admitting the evidence.

II. Sentence

Chandler next contends that the trial court improperly sentenced him. We engage in a four-step process when evaluating a sentence under the current "advisory" sentencing scheme. 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.

The trial court issued both an oral and written sentencing statement. The written statement is brief and does not include any mitigating circumstances, but this omission is not problematic because we consider the two statements together. See McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007) (noting that the reviewing court is to examine the written statement alongside the oral statement to discern the findings of the trial court). The trial court found the following three aggravating circumstances: 1) Chandler was on parole at the time of the offense; 2) Chandler had violated probation in the past; and 3) Chandler had a lengthy criminal history. The trial court found that Chandler's pursuit of an education while incarcerated was a mitigating circumstance. After weighing the factors, the trial court found that the aggravators outweighed the sole mitigator.

Chandler argues the trial court should have found that his substance abuse was a mitigator. Chandler did readily admit his long history of drug addiction to the trial court, but such a condition and an admission of the same are not mandatory mitigating factors. See Iddings v. State, 772 N.E.2d 1006, 1018 (Ind. Ct. App. 2002), trans. denied, ("[A] history of substance abuse is sometimes found by trial courts to be an aggravator, not a mitigator.") We do not reweigh the mitigators and aggravators, so any arguments by

Chandler that the court should have given more weight to the sole mitigator is not valid. Anglemyer, 868 N.E.2d at 482. The trial court properly considered the aggravators and mitigators in this case. Accordingly, it was within the trial court's discretion to sentence Chandler to forty years, with two suspended.

Chandler also contends that his sentence is inappropriate because the trial court did not consider or assign him to a drug treatment program. At the sentencing hearing, he requested inpatient intensive treatment as an alternative to incarceration. 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.

Considering his character, we note that Chandler was forty-eight at the time of sentencing and admitted using drugs since the age of about fourteen. Chandler lived with over thirty years of substance abuse with no serious attempt at treatment. Testimony from Chandler's adult daughters at the sentencing hearing revealed that he had never pursued inpatient substance abuse treatment and that he failed at a previous attempt at outpatient treatment. He had tested positive for drugs while on parole in the past. Chandler's criminal history is lengthy and includes at least six felony convictions. The record also revealed that he has previously violated probation and rules of home

detention. Chandler has not persuaded us that his character merits a change to the trial court's sentence.

Though involving drugs, the nature of Chandler's offenses represent more than a mere substance abuse problem. He was found with over fifty grams of methamphetamine, $1500 in cash, and drug selling paraphernalia. Chandler's Class A felony conviction in the present case indicated a drug enterprise, not merely a drug abuse problem. An attempt to treat his addiction will not serve to punish him for engaging in the distribution of methamphetamine. The nature of the offenses does not warrant a reduction or alteration to Chandler's sentence. We conclude that the forty-year sentence in the Department of Correction is appropriate after considering the nature of the offenses and the character of the offender.

Conclusion

Chandler waived any arguments regarding the admissibility of evidence following the motion to suppress. The trial court did not abuse its discretion by sentencing Chandler to forty years and the sentence is appropriate. We affirm.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.