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# IN THE COURT OF APPEALS OF INDIANA

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|---|---|---|
| CARRIE JOAN GARRETT, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 48A04-1106-CR-293 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Rudolph R. Pyle, III, Judge
Cause No. 48C01-1004-FC-133

**December 29, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

Carrie Joan Garrett appeals her sentence following her conviction for failing to stop after an accident, as a Class C felony. Garrett raises two issues for our review:

1. Whether the trial court abused its discretion when it sentenced her.

2. Whether her sentence is inappropriate in light of the nature of the offense and her character.

We affirm.

## FACTS AND PROCEDURAL HISTORY

On April 6, 2010, Garrett, while driving without insurance and with a suspended license, struck Michael F. Powers, Jr. with her 1993 Infiniti passenger vehicle at an intersection. Powers had been driving a moped, and the force of the collision threw Powers off the moped and lodged the moped into the front of Garrett's vehicle. Powers landed outside the intersection, unconscious, and suffered injuries to both of his legs, his chest, and his head. Garrett fled the scene. A witness to the accident followed Garrett to a residence, where police later arrived and arrested her. On April 11, Powers died from his injuries.

On April 12, the State charged Garrett with, in relevant part, failing to stop after an accident, as a Class C felony. More than a year later, on April 25, 2011, Garrett pleaded guilty to that charge. On May 23, the court held a sentencing hearing, at the conclusion of which the court stated as follows:

> What makes this crime absolutely horrendous is what the probable cause says. The accident was so intense . . . that the moped was lodged into the front of her car and with the moped lodged in the front of her car, she left the scene and went back to, I don't know if it was her place of residence, where the police found her car with the moped still lodged in the front of

> her car. . . . It has to do with the common decency of when you strike someone that hard, launching [him] into the intersection, that you stop and you stay there and render aid and give police your information . . . . [I] understand that accidents happen all the time and they're horrible and that's what this would have been was an accident but what made it a crime was that she had the indecency to leave with the moped in her car . . . . I don't think there's much I need to add because the letter[s] written by [the family] speak for themselves as to the pain that this has caused to them . . . . It's not just a one-sided pile-on but today is about holding you accountable for the horrible decision that you made . . . . It just showed a callousness . . . to leave and . . . you can understand when you say, "I was scared," . . . . I'd be scared too . . . but you have to have the decency to stop. You just can't leave with the moped lodged into the front of your car. It's just beyond, that's what [I] don't understand . . . [,] how someone could do that and I think that's what we're all left here wondering is how could that happen. . . . And . . . let me make a record as to the aggravation and mitigation . . . . The aggravation . . . is the criminal history of the . . . defendant. In addition, i[n] aggravation [is] the impact this crime has had on the victim's family. Mitigation is the plea of guilty and . . . that you're remorseful . . . but aggravation . . . does outweigh the mitigation in this case.

Transcript at 54-58. The court then sentenced Garrett to the maximum sentence of eight years executed. This appeal ensued.

## DISCUSSION AND DECISION

### Issue One: Abuse of Discretion

Garrett first asserts that the trial court abused its discretion when it sentenced her. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds on reh'g, 875 N.E.2d 218 (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. Id.

> One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. 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. . . .
>
> [However, b]ecause the trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other when imposing a sentence, . . . a trial court can not now be said to have abused its discretion in failing to "properly weigh" such factors.

Id. at 490-91.

Garrett states that the trial court improperly considered the impact of her crime on the victim's family. "It is settled law that[,] where there is nothing in the record to indicate that the impact on the families of the victims in this case was different than the impact on families and victims which usually occur in such crimes, this separate aggravator is improper." McElroy v. State, 865 N.E.2d 584, 590 (Ind. 2007) (quotation and alteration omitted). In light of that rule, Garrett asserts that there is nothing in the record here to indicate that the impact of her crime affected Powers' family in a way that was different than the impact on families and victims which usually occurs in such crimes.

Garrett is mistaken. In sentencing, a trial court may consider the nature of the circumstances of a crime. See Ind. Code § 35-38-1-7.1(a). In its sentencing statement, the trial court adopted the written statements offered by Powers' surviving family. As summarized by Powers' father:

> In regard to sentencing . . . I would like to note that my son left a young daughter now nearly three years old to grow up without a father. . . . No

> sentence can ever make up for the life she now must lead without her loving father. . . .
>
> In addition I would like to ask that you order the offender to pay full restitution on the expenses surrounding my son's death. I have submitted copies of these bills and submitted them with this letter. I already am being dunned by collectors in an attempt to collect these bills. A judgment entered as part of the sentencing may help to relieve me of future financial burdens in matters related to these expenses.

Appellant's App. at 39. In other words, Garrett's crime has significantly impacted Powers' family. This crime left a small child fatherless. And because Garrett was uninsured, Powers' family must fend for itself in facing burdensome costs arising from Powers' injuries and death. Further, Garrett does not dispute the fact that Powers' family is unlikely to ever recover those costs from her through a civil judgment or restitution. As such, we hold that the trial court did not abuse its discretion when it considered the impact of Garrett's crime on Powers' family to be an aggravator.

**Issue Two: Appellate Rule 7(B)**

Garrett also contends that her eight-year sentence is inappropriate in light of the nature of the offense and her character. See Ind. Code § 35-50-2-6(a). Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that her sentence is inappropriate in light of the nature of her offense and her character. See Ind. Appellate Rule 7(B); Rutherford v.

State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration original).

Moreover, "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. The principal role of appellate review is to attempt to "leaven the outliers." Id. at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case." Id. at 1224.

Garrett's eight-year sentence is not inappropriate. Regarding the nature of the offense, Garrett displayed unusual callousness when she drove away from the scene of the accident with the victim's moped lodged in the front of her passenger vehicle while she abandoned the injured victim. Further, as described by the trial court, Powers' family has been significantly impacted by Garrett's crime. Regarding her character, Garrett has an extensive criminal history, which includes three felonies and numerous misdemeanor convictions in just the last six years. And the circumstances of the instant crime also

reflect poorly on her character. As such, we cannot say that Garrett's eight-year sentence is inappropriate.

Affirmed.

ROBB, C.J., and VAIDIK, J., concur.