



Shawn L. Kimmel appeals her sentence pursuant to Ind. Appellate Rule 7(B). We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On December 21, 2004, Kimmel met with a confidential informant to facilitate a sale of methamphetamine. Kimmel and the informant discussed purchasing information and drove together to meet Nicholas Gaetz. The informant purchased some methamphetamine from Gaetz. For her efforts, Kimmel kept a portion of the drug for her own use.

Kimmel pled guilty to dealing in methamphetamine, a Class B felony.<sup>1</sup> On February 26, 2007, she was sentenced to ten years with two years suspended. When she committed her offense, a Class B felony carried a presumptive sentence of ten years.<sup>2</sup> The trial court found her prior misdemeanor convictions to be aggravating circumstances. The mitigating circumstances found by the court were a lack of prior felony convictions and hardship on her family.

### **DISCUSSION AND DECISION**

We may revise a sentence 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

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<sup>1</sup> Ind. Code § 35-48-4-1.1.

<sup>2</sup> “The statute to be applied when arriving at the proper criminal penalty should be the one in effect at the time the crime was committed.” *Patterson v. State*, 532 N.E.2d 604, 608 (Ind. 1988). Prior to April 25, 2005, a Class B felony carried a presumptive term of ten years, with up to ten years added for aggravating circumstances or up to four years subtracted for mitigating circumstances. *See* Historical and Statutory Notes, Ind. Code § 35-50-2-5.

character of the offender.” App. R. 7(B). We give deference to the trial court’s decision, recognizing the special expertise of the trial court in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied*. Although we conduct an independent review 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 here was inappropriate.” *Gibson v. State*, 856 N.E.2d 142, 147 (Ind. Ct. App. 2007). The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Kimmel argues more weight should be given to certain mitigating circumstances. The finding of mitigating circumstances is discretionary. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied* 812 N.E.2d 792 (Ind. 2004).

The trial court need not consider, and we will not remand for reconsideration of, alleged mitigating factors that are highly disputable in nature, weight, or significance. A sentencing court need not agree with the defendant as to the weight or value to be given to proffered mitigating facts.

*Id.* (citations omitted).

Kimmel argues she was merely acting as a middleman to support her addiction and she wants to be treated for her addiction. A trial court is not required to consider substance abuse as a mitigating circumstance. *James v. State*, 643 N.E.2d 321, 323 (Ind. 1994). She also argues her guilty plea and expression of remorse should be considered mitigating circumstances. These are not always significant mitigators, especially if the defendant receives a significant benefit from her plea. *Ruiz v. State*, 818 N.E.2d 927, 929

(Ind. 2004). Kimmel could have received up to twenty years, but by pleading guilty, she guaranteed she would serve no more than twelve years. The trial court was not obliged to consider these circumstances to be mitigating, nor do they suggest her sentence is inappropriate.

The trial court did find two mitigating circumstances, which Kimmel argues should have been given more weight. Kimmel has not presented facts concerning the degree of hardship her children will suffer if she serves eight years. Therefore, we cannot evaluate how this factor relates to her character. *See Weaver v. State*, 845 N.E.2d 1066, 1074 (Ind. Ct. App. 2006) (Hardship to dependents “can properly be assigned no weight when the defendant fails to show why incarceration for a particular term will cause more hardship than incarceration for a shorter term.”), *trans. denied* 855 N.E.2d 1011 (Ind. 2006).

Kimmel’s lack of felony convictions, the other mitigator found by the trial court, is the inverse of the court’s observation that she has five misdemeanor convictions. Her criminal record, while not extensive, counterbalances the positive aspects of her character. Therefore, the presumptive term of ten years is not inappropriate.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.