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IN THE
COURT OF APPEALS OF INDIANA

DANIEL STOVALL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 68A01-1106-CR-245
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE RANDOLPH CIRCUIT COURT
The Honorable Jay L. Toney, Judge
Cause No. 68C01-0911-FC-91

October 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Pursuant to a written plea agreement, Daniel Stovall pled guilty to class C felony nonsupport of a dependent child. The trial court sentenced Stovall to a six-year sentence, with three years executed and three years suspended to probation. On appeal, Stovall argues that the trial court abused its discretion when it sentenced him and further asserts that his sentence is inappropriate in light of the nature of the offense. Finding no abuse of discretion and concluding that he failed to meet his burden to show that his sentence is inappropriate, we affirm.

Facts and Procedural History

Stovall is the father of fourteen-year-old A.L. Stovall agreed to paternity on April 2, 1997, and was ordered to pay thirty-five dollars per week in child support for A.L. Stovall failed to meet his support obligation and, as of October 30, 2009, he had accumulated a child support arrearage of $22,154.50.

On November 12, 2009, the State charged Stovall with class C felony nonsupport of a dependent child. On February 25, 2011, Stovall entered into a written open plea agreement with the State pursuant to which Stovall pled guilty to his crime and agreed that the executed portion of his sentence would be capped at four years. On May 13, 2011, the trial court accepted Stovall's guilty plea and sentenced Stovall to a six-year sentence, with three years executed and three years suspended to probation. This appeal followed.

Discussion and Decision

I. Abuse of Discretion

In entering sentence, the trial court found Stovall's criminal history and lack of remorse to be aggravating factors. The trial court found no significant mitigating factors. We begin by noting that 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 reh'g*, 875 N.E.2d 218. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court. *Id*. A trial court may abuse its discretion by issuing an inadequate sentencing statement, finding aggravating or mitigating factors that are not supported by the record, omitting factors that are clearly supported by the record and advanced for consideration, or by finding factors that are improper as a matter of law. *Id.* at 490-91.

Stovall asserts that the record does not support that he lacked remorse for his crime. Thus, he argues, the trial court abused its discretion in finding lack of remorse to be an aggravating factor. Contrary to Stovall's assertion, there is ample evidence in the record to support the trial court's finding that he lacked remorse. As specifically noted by the trial court, Stovall failed to meet his support obligation despite his gainful employment. Moreover, during sentencing, Stovall still had excuses and continued to blame A.L.'s mother for his failure to pay. On appeal, Stovall merely points to his self-serving explanations in the record, which the trial court clearly found incredible. The trial court, which has the ability to directly observe the defendant and listen to the tenor of his voice, is in the best position to determine whether a defendant's remorse is genuine. *Corralez v. State*, 815 N.E.2d 1023,

1025 (Ind. Ct. App. 2004). Accordingly, we defer to the trial court regarding the determination of this aggravating factor and find no abuse of discretion.

Stovall also asserts that the trial court abused its discretion in failing to find his guilty plea to be a mitigating circumstance. A trial court abuses its discretion in sentencing if it overlooks "substantial" mitigating factors that are "clearly supported by the record." *Anglemyer*, 868 N.E.2d at 491. When a defendant offers evidence of mitigating factors, the trial court has the discretion to determine whether the factors are indeed mitigating, and is not required to explain why it does not find the proffered factors to be mitigating. *Johnson v. State*, 855 N.E.2d 1014, 1016 (Ind. Ct. App. 2006), *trans. denied*. A trial court is not bound to find a guilty plea to be a mitigating circumstance unless the guilty plea significantly mitigates the offense and is clearly supported by the record. *Antrim v. State*, 745 N.E.2d 246, 248 (Ind. Ct. App. 2001). Further, the trial court does not have to consider a guilty plea as a mitigating circumstance if the defendant received a substantial benefit from the plea agreement or the evidence is so overwhelmingly against the defendant, that the decision to plead guilty is pragmatic. *Sensback v. State*, 720 N.E.2d 1160, 1163-65 (Ind. 1999).

Here, Stovall received a substantial benefit from his plea agreement, as his executed sentence was capped at four years, half the statutory maximum of eight years. *See* Ind. Code § 35-50-2-6 (sentence for class C felony is fixed term between two and eight years with advisory sentence being four years). Additionally, evidence of Stovall's nonsupport of A.L. was so overwhelming that Stovall's decision to plead guilty was obviously pragmatic. While the better practice may have been for the trial court to acknowledge Stovall's guilty plea and

explain its insignificance under the circumstances, we cannot say that the trial court abused its discretion in not finding Stovall's guilty plea to be a significant mitigating factor.

II. Appropriateness of Sentence

We next address Stovall's challenge to the appropriateness of his sentence. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence "is inappropriate in light of the nature of the offense and the character of the offender." The defendant bears the burden to persuade this Court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). "[W]hether we regard a sentence as appropriate 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 factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

Stovall asserts that his six-year sentence, with three years executed and three years suspended, is inappropriate in light of the nature of his offense.[1] Regarding the offense, Stovall failed to support his dependent son for more than a decade. As of October 2009, Stovall owed $22,154.50 in unpaid support, an amount well above the $15,000 statutory requirement for commission of class C felony nonsupport of a dependent child. *See* Ind. Code § 35-46-1-5. Based upon the foregoing, there is nothing about the nature of Stovall's

[1] In light of his criminal history, Stovall wisely does not assert that sentence revision is warranted based upon his character.

offense that leads us to conclude that his six-year sentence, with three years executed, is inappropriate. Stovall has failed to persuade us to revise his sentence. Therefore, we affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.