

Gary A. Davis appeals the four-year advisory sentence imposed after he pled guilty to Class C felony failure to register as a sex offender.¹ He asserts the sentence is inappropriate in light of his character and offense. We affirm.

FACTS AND PROCEDURAL HISTORY

In 1997, Davis was convicted of Class B felony child molesting and Class C felony child molesting. Two different victims were involved, so Davis was required to register with local law enforcement for the rest of his life. Davis was convicted in June 2007 of Class D felony failure to report.²

In late 2008 Davis was homeless, so he was subject to another reporting requirement:

A sex or violent offender who does not have a principal residence or temporary residence shall report in person to the local law enforcement authority in the county where the sex or violent offender resides at least once every seven (7) days to report an address for the location where the sex or violent offender will stay during the time in which the sex or violent offender lacks a principal address or temporary residence.

Ind. Code § 11-8-8-12(c).

Davis appeared in person at the Allen County Sheriff's Office on November 14, 2008, and was due to appear again by November 21, 2008. Davis did not appear at the Sheriff's Office until December 10, 2008, when he was arrested for failing to appear within seven days.

The State charged Davis with failing to register as a sex offender, which this time was a Class C felony because of Davis' prior conviction of failing to register. *See* Ind.

¹ Ind. Code § 11-8-8-17(a). This offense is a Class C felony because Davis had a "prior unrelated conviction" of failing to report. *See* Ind. Code § 11-8-8-17(b).

² Ind. Code § 11-8-8-17(a).

Code § 11-8-8-17(b). Davis pled guilty without any agreement with the State.

At the sentencing hearing, the court accepted Davis' plea and entered a judgment of conviction. The court found his plea a mitigating factor, and found "the prior criminal history, including the prior failure to register are aggravating circumstances." (Tr. of Formal Sentencing at 9.) The court found the aggravating circumstances outweighed the mitigator and then explained:

I guess that the other thing I'd remark here is that while Mr. Davis, your explanation that you lose track of days has some credibility in any circumstance and I suspect it's compounded when one is homeless. But given the prior conviction, failure to register, you had to know the importance of it and from what the prosecuting attorneys [sic] says and you've not denied was that the Sheriff gave you, essentially gave you two passes so it would have been reemphasized for you the importance of giving the correct information in the proper amount of time such that while like I say, your excuse or explanation makes some sense, it fails [sic] to insignificance in the face of your own experience. You should have known better. That you had to be careful to keep track of time. Under those circumstances I'll find that the advisory sentence is an appropriate sentence, Defendant is committed to the Department of Corrections [sic] for 4 years.

(*Id.* at 10.)

DISCUSSION AND DECISION

Davis asserts his four-year sentence is inappropriate. "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). The merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). That rule provides we may revise a sentence authorized by statute if we find it inappropriate in light of the nature of the offense and the character of

the offender. App. R. 7(B). The appellant has the burden to demonstrate the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). In reviewing the sentence, we look to any factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied* 878 N.E.2d 217 (Ind. 2007).

Davis specifically asserts the court did not give adequate consideration to his guilty plea, his mental health history, and his homelessness. The court explicitly noted it considered Davis' plea and his homelessness.³ To the extent Davis alleges error in the weighing of those facts, we remind him we may no longer review the weight a trial court assigns to aggravators and mitigators, because a trial court "no longer has any obligation to 'weigh' [them] against each other when imposing a sentence." *Anglemyer*, 868 N.E.2d at 491.

We find nothing inappropriate about Davis' four-year advisory sentence. Davis' criminal history includes three felonies: a Class B, Class C, and Class D. The most recent prior felony conviction was for the same offense. Davis asserts this crime was less serious because there "was no evidence that he was purposefully attempting to hide himself while committing the offense," (Br. of Appellant at 7); however, his two convictions within two years of failing to report suggest an indifference to the requirements imposed on him by his prior convictions of child molesting. We cannot

³ The court did not mention Davis' history of depression. The only evidence in the record of Davis' depression appears to be Davis' testimony at the guilty plea hearing that he was diagnosed with depression "[s]everal years ago." (Guilty Plea Tr. at 4.) As the record contains no evidence Davis was depressed when he failed to report or at the time of sentencing, we cannot say the court abused its discretion in declining to find a mitigator in his depression. *Anglemyer*, 868 N.E.2d at 493 (to demonstrate an abuse of discretion, appellant must establish "the mitigating evidence is both significant and clearly supported by the record").

find his sentence inappropriate for his character or his offense.

Affirmed.

KIRSCH, J., and DARDEN, J., concur.