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IN THE COURT OF APPEALS OF INDIANA

MICHAEL LANDON DENEAL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0912-CR-569
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
CRIMINAL DIVISION, ROOM II
The Honorable Clarence D. Murray, Judge
Cause No. 45D02-0905-FC-60

June 15, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Michael Landon Deneal (Deneal), appeals his sentence following a guilty plea to burglary, a Class C felony, Ind. Code § 35-43-2-1.

We affirm.

ISSUE

Deneal raises one issue on appeal, which we restate as: Whether the trial court properly sentenced him.

FACTS AND PROCEDURAL HISTORY

At some time during the early morning hours of May 23, 2009, Deneal entered Locke Elementary School, located in Gary, Indiana, by opening a closed window. Inside the school, he took metal heating coils and attempted to remove metal pipes from the school's property. When Michael Brown (Brown), the school's security officer, entered the building at approximately 4:00 a.m. he heard noises coming from inside. The Gary Police Department was contacted. After arriving at the school, two officers observed Deneal coming from the east side of the building and crossing the street. The officers ordered Deneal to stop, but he took off running. A chase ensued and eventually, the officers managed to capture Deneal.

On May 23, 2009, the State filed an Information charging Deneal with Count I, burglary, a Class C felony, I.C. § 35-43-2-1; Count II, trespass, a Class D felony, I.C. § 35-43-2-2; and Counts III-IV, resisting law enforcement, Class A misdemeanors, I.C. § 35-44-3-3. On June 19, 2009, the State filed an amendment, adding a habitual offender Count, I.C. § 35-50-2-8. On November 2, 2009, Deneal pled guilty to Count I, burglary, a Class C felony

in exchange for the State dismissing all other charges. That same day, the trial court conducted a sentencing hearing. During the hearing, the trial court stated

> I have to look at your entire criminal record as a matter of law. I can't carve out a portion of it and exclude another portion. Your criminal history is extensive; and it's difficult to take issue with the State's argument, when you're out, you commit crime.
>
> Now you speak highly of your faith,[], but the Qur'an does not – stealing, murder and things of that nature, those are high crimes in the Qur'an. So you don't seem to have a great deal of faith either. You're not following the dictates of your faith. So that – I'm not impressed. I don't know of any religion that condones what you have been doing. Moreover, you continue to commit crime, and you are long-winded, you have an excuse for everything. But you don't stop, you keep coming back.
>
> You got a significant benefit from this plea agreement because the State had the option of going with the habitual offender here which would have meant significantly more prison time had this case gone to trial and you'd been convicted. The case clearly calls for an aggravated sentence.

(Transcript pp. 21-22). In its sentencing statement, the trial court specified as aggravating circumstances: Deneal "has a history of misdemeanor and felony convictions, he has had the benefit of probation in the past but continues to commit crimes." (Appellant's App. p. 33). As mitigating factor, the trial court listed that Deneal "admitted his guilt by way of a plea agreement, thus saving the [c]ourt and the tax payers of this county the time and expense of trial." (Appellant's App. p. 33). The trial court sentenced Deneal to seven years at the Department of Correction.

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

DISCUSSION AND DECISION

Deneal contends that the trial court abused its discretion when it imposed a seven-year sentence for a Class C felony. A person who commits a Class C felony shall be imprisoned

for a fixed term of between two and eight years, with the advisory sentence being four years. I.C. § 35-50-2-6. Here, the trial court ordered a sentence which was one year short of the maximum sentence under the statute.

As long as the 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), *aff'd on reh'g*, 875 N.E.2d 218 (Ind. 2007). 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*. One way in which a trial court may abuse its discretion is by failing to enter a sentencing statement at all. *Id*. Another example includes entering a sentencing statement that explains reasons for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. *Id*. at 490-91.

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion by failing to properly weigh such factors. *Id*. at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id*.

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id*. Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate

court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id*. It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

A. *Mitigator*

Although Deneal framed his argument as an appropriateness challenge pursuant to Ind. Appellate Rule 7(B), the main part of his claim is focused on a mitigating factor which he asserts the trial court overlooked. Specifically, Deneal argues that the trial court failed to identify as a mitigating circumstance the fact that he had lived a law-abiding life from 1995 to May of 2009, a period of approximately fourteen years.

However, it is clear from the sentencing statement that the trial court did consider Deneal's life in crime. The trial court specifically mentioned that Deneal's criminal record is extensive and although no specific reference was made regarding Deneal's fourteen year hiatus as a law-abiding citizen, the trial court did consider that Deneal does not stop committing crimes, he "keep[s] coming back." (Tr. p. 21). As the trial court did consider this circumstance, the court obviously decided not to give it much weight. Regardless of the weight assigned, a trial court's weighing of a mitigating factor is no longer subject to our review. *See id* at 491.

Moreover, even assuming that the trial court erred and failed to list Deneal's brief law-abiding life as a mitigating factor, "[o]ur courts frequently hold that a single aggravating circumstance may be sufficient to support the imposition of an enhanced sentence." *Flickner v. State*, 908 N.E.2d 270, 274 (Ind. Ct. App. 2009). If valid aggravators exist, this court will remand only if we "cannot say with confidence that the trial court would have imposed the same sentence if it considered [only] the proper aggravating and mitigating circumstances." *Id*. Here, the trial court's decision to enhance was based on Deneal's criminal history, characterizing it as "extensive." (Tr. p. 21). As such, we can say with confidence that the trial court would have sentenced Deneal to the same seven-year sentence even if it would have considered Deneal's proffered mitigator.

B. *Nature and Character*

With respect to Deneal's argument pursuant to Ind. Appellate Rule 7(B), we conclude that he failed to make a cogent argument as to why his seven-year sentence is not appropriate in light of the nature of his offense and his character. It is well-established that failure to make a cogent claim results in waiver of the claim. Ind. Appellate Rule 46(A)(8)(a); *Johnson v. State*, 837 N.E.2d 209, 217 (Ind. Ct. App. 2005), *trans. denied*.

Waiver notwithstanding, we will address the merits of Deneal's argument. While we note that the nature of the crime is not particularly egregious, the crime nevertheless took place on school property. Deneal entered a closed elementary school and destroyed property inside. Turning to his character, we observe that Deneal's criminal history spans thirty-eight years, with his first conviction for robbery, a Class B felony, at the age of eighteen. In

addition, Deneal's criminal history includes felony theft, a Class C battery, a Class B felony robbery, a Class C felony escape, a Class C felony carrying a handgun without a license, and a Class B misdemeanor disorderly conduct. Furthermore, Deneal had numerous arrests that resulted in either a dismissal or an unknown disposition. "While a record of arrests does not establish the historical fact of prior criminal behavior, such a record does reveal to the court that subsequent antisocial behavior on the part of the defendant has not been deterred even after having been subject to the police authority of the State and made aware of its oversight activities of its citizens." *Pickens v. State*, 767 N.E.2d 530, 534 (Ind. 2002).

Therefore, in light of the evidence before us, we cannot conclude that Deneal's seven-year sentence is not inappropriate in light of the nature of the offense and his character.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly sentenced Deneal.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.