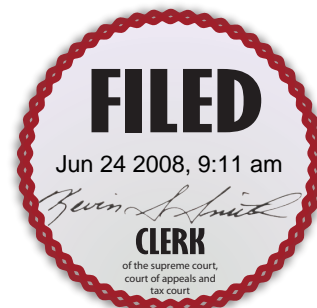


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY J. JENKINS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 31A01-0712-CR-566

APPEAL FROM THE HARRISON SUPERIOR COURT
The Honorable Roger D. Davis, Judge
Cause No. 31D01-0605-FD-371

June 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Timothy J. Jenkins appeals his two-year sentence following his guilty plea to operating a motor vehicle while privileges are suspended, a Class D felony. Specifically, Jenkins argues that the trial court abused its discretion because its sentencing statement is inadequate to permit appellate review and fails to discuss any mitigating circumstances and that his sentence is inappropriate. Concluding that the sentencing statement is adequate to permit appellate review and need not discuss mitigating circumstances and that the sentence is appropriate, we affirm.¹

Facts and Procedural History

On May 19, 2006, the State charged Jenkins with identity deception, a Class D felony; operating a motor vehicle while privileges are suspended, a Class D felony; driving while suspended, a Class A misdemeanor; and false informing, a Class B misdemeanor. On January 3, 2007, Jenkins pled guilty to operating a motor vehicle while privileges are suspended in a “Blind Plea Agreement,” meaning the terms of Jenkins’s sentence were left open to the court. Appellant’s App. p. 21. In exchange, the State dismissed the remaining counts.

According to the factual basis presented by the State, on April 19, 2006, Jenkins operated a vehicle despite knowing that his license was suspended because he had been determined to be a habitual traffic violator and was stopped by the police. Tr. p. 17. The trial court accepted Jenkins’s plea.

¹ We hereby grant the State’s Motion for Leave to Substitute Complete Copies of the Brief of Appellee.

At the sentencing hearing, the trial court identified its concerns regarding Jenkins's prior criminal history and high potential for recidivism. Because of these concerns, the trial court sentenced Jenkins to serve a term of two years, which is six months in excess of the advisory sentence for a Class D felony, and ordered his driving privileges forfeited for life. Jenkins now appeals his sentence.

Discussion and Decision

Jenkins raises two issues on appeal. First, he contends that the trial court abused its discretion because the sentencing statement is inadequate to permit appellate review and fails to discuss any mitigating circumstances. Second, he contends that his sentence is inappropriate.

I. Sentencing Statement

Jenkins contends that the trial court abused its discretion because its sentencing statement is inadequate to permit appellate review and fails to discuss any mitigating circumstances. Indiana trial courts imposing sentences for felony offenses are required to enter sentencing statements. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Such statements “must include a reasonably detailed recitation of the trial court’s reasons for imposing a particular sentence.” *Id.* Adequate sentencing statements serve the primary purposes of guarding against arbitrary and capricious sentencing and providing an adequate basis for appellate review. *Id.* at 489 (citing *Dumbsky v. State*, 508 N.E.2d 1274, 1278 (Ind. 1987)). They also serve the additional goals of “contribut[ing] significantly to the rationality and consistency of sentences” and “help[ing] both the defendant and the public understand

why a particular sentence was imposed.” *Id.* (quoting *Abercrombie v. State*, 275 Ind. 407, 417 N.E.2d 316, 319 (1981)). On appeal, we consider both written and oral sentencing statements. *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007).

Jenkins asserts that neither the trial court’s written nor oral sentencing statements provide adequate explanation of the reasons for the sentence imposed. We disagree. The oral sentencing statement highlights Jenkins’s prior criminal history and high potential for recidivism as the reasons for the sentence imposed. Jenkins’s adult history as outlined in the presentence investigation report detail a criminal history beginning with two convictions in 1975 and resuming in 1996. Appellant’s App. p. 51-54. The trial court acknowledged that, since 1996, Jenkins has accrued numerous convictions, Tr. p. 45, including intimidation, driving while intoxicated, public intoxication, battery, resisting law enforcement, and carrying a handgun without a license. Appellant’s App. p. 51-54.

The trial court imposed Jenkins’s sentence as follows:

(Inaudible) . . . it’s too painful. It’s too much trouble to be in and out of jails and prison and they usually get that figured out by the time they’re forty something and they quit coming back or they, in the alternative, they die or somebody else kills them but I guess you’re a slow learner, I don’t know, or maybe you got a late start. In someways maybe you got a late start. I don’t know. Because apparently you did really good when you were, for most of the time that you were married, you did really good. Uh . . . Pretty good. I don’t think you got arrested too many times when you were married there but . . . Anyhow maybe you just got a late start, you know. So I don’t know what else to do with you other than just give you a certain amount of time and be done with it. But I really, unfortunately, don’t have much confidence that you won’t be back. And, uh . . .

You’re sentenced to two years, all to serve, none suspended.

Tr. p. 44-45. This oral sentencing statement indicates that the sentence imposed is a reflection of Jenkins's prior criminal history and high potential for recidivism. It is adequate to permit proper appellate review.

In addition, Jenkins maintains that the trial court abused its discretion by failing to find his physical and mental infirmities as a mitigating factor. In order for the trial court to find or identify mitigating factors, the defendant must establish that the mitigating evidence is both significant and clearly supported by the record. *Anglemyer*, 868 N.E.2d at 493 (citing *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999)). If the trial court does not find a mitigating factor after it has been argued by counsel, it is not obligated to provide its reasoning. *Id.* (quoting *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993)). Here, the trial court did not find Jenkins's physical and mental infirmities as mitigating because he failed to establish any nexus between those infirmities and operating a vehicle while his privileges are suspended. *See Barany v. State*, 658 N.E.2d 60, 67 (Ind. 1995). Therefore, the trial court did not abuse its discretion by failing to find Jenkins's physical and mental infirmities as a mitigating factor.

II. Inappropriate Sentence

Jenkins also contends that his two-year sentence is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court "may revise a sentence authorized by statute 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.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Although the nature of Jenkins’s offense is not particularly aggravating, his character as reflected by his prior criminal history is troubling. Aside from the instant offense, Jenkins has been arrested eleven times. Although two of those arrests resulted in dismissed charges, Jenkins nevertheless has three felony and six misdemeanor convictions, including one for intimidation. Jenkins appears to have settled into a pattern of criminal behavior. During sentencing, the trial court recognized Jenkins’s recidivist behavior and stated, “I hope when you get out that you never get arrested again, that you never come back and you never have to go to jail or prison again. I hope I’m wrong. I don’t think I will be but I hope I am.” Tr. p. 48. In addition, Jenkins’s character is reflected negatively by the fact that he tested positive for illegal substances when he arrived for his presentence investigation interview. Appellant’s App. p. 100-02. Jenkins’s character eclipses the fact that the nature of his offense is not particularly aggravating. Jenkins has failed to persuade us that his two-year sentence is inappropriate.

Affirmed.

MAY, J., and MATHIAS, J., concur.