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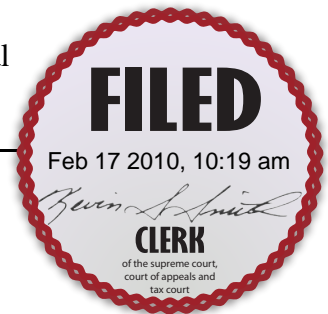
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**IN THE
COURT OF APPEALS OF INDIANA**

JERROD FORD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 36A01-0907-CR-365

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable William E. Vance, Judge
Cause No. 36C01-0810-FB-49

February 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Jerrold Ford pleaded guilty to criminal mischief¹ as a Class D felony and received a three-year executed sentence. He appeals, raising the following restated issues:

- I. Whether the trial court abused its discretion in sentencing him; and
- II. Whether his sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 20, 2008, Ford was an inmate in the Jackson County Jail. Ford and another inmate used pieces of a razor blade to cut themselves and then smeared their blood onto the floors and walls of the cell, as well as on themselves. Prison officers also discovered damage to the cell's door, toilet, and shower. Ford was removed from the cell and given medical treatment for his injuries. The value of the damage to the cell was determined to be in excess of \$2,500.

The State initially charged Ford with criminal mischief as a Class A misdemeanor and possession of a dangerous device or material by an inmate as a Class B felony. The State later amended the criminal mischief count to a Class D felony due to the amount damage done to the cell. Ford pleaded guilty to Class D felony criminal mischief, and the State dismissed the Class B felony charge. The plea agreement left sentencing to the discretion of the trial court. At the sentencing hearing, the trial court stated that, although Ford's guilty plea may have bestowed a savings to the State of time and expense, he also received a

¹ See Ind. Code § 35-43-1-2.

significant benefit as the Class B felony charge was dismissed. The trial court went on to consider Ford's extensive criminal history, numerous violations of probation, and repeated failures to appear for court proceedings. It sentenced him to three years executed. Ford now appeals.

DISCUSSION AND DECISION

I. Abuse of Discretion

Although Ford initially frames his argument as whether his sentence was inappropriate in light of the nature of the offense and the character of the offender, he also appears to argue that the trial court abused its discretion in its finding of aggravating and mitigating circumstances. As our Supreme Court has previously made clear, "inappropriate sentence and abuse of discretion claims are to be analyzed separately." *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). We therefore address each of these arguments separately.

Trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.* Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Id.* An abuse of discretion occurs if the decision is "clearly against the

logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *Id.*

Ford argues that the trial court abused its discretion in its finding of aggravating and mitigating circumstances. He initially contends that it was an abuse of discretion for the trial court to consider his past failures to appear for court proceedings as an aggravating circumstance because nothing indicated that he had been afforded due process safeguards such as hearings on the allegations and an opportunity to address the accusations. Ford also claims that the trial court abused its discretion when it declined to give his guilty plea mitigating weight because it improperly determined that he had received a significant benefit from pleading guilty. He asserts that the State failed to show that it could have proven the allegations set out in the dismissed charge of possession of a dangerous device or material by an inmate, and therefore, it was not shown that he received a significant benefit by pleading guilty.

Here, in its oral sentencing statement, the trial court stated in reference to Ford’s guilty plea that, “when one considered that there is a savings to the county of time and expense, the court is also to consider if there are benefits that the defendant receives from . . . pleading guilty.” *Sentencing Tr.* at 6-7. It then went on to note that Ford received a significant benefit in pleading guilty because a more serious charge was dismissed. The trial court also discussed Ford’s repeated past failures to appear for court proceedings as well as his lengthy criminal history and numerous violations of probation in reference to how Ford comported with the criminal justice system in the past.

As to the finding of past failures to appear for court proceedings as an aggravating circumstance, we first note that these failures to appear were mentioned in Ford's presentence report, and he was given an opportunity to make changes or corrections to the report at his sentencing hearing. Ford did not protest the accuracy of any of the information contained in the presentence report, including the allegations of failing to appear for various court proceedings. *Id.* at 4. Ford also offers no authority for his claim that a failure to appear may not be considered in sentencing unless there is sufficient evidence to prove that he received his constitutional rights regarding the failure to appear. The trial court's statement concerning Ford's past failures to appear for court proceedings was evidence of Ford's failure to comport with the criminal justice system in the past. This statement by the trial court was clearly supported by the record as the presentence report contained several instances in his legal history where he failed to appear for court hearings and failed to report to jail as ordered. We conclude that the trial court did not abuse its discretion in finding Ford's failures to appear to be aggravating circumstances.

As to the trial court's determination that Ford's guilty plea was not a mitigating factor because he had received a significant benefit by pleading guilty, we conclude that this was not an abuse of discretion. The significance of a guilty plea as a mitigating factor varies from case to case. *Anglemyer v. State*, 875 N.E.2d 218, 221 (Ind. 2007). A guilty plea may not be significantly mitigating when it does not demonstrate the defendant's acceptance of responsibility, or when the defendant receives a substantial benefit in return for the plea. *Id.*

Here, Ford was charged with Class B felony possession of a dangerous device or material by an inmate and Class D felony criminal mischief, and when he pleaded guilty to the criminal mischief charge, the State agreed to dismiss the Class B felony charge. Ford therefore received a substantial benefit in exchange for pleading guilty, and the trial court did not abuse its discretion in not finding his guilty plea to be a mitigating circumstance. As for his contention that the State was required to prove the dismissed count to demonstrate a substantial benefit for its dismissal, he does not cite to any authority for this claim. In any event, the probable cause affidavit, included as part of the presentence report, clearly stated that Ford was found to be in possession of a piece of razor blade inside of his mouth when he was removed from his cell. The trial court did not abuse its discretion when it sentenced Ford.

II. Inappropriate Sentence

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

Ford argues that his three-year sentence was inappropriate in light of the nature of the offense and his character. He specifically contends that the nature of the offense was not a crime of violence and that there were no allegations that he hurt any other person. As to his

character, he points to his acceptance of responsibility by pleading guilty and the fact that his criminal history consisted mainly of misdemeanors.

As to the nature of the offense, while incarcerated in the Jackson County Jail, Ford used pieces of razor blade to cut himself and then proceeded to smear the blood on the floor and walls of his cell and on himself. It was also discovered that damage had been done to the cell's door, toilet, and shower in excess of \$2,500. As to Ford's character, he had a lengthy criminal history that consisted of juvenile offenses and numerous misdemeanor and felony convictions, including convictions for conversion, false informing, never receiving a driver's license, criminal mischief, battery, possession of marijuana, and attempted escape. Ford also had a history of probation violations and failing to appear for court proceedings. Lenience shown to Ford through probation and community corrections opportunities has not caused him to follow a law-abiding life. We conclude that Ford's three-year sentence was not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

DARDEN, J., and MAY, J., concur.