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# IN THE
# COURT OF APPEALS OF INDIANA

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| PRESTON L. PEARSON, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 02A03-0910-CR-453 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0906-FD-521

**MAY 17, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARTEAU, Senior Judge**

## STATEMENT OF THE CASE

Defendant-Appellant Preston Pearson appeals his sentence of two years for his conviction of invasion of privacy as a Class D felony. Ind. Code § 35-46-1-15.1.

We affirm.

## ISSUE

Pearson presents one issue for our review, which we restate as: whether Pearson's sentence is inappropriate.

## FACTS AND PROCEDURAL HISTORY

Pearson previously dated D.M. At the time of this incident, two no-contact orders were in place against Pearson ordering him to refrain from contacting D.M. and to refrain from going to her residence. On May 28, 2009, Pearson walked down the alley behind D.M.'s residence and cut her phone lines.[1]

Based upon this incident, Pearson was charged with invasion of privacy, as a Class D felony. Pearson pleaded guilty to the charge and was sentenced to two years in the Department of Correction. It is from this sentence that he now appeals.

## DISCUSSION AND DECISION

Pearson argues that his two-year sentence is inappropriate and that the trial court failed to recognize mitigating circumstances. Thus, Pearson makes both a process-based

[1] Although Pearson's brief states that he was arrested for breaking a window in D.M.'s house, the only information with which we are provided on appeal is the probable cause affidavit, which states that Pearson cut the phone line to D.M.'s residence. In either instance, the charge of invasion of privacy remains the same.

and a result-based challenge to his felony sentence. *See Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007), *trans. denied*.

For his process-based challenge, Pearson argues that the trial court overlooked some mitigating circumstances. As long as a defendant's sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). A trial court abuses its discretion when it: 1) fails to issue a sentencing statement; 2) enters a sentencing statement that includes reasons not supported by the record; 3) enters a sentencing statement that omits reasons clearly supported by the record and advanced for consideration; or 4) enters a sentencing statement that includes reasons that are improper as a matter of law. *Id*. at 490-91. Yet, even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate. *Mendoza*, 869 N.E.2d at 556.

Here, Pearson claims that "[t]here are mitigating circumstances that went unrecognized by the court." Appellant's Brief at 4. However, Pearson provides no identification of the mitigating circumstances to which he is referring and no argument as to their significance and their support in the record. Pearson lists his guilty plea, his addiction to alcohol, and his health issues when discussing his character in the paragraph preceding his allegation regarding mitigators; however, he does not link these factors to any contention or argument regarding mitigating circumstances. An allegation that the sentencing court failed to identify or find a mitigating factor requires the defendant to

establish that the mitigating evidence is both significant and clearly supported by the record. *Rogers v. State*, 878 N.E.2d 269, 272-73 (Ind. Ct. App. 2007), *trans. denied.* Pearson failed in his burden of showing the significance of any mitigators and their support in the record.

With regard to a challenge of the result of the sentencing process, we will revise a sentence if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate. *Anglemyer*, 868 N.E.2d at 494.

We begin with the nature of the offense. The advisory sentence is the starting point in the nature of the offense portion of the appropriateness review. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Pearson pleaded guilty to a Class D felony and was sentenced to two (2) years. The advisory sentence for a Class D felony is one and one-half (1 ½) years, with six (6) months as the minimum and three (3) years as the maximum sentence. Ind. Code § 35-50-2-7. Further consideration of the nature of this offense reveals that Pearson's conviction of invasion of privacy stems from his violation of a no-contact/protective order by cutting the phone lines and/or breaking the window of the residence of D.M., his former girlfriend. Moreover, Pearson was intoxicated when he committed this offense.

As to Pearson's character, we note, as did the trial court, that Pearson has a lengthy criminal history. The pre-sentence investigation report summarizes Pearson's

criminal history as forty-eight (48) misdemeanor convictions and six (6) felony convictions. Further, Pearson has had suspended sentences revoked on at least two occasions, and his driver's license is suspended for life. Pearson has a history of alcohol abuse, and he committed the instant offense while he was intoxicated. In addition, he committed this offense just six days after pleading guilty to a misdemeanor invasion of privacy charge. As the trial court stated, "[p]rior attempts at rehabilitation have failed." Tr. at 8. In light of the nature of the offense and Pearson's character, the sentence is not inappropriate.

## CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that Pearson's sentence is not inappropriate.

Affirmed.

NAJAM, J., and BAILEY, J., concur.