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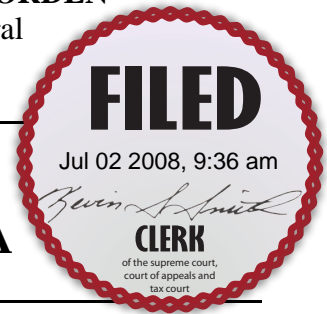
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**IN THE
COURT OF APPEALS OF INDIANA**



DONALD DIXON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0803-CR-169

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben Hill, Judge
Cause No.49F18-0704-FD-68646

July 2, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Donald Dixon appeals following his conviction, pursuant to a guilty plea, for Attempted Residential Entry, a Class D felony,¹ for which he received a sentence of three years with two and one-half years in the Department of Correction and one-half year suspended to probation. Upon appeal, Dixon claims that the trial court improperly weighed the aggravating and mitigating factors in imposing his sentence. Concluding that this claim is unavailable for review, we affirm.

FACTS

According to the factual basis, on or about April 11, 2007, Dixon knowingly pushed in the bedroom window of a residence at 2431 Hobart Road in Indianapolis, an act constituting a substantial step toward the crime of residential entry. On April 24, 2007, the State charged Dixon with attempted residential entry and voyeurism. On June 7, 2007, the State alleged Dixon to be a habitual offender. On November 27, 2007, Dixon entered a guilty plea to the residential entry charge, and the State dismissed the voyeurism charge and the habitual offender information. At the sentencing hearing held that day, the trial court imposed the three-year sentence, with two and one-half years executed. Upon imposing this sentence, the trial court considered aggravating factors including Dixon's criminal history and mitigating factors including his guilty plea and the fact that he had dependents.

DISCUSSION AND DECISION

Upon appeal, Dixon challenges the trial court's weighing of aggravating and mitigating factors. Dixon was convicted of a Class D felony. Under Indiana Code section

¹ Ind. Code §§ 35-41-5-1, 35-43-2-1.5 (2006).

35-50-2-7 (2006), a person who commits a Class D felony shall be imprisoned for a “fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years.” Under this amended version of the sentencing statute,² the trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing sentence and cannot now be said to have abused its discretion in failing to “properly weigh” sentencing factors. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007). Accordingly, we decline to review the merits of Dixon’s challenge to the relative weight of aggravating and mitigating factors used by the trial court in imposing his sentence.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.

² Indiana Code section 35-50-2-7 was amended in 2005 to rectify the Sixth Amendment problem presented by *Blakely v. Washington*, 542 U.S. 296 (2004). See *Anglemyer*, 868 N.E.2d at 486-88.