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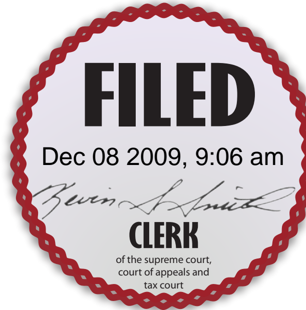

ATTORNEY FOR APPELLANT:

GARY A. COOK
Cook's Law Office
Peru, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

OSCAR L. SNOW,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A02-0909-CR-865
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen M. Jessup, Judge
Cause No. 34D02-0306-FC-227

December 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Oscar L. Snow ("Snow") appeals his sentence for Nonsupport of a Dependent Child, as a Class C felony.[1] We affirm.

Issues

Snow raises the following two issues, which we restate as follows:

I. Whether the trial court abused its discretion in not finding certain proffered mitigating circumstances; and

II. Whether his sentence is inappropriate.

Facts and Procedural History

In 1982, Snow was ordered to pay $20 per week for support of his daughter. For fifteen years, he paid nothing. In 1997, the trial court ordered him to pay $40 per week, with half of the payment to address what at the time was a $15,560 arrearage.

He paid $80 in 1997, $560 in 1998, and $40 in April 2003. By June 2003, the arrearage was $20,580. The State then charged Snow with Nonsupport of a Dependent Child, as a Class C felony.

In January 2005 and January 2007, the trial court released Snow on his own recognizance, conditioned upon his "strict compliance" with the support order and notifying the prosecutor's office of the name of his employer, for purposes of an income withholding order, within twenty-four hours of his release. Appendix at 48.

In January 2008, Snow pled guilty to Nonsupport of a Dependent Child. The trial

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[1] Ind. Code § 35-46-1-5.

court again released him and ordered him to obtain employment.

At the sentencing hearing, the trial court did not make any explicit findings as to aggravating or mitigating circumstances. Nonetheless, after hearing Snow's testimony and considering the arguments, the trial court commented as follows:

> Court: It doesn't give me any pleasure because you're a likeable person, sir, and I understand there are probably times when you have tried. And it's probably hard to keep a job with your criminal record I would guess. And you just don't – you just missed a – you know we had to put out a warrant for you within the last year because you didn't come here.
>
> Snow: I know it, sir.
>
> Court: Taking into consideration the unbelievable amounts that you owe and your criminal record, I have very little option but to – to do what the State has requested. I don't believe your actions are gonna change as [defense counsel] does. I wish there were another way but this is a criminal statute and if it's to have any effect at all, it's a case where you must go to prison. This is one of the worst cases I've seen. The effort that's been put into this during the last six years is one of the worst efforts I've seen.

Transcript at 26-27. The trial court sentenced Snow to the maximum, eight-year term, to be fully executed in the Department of Correction.

Snow now appeals his sentence.

Discussion and Decision

I. Abuse of Discretion

Snow argues that the trial court abused its discretion in failing to find certain proffered mitigating circumstances. "So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007). This includes the finding of

an aggravating circumstance and the absence of finding a proffered mitigating circumstance. Id. at 490-91; and Hollin v. State, 877 N.E.2d 462, 464 (Ind. 2007). "An abuse of discretion occurs if the decision is 'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" Anglemyer, 868 N.E.2d at 490 (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)).

When imposing sentence for a felony, the trial court must enter "a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence." Anglemyer, 868 N.E.2d at 491. Its reasons must be supported by the record and must not be improper as a matter of law. Id. However, a trial court's sentencing order may no longer be challenged as reflecting an improper weighing of sentencing factors. Id. Where a sentence fails to meet the above standards, we may 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.

Snow argues that the trial court should have found his pleading guilty to be a mitigating circumstance. A trial court is neither obligated to find a circumstance to be mitigating simply because it was proffered by the defendant, nor to explain why it found that the factor did not exist. Highbaugh v. State, 773 N.E.2d 247, 252 (Ind. 2002); and Anglemyer, 868 N.E.2d at 493 (quoting Fugate v. State, 608 N.E.2d 1370, 1374 (Ind. 1993)). "[A]n allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant." Anglemyer, 875 N.E.2d at 221.

Although Snow pled guilty, he did so only after being given a host of opportunities to comply with the child support order. He paid nothing for fifteen years. In the seven years after that, he paid less than $700. After 2003, he made four minimal payments. Based upon this record, the trial court was not obligated to find that Snow's plea of guilty was a significant mitigating circumstance.

Snow also asserts that the trial court should have found mitigating circumstances in his expression of remorse, the detrimental effect that his imprisonment would have upon his father, and his difficulty in obtaining and keeping employment. However, our review of the transcript reveals no significant expression of remorse. In testifying during the sentencing hearing, Snow emphasized that his lack of work resulted from his emphysema, lack of construction work due to the weather, and his criminal record. He guaranteed that four individuals had promised to hire him as soon as they received their retirement checks on the first day of the month. He also stated that he was helping his father, who was required to receive dialysis treatments. Yet his father was able to drive and his appointments were five minutes from his home. Furthermore, Snow expressed interest in his daughter being emancipated so that his support obligation could be lowered. He also testified that he understood the child support obligation to be $105 per week. When asked why he had not been paying anything at all, Snow stated,

> Well if it's $20 a week I can do that . . . . I didn't know it was no $20. Actually – honestly I did not know it was $20 a week, if that was $20 a week I would sell pop – I would sell pop cans.

Tr. at 21-22.

Snow failed to establish that his proffered mitigating circumstances were significant and supported by the record. Accordingly, the trial court did not abuse its discretion in sentencing him.

II. Appropriateness of Sentence

Snow also asserts that his sentence is inappropriate. Under Indiana Appellate Rule 7(B), this "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." Ind. Appellate Rule 7(B); see IND. CONST. art. 7, § 6. In performing our review, we assess "the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008). This "introduces into appellate review an exercise of judgment that is unlike the usual appellate process, and is very similar to the trial court's function." Id. at 1223. A defendant "'must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" Anglemyer, 868 N.E.2d at 494 (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As to the nature of the offense, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Childress, 848 N.E.2d at 1081. The advisory and maximum sentences for a Class C felony are respectively four and eight years. Snow was sentenced to the maximum, fully-executed, eight-year term.

Snow was ordered to pay $20 per week in child support for his daughter. For fifteen

years, he paid nothing at all. Then, from 1997 through 2009, he made a small number of nominal payments. By the time he was charged in 2003, the arrearage was more than $20,000. The trial court commented that this was one of the worst cases it had observed.

As to Snow's character, he engaged in a long list of criminal conduct, starting in 1976 and continuing almost annually through 2007, when this case was pending. Since 1985, Snow has committed five felonies and twenty-three misdemeanors, not including the instant offense, and has violated the terms of his probation at least eight times. He failed to appear for hearings in October 2005, March 2007, and April 2008. This evidences a clear and consistent disregard for the law and the judicial system. Based upon our review of the case, we conclude that Snow's maximum term is not inappropriate.

Conclusion

The trial court did not abuse its discretion in considering the proffered mitigating circumstances. Snow's sentence is not inappropriate.

Affirmed.

BAKER, C.J., and ROBB, J., concur.