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**IN THE
COURT OF APPEALS OF INDIANA**



ROGER L. STOREY,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 57A05-1001-CR-40

APPEAL FROM THE NOBLE CIRCUIT COURT
The Honorable G. David Laur, Judge
Cause No. 57C01-0910-FC-66

July 6, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Roger Storey appeals his six-year executed sentence following a guilty plea to nonsupport of a dependent child, a Class C felony. Storey raises one issue for our review: whether the sentence is inappropriate in light of the nature of the offense and Storey's character. Concluding Storey's sentence is not inappropriate, we affirm.

Facts and Procedural History

On October 3, 1995, the DeKalb County Circuit Court ordered Storey to pay \$38.50 per week in child support. A few days after that order, Storey was incarcerated for a Class C felony burglary charge and was not released until January 2007. During his incarceration, Storey was not on work release so he made no child support payments. A large part of the \$28,610.47 Storey owed in child support as of December 2, 2009, accrued while he was incarcerated. Upon release from prison, Storey worked periodically as a maintenance man for an out-of-state property manager, and occasionally made small support payments. However, he has not made a payment since May 24, 2008.

On October 5, 2009, the State charged Storey with nonsupport of a dependent child as a Class C felony. On October 15, 2009, Storey pleaded guilty and was released on his own recognizance with the condition that he either pay \$1,500.00 of the back child support by the following Friday or report to the Noble County Jail. The \$1,500.00 sum was later reduced by agreement to \$1,000.00, but Storey only paid \$600.00 by the deadline. Storey did not report to jail and avoided apprehension by police officers by not attending work. On December 3, 2009, the trial court held a sentencing hearing and

sentenced Storey to six years in the Department of Correction. Storey now appeals his sentence.

Discussion and Decision

I. Standard of Review

Storey's six-year sentence for nonsupport of a dependent child is two years over the advisory and two years under the statutory maximum sentence for a Class C felony. See Ind. Code § 35-50-2-6(a). This Court has authority to revise a sentence "if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We recognize the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). When examining the nature of the offense and the character of the offender, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) ("[I]nappropriateness review should not be limited...to a simple rundown of the aggravating and mitigating circumstances found by the trial court"). Ultimately, the burden is on the defendant to demonstrate his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

II. Inappropriate Sentence

A. Nature of the Offense

Storey contends his six-year sentence is inappropriate because it ensures his child will receive no support from him during the time he is incarcerated. We disagree. Indiana Code section 35-46-1-5(a) provides that nonpayment of child support with arrears of more than \$15,000.00 is a Class C felony. The \$28,610.00 Storey is in arrears is almost double the statutory amount. We acknowledge that a large part of the sum owed accrued while Storey was incarcerated; however, other facts in the record show that Storey was unwilling to fulfill his obligation to pay on a weekly basis, even when he was free from incarceration. Storey was released from prison in January 2007, yet he made very few payments. He even admitted that since his release there were times he had the means to pay child support but failed to do so. Furthermore, Storey has made no payments since May 24, 2008. After the guilty plea hearing, the trial court released Storey on the condition that he pay \$1,500.00 towards his child support by the following week or else report to jail. The trial court was lenient enough to later lower the sum to \$1,000.00, but Storey paid only \$600.00 and did not report to jail as he was ordered to do. Time and time again Storey willingly chose not to pay his court-ordered child support, whether he was incarcerated or not. Therefore, Storey's sentence is not inappropriate in light of the nature of his offense.

B. Character of the Offender

Storey further contends his sentence is inappropriate because his character reflected that he made child support payments when he was employed and able to do so. Again, we disagree. This argument is not only belied by Storey's own admission that there were times he had the means to pay but did not, but also disregards Storey's long criminal history and questionable conduct since his sentencing hearing. The significance of a defendant's criminal history "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999). As an adult, Storey has an extensive criminal history dating back to 1994, including the following convictions: six felony counts of burglary, one felony count of theft, operating without financial responsibility, and driving while suspended. Although the nature of Storey's prior convictions do not directly relate to the current offense, we observe a pattern of Storey's disregard for the law. When Storey chose not to comply with the court order and pay the required sum toward his child support arrearage or report to jail, he took advantage of the court's leniency. Instead, Storey chose to evade capture by law enforcement and not go to work, even though his job was a means he could have used to pay his child support. In addition, Storey's dubious character and disregard for the law is compounded by the fact that he was convicted of intimidating his child's mother some time after his sentencing hearing. According to the mother's testimony, Storey battered and threatened her with death if she did not drop the child support charges against him. Storey has the burden of persuading this court that his sentence is inappropriate in light of his character, and he has not met that burden. The evidence that

he made occasional payments does not outweigh the fact Storey's character is that of a person who continually disregards the law, and is willing to resort to extreme measures to avoid his responsibility to pay child support. Therefore, we conclude Storey's sentence is not inappropriate in light of his character.

Conclusion

Storey's sentence is not inappropriate in light of the nature of the offense and his character.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.