

STATEMENT OF THE CASE

Appellant-Defendant, Mark E. McClung (McClung), appeals his sentence for dealing in cocaine, a Class B felony, Ind. Code § 35-48-4-1; possession of marijuana, a Class A misdemeanor, I.C. § 35-48-4-11; and resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3.

We affirm.

ISSUE

McClung raises one issue on appeal, which we restate as follows: Whether the trial court sufficiently explained the reasons for the sentence it imposed.

FACTS AND PROCEDURAL HISTORY

On December 11, 2007, Indianapolis Metropolitan Police Officer Andrew Troxell initiated a traffic stop of a vehicle for an expired plate in Indianapolis, Indiana. McClung, a passenger in the vehicle, ran from the scene despite being ordered by the officer to stop. A canine was used to track McClung and, after he refused to emerge from his hiding place, to apprehend him. Police discovered two baggies, which contained 18.3 grams of cocaine and 11 grams of marijuana respectively in McClung's hiding place.

On December 14, 2007, the State filed an Information charging McClung with Count I, dealing in cocaine, a Class A felony, I.C. § 35-48-4-1; Count II, possession of cocaine, a Class C felony, I.C. §35-48-4-6; Count III, possession of marijuana, a Class A misdemeanor, I.C. §35-48-4-11; and Count IV, resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3. On May 29, 2008, McClung entered into an agreement with the State, agreeing to

plead guilty to the lesser offense of Class B felony dealing cocaine, a Class A misdemeanor possession of marijuana, and a Class A misdemeanor resisting law enforcement in exchange for the State dismissing the Class C felony possession of cocaine, as well as a Class D felony theft charge under a different cause number. The terms of the plea agreement further specified that

the State . . . will make the following recommendation as to the sentence to be imposed:

Count I – 15 years total sentence, terms to the [c]ourt with an executed cap of six years.

Count III - 365 days suspended, concurrent to Count I.

Count IV – 365 days suspended, concurrent to Count I

(Appellant’s App. p. 32).

On July 14, 2008, the trial court sentenced McClung to fifteen years with 545 days executed and the remainder suspended on the Class B felony dealing charge and ordered McClung to serve 2 years on probation. In addition, the trial court imposed concurrent, fully suspended 365 day sentences on each of the misdemeanor convictions. On July 30, 2008, McClung filed a motion to correct error, which was denied by the trial court on August 15, 2008. On September 8, 2008, McClung filed a motion for permission to file a belated notice of appeal, which was subsequently granted by the trial court.

McClung now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

McClung's only argument centers on the specificity of the trial court's sentencing statement. He maintains that the trial court merely explained the terms and conditions of his probation and failed to state any reasons for his sentence. We disagree.

A trial court is required to provide a sentencing statement that gives a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence," identifying all significant aggravating and mitigating factors, if any are found, and the reason why the court has found them to be such. *Anglemeier v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *aff'd on reh'g*, 875 N.E.2d 218 (Ind. 2007). The purpose of this requirement is to guard against arbitrary and capricious sentences, to facilitate appellate review of the sentence, and to allow both the defendant and the public to understand the court's reasoning in choosing the sentence it imposes so that they will accept the sentence "without bitterness." *Id.* at 489.

First, we note that the plea agreement limited the trial court's discretion by already setting out the parameters of the trial court's sentence. In fact, the only leeway the trial court had in its sentencing was on Count I, where the plea read "15 years total sentence, terms to the [c]ourt with an executed cap of six years." (Appellant's App. p. 32). The trial court was further limited by the fact that McClung had been rejected by both the Marion County Community Corrections and HOCCS, thereby leaving the Department of Correction as the only solution.

Within these parameters, the trial court sentenced McClung to fifteen years with 545 days executed and the remainder suspended on the Class B felony dealing charge and ordered

McClung to serve 2 years on probation. In addition, the trial court imposed concurrent, fully suspended 365 day sentences on each of the misdemeanor convictions. In support of its sentence, the trial court stated that

I'm not going to give you a suspended sentence on a Class B felony, sir. You just don't get a free felony conviction. I hope you understand that. Maybe you do, maybe you don't, but I think when you get felony convictions, I'm giving you a very minimal amount of time recognizing that you don't have much criminal history, but you have got a Class B felony conviction, the [c]ourt could have given you up to twenty years, I suggest when you get out you find some other line of work besides selling cocaine and marijuana.

(Transcript pp. 25-26).

The trial court acted within its discretion in imposing McClung's sentence. McClung's criminal history shows that he has eight prior convictions—two of which involve illegal substances—he has been unsuccessful at prior attempts at probation, and he picked up a new felony charge while he was free in this case. It is clear that the trial court considered it inappropriate to serve no time in prison for a Class B felony conviction. However, because the trial court determined McClung's prior criminal history to be relatively mild, the trial court only imposed a minimal amount of prison time, with two years of probation.

Admittedly, while the trial court's explanation for imposing the sentence is brief, in light of the parameters of the plea agreement and McClung's criminal history, we conclude that the trial court's sentencing statement is sufficiently detailed.

CONCLUSION

Based on the foregoing, we conclude that the trial court sufficiently explained its reasons for imposing McClung's sentence.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.