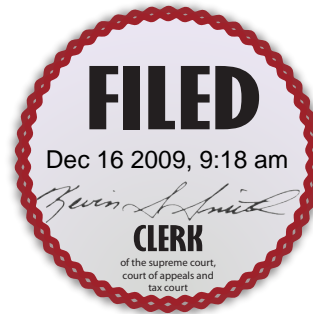


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CORNELIUS ENOCH,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-0905-CR-242
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-0805-FB-120975

December 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Cornelius Enoch was convicted of carjacking¹ as a Class B felony and carrying a handgun without a license² as a Class A misdemeanor after a jury trial and was sentenced to an aggregate term of fourteen years executed. He appeals, raising the following issues:

- I. Whether the trial court abused its discretion in its determination of aggravating and mitigating circumstances; and
- II. Whether his sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 17, 2008, at approximately 6:15 p.m., Margaret Vest left her home to attend a Tupperware party in Indianapolis. Vest was a company director for Tupperware and drove a leased 2008 Chevrolet Equinox provided by the company; inside of the vehicle she had merchandise, her purse, and her cell phone. Although Vest had entered her destination into her GPS system, she had some trouble finding it and had to pull into an alley to check her location. While in the alley, Vest heard a slam on the back end of her vehicle and saw someone moving behind her. She then heard a thud on her driver's side window. When she turned to look, she observed a man standing outside her vehicle. He was approximately 5'9" to 5'10", wearing a white baseball cap, had short, curly hair, and appeared to be in his early to mid-twenties. He pointed a gun at her and said, "Bitch, get out of the car or I will f**kin' kill you." *Tr.* at 40.

¹ See Ind. Code § 35-42-5-2.

² See Ind. Code § 35-47-2-1.

Vest was afraid and put the car in park. As she reached for her purse, the man said, “No, leave that in the car. Get out now.” *Id.* at 41. She then exited the vehicle. The man had the gun pointed at her chest and ordered her to “face that way,” indicating that she should face east. *Id.* at 44. The man got into Vest’s vehicle and drove off. After he had driven away, Vest ran to a house and had the homeowners call 911. The vehicle was later found, but much of Vest’s property was missing. Fingerprints recovered from the vehicle were matched to Enoch. The police showed Vest a photo array, and she identified Enoch as the perpetrator.

The State charged Enoch with carjacking, robbery, and carrying a handgun without a license. A jury trial was held, and Enoch was found guilty on all charges. At sentencing, the trial court did not enter judgment on the robbery conviction based on double jeopardy concerns. The trial court found Enoch’s remorse to be a mitigating factor and found his criminal history, the fact that he was on probation at the time of the present offenses, and the impact of the crime on the victim as aggravating circumstances. He was sentenced to a fifteen-year aggregate sentence for his two remaining convictions with one year served in Community Corrections for a total of fourteen years executed. Enoch now appeals.

DISCUSSION AND DECISION

Initially, we note that the State did not file an appellee’s brief. We will not undertake the burden of developing arguments for the appellee. *Painter v. Painter*, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). Thus, when the appellee does not submit a brief, the appellant may prevail by making a prima facie case of error, *i.e.*, an error at first sight

or appearance. *Mateyko v. State*, 901 N.E.2d 554, 557 (Ind. Ct. App. 2009), *trans. denied*. We are nevertheless obligated to correctly apply the law to the facts of the record to determine if reversal is required. *Id.*

I. Abuse of Discretion

Trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.* Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only 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 before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.*

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. *Id.* Other examples include entering 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, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. *Id.* at 490-91. Because the trial court no longer has any obligation to "weigh" aggravating and

mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion in failing to “properly weigh” such factors. *Id.* at 491. Once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then “impose any sentence that is . . . authorized by statute; and . . . permissible under the Constitution of the State of Indiana.” Ind. Code § 35-38-1-7.1(d).

Enoch argues that the trial court abused its discretion when it sentenced him. He specifically contends that the trial court improperly failed to find his mental illness to be a mitigating factor. He also claims that the trial court improperly considered the particularized circumstances of his offenses as an aggravating circumstance when sentencing him because they did not implicate an enhanced sentence.

It is well-settled that a trial court is not required to find mitigating circumstances, nor is it obligated to accept as mitigating each of the circumstances proffered by the defendant. *Ousley v. State*, 807 N.E.2d 758, 761 (Ind. Ct. App. 2004). Accordingly, the finding of a mitigating circumstance is within the trial court’s discretion. *Id.* A court does not err in failing to find mitigation when the presence of a mitigating circumstance is highly disputable in nature, weight, or significance. *Id.* at 761-62. However, when the trial court fails to find a significant mitigator that is clearly supported by the record, there is a reasonable belief that the mitigator was overlooked. *Id.* at 762.

Here, the trial court did not find as a mitigating factor that Enoch suffered from a mental illness. Initially, we note that although he argues on appeal that his mental illness should have been considered as a mitigating circumstance, he did not specifically argue

mental illness as a mitigator at his sentencing. Further, we conclude that Enoch's mental illness was not clearly supported by the record. In the psychiatric reports prepared for trial, both doctors found no evidence of mental disease or defect at the time of the offenses. The trial court did not abuse its discretion in not finding Enoch's mental illness to be a mitigating circumstance.

Enoch next contends that the trial court abused its discretion in finding the impact on the victim as an aggravating factor. If an aggravating circumstance found by the trial court is invalid, the reviewing court must decide whether the remaining circumstance or circumstances are sufficient to support the sentence imposed. *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. "If valid aggravators exist, this court will remand only if we 'cannot say with confidence that the trial court would have imposed the same sentence if it considered [only] the proper aggravating and mitigating circumstances.'" *Flickner v. State*, 908 N.E.2d 270, 274 (Ind. Ct. App. 2009).

Assuming without deciding that the impact of the crime on the victim was an improper aggravating circumstance, we conclude that any error was harmless. The trial court also found two other valid aggravating factors, Enoch's criminal history and that he was on probation at the time of the present offenses, with which Enoch does not take issue. Both of these aggravators were supported by the record. A single aggravating circumstance is adequate to justify an enhanced sentence. *Storey v. State*, 875 N.E.2d 243, 251 (Ind. Ct. App. 2007), *trans. denied* (2008). Accordingly, we conclude that the trial court would have imposed the same sentence if it had considered only the proper

aggravating circumstances. *Id.* at 384. The trial court did not abuse its discretion in sentencing Enoch.

II. Inappropriate Sentence

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). The burden is on the defendant to persuade this court that his sentence is inappropriate. *Patterson v. State*, 909 N.E.2d 1058, 1063 (Ind. Ct. App. 2009).

Enoch argues that his fourteen-year executed sentence was inappropriate in light of the nature of the offense and his character. He specifically claims that the facts and circumstances of the instant offenses were not heinous or “worse than that contemplated by the nature of the charge.” *Appellant's Br.* at 14. He further contends that his age, his mental illness, his supportive family, and his remorse reflect that his sentence was inappropriate based on his character.

As to the nature of the offense, we agree with Enoch that the circumstances of the present crime were not exceptional and that there was no showing that the impact on the victim was significantly different from that of other victims of carjacking. While the nature of the offense may not have been extraordinary, we nonetheless conclude that Enoch had a criminal history consisting of convictions for theft and criminal trespass and

that he was on probation at the time that he committed the present offenses. His violation of probation showed disrespect for the orders of the trial court and an unwillingness to conform to such orders. It also demonstrated that prior attempts at rehabilitation had been unsuccessful. Enoch has failed to persuade us that his fourteen-year executed sentence was inappropriate.

Affirmed.

NAJAM, J., and BARNES, J., concur.