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IN THE COURT OF APPEALS OF INDIANA

NICKOLAS TROBAUGH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0803-CR-301
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-9812-CF-138

August 6, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Nickolas Trobaugh appeals the eight-year sentence imposed after he pleaded guilty to Prisoner Possessing a Dangerous Device or Material,[1] a class C felony. Specifically, Trobaugh argues that the trial court abused its discretion by failing to attribute weight to certain mitigating circumstances and that the sentence is inappropriate in light of the nature of the offense and his character. Finding no reversible error, we affirm the judgment of the trial court.

FACTS

On November 19, 1998, Trobaugh was incarcerated at the Tippecanoe County Jail (TCJ) awaiting a trial on a pending robbery charge. After Trobaugh alerted TCJ officers that he had harmed himself, the officers removed Trobaugh from his cell. TCJ officers then noticed that there were sharpened tweezers in Trobaugh's sock. Trobaugh attempted to stab the TCJ officers with the tweezers and a struggle ensued. TCJ officers ultimately retrieved the tweezers and Trobaugh was placed in a segregated cell.

On December 22, 1998, the State charged Trobaugh with class B felony prisoner possessing a dangerous device or material and class A misdemeanor criminal mischief. Trobaugh pleaded guilty to prisoner possessing a dangerous device or material in exchange for the State's agreement to reduce the charge to a C felony and dismiss the criminal mischief charge.

On April 18, 2000, the trial court sentenced Trobaugh to serve the maximum term of

[1] Ind. Code § 35-44-3-9.5

eight years of incarceration.[2] On July 27, 2006, Trobaugh petitioned the trial court for leave to file a belated notice of appeal, which was granted on January 11, 2008. Trobaugh now appeals his sentence.

DISCUSSION AND DECISION

Trobaugh argues that the trial court abused its discretion by failing to recognize certain mitigating circumstances when sentencing him to the maximum sentence of eight years. Further, Trobaugh argues that his sentence is inappropriate in light of his character and the nature of the offense.

I. Failure to Consider Mitigating Circumstances

The trial court has broad discretion when determining sentences and we will review for an abuse of discretion. Henderson v. State, 769 N.E.2d 172, 179 (Ind. 2002). An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances. Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998). If a trial court relies upon aggravating or mitigating circumstances to enhance a presumptive sentence it must "(1) identify all significant mitigating and aggravating circumstances; (2) state the specific reason why each circumstance is determined to be mitigating or aggravating; and (3) articulate the court's evaluation and balancing of the circumstances."[3] Henderson, 769 N.E.2d at 179.

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[2] At the time of the offense, the sentencing statutes dictated that the presumptive sentence for a class C felony was four years of incarceration, with two years being the minimum and eight years being the maximum. I.C. § 35-50-2-6 (1998).

[3] Trobaugh committed the offense prior to the sentencing regime changes that occurred on April 25, 2005, when the legislature amended the sentencing statutes to eliminate fixed presumptive terms. See Anglemyer v. State, 868 N.E. 2d 482, 488 (Ind. 2007). Therefore, we will apply the former sentencing scheme to analyze Trobaugh's sentence. See Gutermuth v. State, 868 N.E.2d 427, 431 n.4 (Ind. 2007) (noting that the sentencing statute that is in effect at the time a crime is committed governs the sentence).

Trobaugh argues that the trial court failed to find and weigh three mitigating circumstances: his guilty plea, his fear for his safety while in the TCJ, and his educational achievements. It is within the discretion of the trial court to find and weigh mitigating factors. Weidner v. State, 659 N.E.2d 529, 533 (Ind. 1995). In challenging the trial court's findings of mitigators, the defendant must establish that the mitigating evidence is both significant and clearly supported by the record. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000).

At the sentencing hearing, the trial court found the following significant aggravating circumstances: a long history with drugs and alcohol, a violent character, and Trobaugh's criminal history. The trial court did not identify any mitigating circumstances.

Trobaugh maintains that his fear for his safety—which allegedly prompted him to possess a weapon—should have been a mitigating circumstance. There is a dearth of evidence supporting Trobaugh's contention that he was afraid for his safety. Furthermore, Trobaugh knew that it was a violation to possess the tweezers, guilty plea tr. p. 13, and it is evident that he even lured the TCJ officers to his cell by saying that he "was bleeding from the neck and was trying to kill himself," appellant's app. p. 14. Under these circumstances, the trial court did not abuse its discretion by declining to find Trobaugh's alleged fear to be a mitigator.

Next, Trobaugh argues that his recent endeavors to earn his associate degree and pursue classes in auto mechanics deserve mitigating weight. The only evidence in the record supporting Trobaugh's alleged educational endeavors are his own statements that he wished to pursue an associate's degree, sent. tr. p. 10, and a letter indicating that he was in an

apprenticeship program as a welder, appellant's app. p. 114. Again, the trial court did not abuse its discretion by failing to find this mitigator.

Lastly, Trobaugh argues that the trial court erred by neglecting to give mitigating weight to his guilty plea. A guilty plea does deserve some weight, especially when the State receives the benefits of saving court time and not having to prepare for trial. Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999). However, a guilty plea is not automatically a significant mitigating factor. Id. Here, Trobaugh reaped substantial benefits by pleading guilty, specifically, the dismissal of the criminal mischief charge and the reduction of the remaining charge from a class B felony to a class C felony. Thus, his guilty plea was not entitled to significant mitigating weight and any alleged error committed by the trial court was harmless.

II. Appropriateness

When reviewing a sentence imposed by the trial court, we "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." Ind. Appellate Rule 7(B). In conducting an appropriateness review, we must examine both the nature of the offense and the defendant's character. Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004). 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.

Regarding the nature of the offense, Trobaugh possessed a weapon while in prison, which he knew violated the rules. He lured TCJ officers to his cell under false pretenses and then repeatedly attempted to stab them with sharpened medical tweezers. The officers had to

wrestle Trobaugh to the floor and ultimately place him in a segregated cell. Even while in the segregated cell, Trobaugh continued to cause damage—breaking a security camera—and threaten TCJ officers. The nature of the offense does not aid Trobaugh's appropriateness argument.

Turning to his character, Trobaugh was twenty-one years old at the time of his conviction for the present offense and had already amassed a significant criminal history. Trobaugh has been convicted of battery, assault, theft, possession of cannabis, and robbery. PSI p. 3-4. Also, it was noted that Trobaugh has being using drugs and alcohol since the age of five and has tried "almost every illegal drug." Id. at 6. Further, Trobaugh has "no significant employment history, but any employment was affected by his use of alcohol and other substance." Id. at 20. We agree with the trial court that "[Trobaugh] is in need of correctional or rehabilitative treatment that can best be provided by [his] commitment to a penal facility." Sent. Tr. p. 20. In light of the evidence in the record, we cannot say that his sentence is inappropriate based on the nature of the offense and his character.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.