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**IN THE  
COURT OF APPEALS OF INDIANA**

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QUINTON L. HAMILTON,  
Appellant- Defendant,

vs.

STATE OF INDIANA,  
Appellee- Plaintiff,

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No. 02A03-0905-CR-239

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Frances C. Gull, Judge  
Cause No. 02D04-0811-FC-328

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**January 29, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

### Case Summary and Issues

Quinton Hamilton appeals the five-year aggregate sentence imposed after a jury convicted him of carrying a handgun without a license with a prior felony conviction, a Class C felony, and pointing a firearm at another person, a Class D felony. For our review, Hamilton raises two issues, which we restate as: 1) whether the trial court properly sentenced Hamilton; and 2) whether Hamilton's sentence is inappropriate in light of the nature of the offenses and his character. Concluding the trial court properly sentenced Hamilton and his sentence is not inappropriate, we affirm.

### Facts and Procedural History

On the night of November 18, 2008, Hamilton entered the apartment of his girlfriend, Shameika Thompson, believing she was seeing another man. Hamilton and Thompson began fighting, and Hamilton pulled Thompson by the hair, forcing her to her knees. Thompson's sisters, Tiffany and Courtney Cottrell, came into the room and tried to pull Hamilton off of Thompson. Tiffany struck Hamilton with a lamp, and Hamilton released Thompson. At that time, one of Hamilton's friends, Brendon Johnson, came into the apartment and convinced Hamilton to leave. As Hamilton was leaving, he drew a handgun from his coat, pointed it at Tiffany, and cocked it.

After Hamilton left, the sisters called 911. Police located Hamilton nearby standing next to a vehicle the sisters had described to police. Police found the handgun under the front passenger seat of the vehicle. On November 25, 2008, the State charged Hamilton with carrying a handgun without a license with a prior felony conviction, a Class C felony, and pointing a firearm at another person, a Class D felony. The trial

court conducted a jury trial on April 9, 2009, after which the jury found Hamilton guilty of both charges.

On May 7, 2009, the trial court held a sentencing hearing. Because Hamilton was unhappy with the performance of his appointed public defender during his trial, Hamilton spoke on his own behalf at the sentencing hearing with his counsel present. The trial court found Hamilton's criminal record and multiple failed efforts at rehabilitation to be aggravating circumstances and found no mitigating circumstances. The trial court then sentenced Hamilton to five years for the Class C felony and two years for the Class D felony, with the sentences to be served concurrently for an aggregate sentence of five years executed with the Department of Correction. Hamilton now appeals.

### Discussion and Decision

#### I. Standard of Review

We engage in a multi-step process when evaluating a sentence. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (2007). First, the trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravating or mitigating circumstances, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

## II. Propriety of Sentence

A trial court may impose “any sentence that is: (1) authorized by statute ... regardless of the presence or absence of aggravating or mitigating circumstances.” Ind. Code § 35-38-1-7.1(d). However, a trial court abuses its discretion when it: 1) fails to issue any sentencing statement; 2) enters a sentencing statement that explains reasons for imposing a sentence, but the record does not support the reasons; 3) enters a sentencing statement that omits reasons clearly supported by the record and advanced for consideration; or 4) considers reasons that are improper as a matter of law. Anglemyer, 868 N.E.2d at 490-91.

Hamilton contends the trial court should have considered his history of drug and alcohol abuse and his diagnoses of bipolar disorder and schizophrenia as mitigating circumstances.

The trial court is not required to find mitigating factors or to accept as mitigating the circumstances proffered by the defendant. Also, the trial court is not required to give the same weight to proffered mitigating circumstances as the defendant does. Only when the trial court fails to find a significant mitigator that is clearly supported by the record is there a reasonable belief that it was overlooked.

Bennet v. State, 787 N.E.2d 938, 947-48 (Ind. Ct. App. 2003) (citations omitted), trans. denied.

### A. Substance Abuse

Although Hamilton informed the trial court of his drug and alcohol abuse problems, he made no attempt to explain why his substance abuse problems should mitigate his sentence for these particular convictions. In addition, the trial court pointed out Hamilton has multiple prior convictions for possession of illegal drugs and was

provided drug rehabilitation treatment as a part of his sentences. Hamilton's continued substance abuse combined with his failure to successfully seek help could be considered an aggravating circumstance rather than a mitigating one. See id. at 948. Therefore, the trial court did not err by failing to consider Hamilton's substance abuse problem as a mitigating circumstance.

### B. Mental Illness

Hamilton next argues the trial court should have considered his mental illness as a mitigating circumstance. During Hamilton's presentence investigation, he indicated he suffers from bipolar disorder and schizophrenia and takes medication.

Our supreme court has identified four factors that bear on the weight, if any, that should be given to mental illness in sentencing. ... (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime.

Ankney v. State, 825 N.E.2d 965, 973 (Ind. Ct. App. 2005) (citations omitted), trans. denied. Hamilton did not indicate to the trial court – and does not indicate in his appellate brief – why the trial court should have assigned mitigating weight to his mental illness. He has not demonstrated an inability to control his behavior, any limitation on his functioning, or any nexus between the disorders and his crime. Therefore, the trial court did not err by failing to consider Hamilton's mental illness as a mitigating circumstance.

### III. Inappropriateness of Sentence

Hamilton's five and two year sentences are one year and a half year, respectively, above the advisory sentences for a Class C and Class D felony. See Ind. Code § 35-50-2-

6 (advisory sentence for a Class C felony is four years) and -7 (advisory sentence for a Class D felony is one and one-half years). Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence 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." When making this decision, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 196 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) ("[I]nappropriateness review should not be limited ... to a simple rundown of the aggravating and mitigating circumstances found by the trial court."). However, the defendant bears the burden to "persuade the appellate court that his ... sentence has met this inappropriateness standard of review." Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

#### A. Nature of the Offenses

Hamilton's convictions are each already enhanced due to the dangerous character of the encounter. His conviction for carrying a handgun without a license was enhanced to a Class C felony because he has a prior felony conviction. See Ind. Code § 35-47-2-23(c)(2)(B). Similarly, his conviction for pointing a firearm at another person was enhanced to a Class D felony because the handgun was loaded. See Ind. Code § 35-47-4-3(b). The only aspect of Hamilton's offenses that strikes us as particularly egregious is that he cocked the weapon, seemingly indicating his intent to use it and certainly increasing the likelihood the gun would discharge, even if unintentionally. Hamilton's sentences are only slightly above the advisory sentences, and we cannot say the sentences are inappropriate in light of the nature of his offenses.

## B. Character of the Offender

Hamilton has a lengthy criminal history including three juvenile adjudications, seven misdemeanor convictions, and one felony. Although most of Hamilton's convictions are nonviolent and related to his substance abuse, he does have juvenile adjudications for disorderly conduct and resisting law enforcement, and one misdemeanor conviction for resisting law enforcement. In addition, Hamilton had suspended sentences or placement in community corrections revoked on five occasions. Despite multiple instances of leniency shown by the trial court and multiple attempts to assist Hamilton in controlling his substance abuse problem, Hamilton has shown no ability to cease his criminal behavior or rehabilitate himself.

Additionally, Hamilton refused to accept responsibility or even to acknowledge the wrongfulness of his actions. Hamilton told the trial court at his sentencing hearing, "I didn't do nothin' wrong, I just got found guilty." Transcript of Sentencing Hearing at 7. All of these facts weigh in favor of an increased sentence above the advisory sentence. Hamilton bears the burden of demonstrating the inappropriateness of his sentence, and he has failed to do so. Therefore, Hamilton's sentence is not inappropriate in light of the nature of his offenses and his character.

### Conclusion

The trial court properly sentenced Hamilton, and his sentence is not inappropriate in light of the nature of his offenses and his character. Therefore, we affirm Hamilton's sentence.

Affirmed.

BAKER, C.J. and BAILEY, J., concur.