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**IN THE
COURT OF APPEALS OF INDIANA**

TERRY D. BRYANT,)
)
Appellant-Defendant,)
)
vs.) No. 02A03-0707-CR-302
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Robert J. Schmoll, Judge
Cause No. 02D04-0701-FB-2

November 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Terry Bryant appeals his sentence for theft as a class D felony¹ and invasion of privacy as a class D felony.² Bryant raises one issue, which we revise and restate as whether the trial court abused its discretion in sentencing Bryant. We affirm.

The relevant facts follow.³ On December 26, 2006, Bryant violated a no contact order issued as a condition of probation in a separate cause by going to the apartment of his ex-girlfriend, Lori Audette. Audette told Bryant that he had no business being at her apartment and that he could not stay. Bryant forcibly pushed his way into the apartment by pushing open the door that Audette was trying to close. Bryant unplugged the television and DVD player and told Audette that he was going to pawn the items because she owed him.

Audette called the police. Officers of the Fort Wayne Police Department arrived, and Audette told them that her key was missing and that no one other than her son had permission to have the key. The key was later found in Bryant's possession.

The State charged Bryant with: Count I, burglary as a class B felony;⁴ Count II, theft as a class D felony; Count III, invasion of privacy as a class D felony; and Count IV, residential entry as a class D felony.⁵ Wright pleaded guilty to theft as a class D felony

¹ Ind. Code § 35-43-4-2 (2004).

² Ind. Code § 35-46-1-15.1 (2004).

³ The record does not include a transcript of the guilty plea hearing.

⁴ Ind. Code § 35-43-2-1 (2004).

⁵ Ind. Code § 35-43-2-1.5 (2004).

and invasion of privacy as a class D felony, and the State dismissed the remaining charges.

At the sentencing hearing, Audette stated that she had given Bryant the key, that Bryant resided at her home, that she and Bryant were not aware of the protective order, and that she loved Bryant. Bryant's attorney stated:

Well, it's quite obvious, Judge, I think you see what the circumstances involving the facts of this case [sic]. I'm not about to get into a discussion with-I've had prior discussions about this and that is-kind of surprised me this afternoon. I knew there was [sic] issues. I knew there was issues and so did [the prosecutor] and that's why we worked out what we worked out, but that's why I'm asking you for the sentence I asked you for, Judge, given the circumstances, albeit his criminal history.

Sentencing Transcript at 7.

The trial court found Bryant's guilty plea as a mitigator and Bryant's criminal history, which consisted of twenty-one misdemeanor convictions and three felony convictions, as an aggravator. The trial court found that the aggravator outweighed the mitigator and sentenced Bryant to serve two and a half years for theft as a class D felony and two and a half years for invasion of privacy as a class D felony. The trial court ordered that the sentences be served concurrently.

The sole issue is whether the trial court abused its discretion in sentencing Bryant. We note that Bryant's offense was committed after the April 25, 2005, revisions of the sentencing scheme.⁶ In clarifying these revisions, the Indiana Supreme Court has held

⁶ Indiana's sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences. See Ind. Code § 35-50-2-5 (Supp. 2005).

that “the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.” Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), reh’g granted on other grounds. We review the sentence 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.” Id.

A trial court abuses its discretion if it: (1) fails “to enter a sentencing statement at all;” (2) enters “a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not support the reasons;” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration;” or (4) considers reasons that “are improper as a matter of law.” Id. at 490-491. If the trial court has abused its discretion, we will remand for resentencing “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. Id.

Bryant argues that the trial court failed to consider the following mitigators: (A) the crime did not cause or threaten to cause serious harm to persons or property; (B) the victim induced or facilitated the offense; and (C) substantial grounds exist tending to excuse or justify the crime though failing to establish a defense. Bryant has waived this claim because he failed to ask the trial court to consider these facts as mitigators. See

Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005) (holding that defendant waived his claim because he failed to raise proposed mitigators at the trial court level).

For the foregoing reasons, we affirm Bryant's sentence for theft as a class D felony and invasion of privacy as a class D felony.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur