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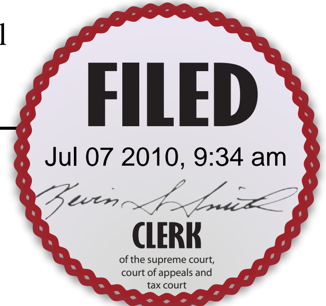

IN THE COURT OF APPEALS OF INDIANA

HARRY GREEN, JR., Appellant-Defendant,	)	
vs.	)	No. 02A04-1003-CR-178
STATE OF INDIANA, Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0910-FD-943

July 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Harry Green, Jr., pleaded guilty to intimidation, a class D felony, public nudity, a class C misdemeanor, operating while intoxicated (OWI) as a class C misdemeanor, and operation of a motor vehicle by an unlicensed driver, a class C misdemeanor. The trial court sentenced Green to an aggregate term of 2 ½ years imprisonment. On appeal, Green argues that the trial court abused its discretion by failing to enter a reasonably detailed statement setting forth its reasons for the sentence imposed.

We affirm.

On October 8, 2009, the State charged Green with intimidation as a class D felony, public nudity as a class C misdemeanor, OWI as a class C misdemeanor, and operation of a motor vehicle by an unlicensed driver as a class C misdemeanor. On January 27, 2010, Green pleaded guilty as charged. During the guilty plea hearing, Green informed the court that he was on parole and that he had been treated for alcohol abuse. As the factual basis, Green admitted to the facts as alleged in the charging information. Specifically, Green admitted that he communicated a threat to Officer Mike Kreager of the Fort Wayne Police Department in order to place Officer Kreager in fear of retaliation for a prior lawful act, and he admitted to the operative facts underlying the remaining charges as well. The trial court held a sentencing hearing on February 22, 2010. Green argued for concurrent sentencing and also argued for the advisory sentence for class D felony intimidation, citing his guilty plea and his expression of remorse as mitigating factors. In his statement to the court, Green testified that he would not normally have committed the offenses but for his level of intoxication. Green did not deny that he has an alcohol problem. The State argued for

imposition of a 2 ½-year sentence, citing Green's history of alcohol abuse and criminal history, which the State summarized as follows:

> Mr. Green has a criminal record from Illinois. There's a violation of a [sic] order of protection in 98, criminal trespass in October of 98, a violation of order of protection December of 98. It's important to know that those are orders that are issued by the court. August of 99 there's a theft and in November of 99 the sentence had to be modified. In July of 2000 there's public intoxication, May of 2005 domestic battery and in September of 06 he decides to come to Indiana and Allen County specifically. Then he's going to commit public intoxication. Then they elevate from there to September 2007, there's a robbery as a Class C felony. He is released to parole in February of 2009 and he's not on parole more than four months before May of 2009, he's committing public intoxication. July of 2009 there's a public intoxication.

Sentencing Transcript at 6-7.[1] Immediately after hearing arguments of the parties, the trial court made the following oral sentencing statement during the hearing:

> That would be one thing is [sic] this was the first time he'd gotten drunk like this, but it's clearly not, he's been arrested on numerous occasions for intoxication offenses. He's on notice he needs help, he doesn't get it. That doesn't constitute a mitigating circumstance. Obviously urinating on a police car in the presence of the police officer was extraordinarily stupid. In the meantime, the remarks, the threats you made to this officer were extraordinarily offensive. These folks have enough problems and issues on the street without compounding them with that kind of threat.

Id. at 7-8. The court then sentenced Green to 2 ½ for class D felony intimidation, and 60 days on each of the class C misdemeanor offenses, with all of the sentences to be served concurrently. In its written judgment of conviction, the trial court did not identify the aggravating or mitigating circumstances it considered.

[1] Green did not include the pre-sentence investigation report in the record on appeal. Green did not object to the State's summary of his criminal history during the sentencing hearing.

Green argues that the trial court abused its discretion by failing to set forth a reasonably detailed sentencing statement identifying the aggravating and mitigating circumstances and its reasons for the sentence imposed.

We note that sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g by* 875 N.E.2d 218. Where a trial court imposes a sentence for a felony offense, it is required to issue a sentencing statement that includes a reasonably detailed recitation of the trial court's reasons for the sentence imposed. *Id.* A trial court's sentencing statement must fulfill the following: (1) Identify significant aggravating and mitigating circumstances; (2) state the specific reason why each circumstance is aggravating and mitigating; and (3) demonstrate that the aggravating and mitigating circumstances have been weighed to determine that the aggravators outweigh the mitigators. *Shaw v. State*, 771 N.E.2d 85 (Ind. Ct. App. 2002), *trans. denied*. A sentencing statement serves two primary purposes: (1) it guards against arbitrary and capricious sentencing, and (2) it provides an adequate basis for appellate review. *Anglemyer v. State*, 868 N.E.2d 482. Failure to enter a sentencing statement is an abuse of discretion. *Id.* On appeal, we will review both the written and oral sentencing statements to discern the findings of the trial court. *Corbett v. State*, 764 N.E.2d 622 (Ind. 2002).

Here, the trial court's written sentencing statement fails to set forth the trial court's reasons for the sentence imposed. The trial court's comments at the sentencing hearing, however, demonstrate that the trial court rejected Green's intoxication argument and considered Green's criminal history as well as the nature and circumstances of the current

offenses in deciding what sentence to impose. The trial court noted Green had "been arrested on numerous occasions for intoxication offenses" and further noted Green's failure to get help for his alcohol problems. *Sentencing Transcript* at 7. The trial court clearly rejected Green's intoxication argument and his claimed acceptance of responsibility by expressly finding that his intoxication would not be considered mitigating and by noting that this is not Green's first instance of intoxication. The trial court also characterized Green's actions underlying his convictions as "extraordinarily stupid" and "extraordinarily offensive." *Id.* at 8. After examining the record of the sentencing hearing, we conclude that the trial court adequately explained its reasons for the sentence imposed. While we strongly encourage the trial court to set forth its findings of aggravating and mitigating circumstances and its balancing thereof in its written sentencing order, we find no abuse of discretion here as the trial court's oral sentencing statement provided us with an adequate basis for meaningful appellate review. *See Mundt v. State*, 612 N.E.2d 566, 568 (Ind. Ct. App. 1993) ("[w]hile better practice would be for the trial court to set out a written statement of its reasons in its sentencing order, it is sufficient, in non-death penalty cases, if the trial court's reasons for enhancement are clear from a review of the sentencing transcript"), *trans. denied*.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.