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IN THE
COURT OF APPEALS OF INDIANA

JAMES MAXWELL CART,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0706-CR-542
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON COUNTY COURT
DIVISION I
The Honorable David W. Hopper, Judge
Cause No. 48E01-0606-FD-227

February 26, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, James Maxwell Cart, III (Cart), appeals his sentence for residential entry, a Class D felony, Ind. Code § 35-43-2-1.5.

We affirm.

ISSUE

Cart raises two issues on appeal which we restate as follows:

(1) Whether the trial court abused its discretion by failing to enter a sentencing statement explaining the reasons or circumstances for Cart's sentence; and

(2) Whether the sentence was appropriate in light of Cart's character and the nature of the offense.

FACTS AND PROCEDURAL HISTORY

During the early morning hours of May 31, 2006, Brooke Badger (Badger) lay asleep in bed at her residence in Elwood, Indiana. Cart entered Badger's residence, without her permission, and sat on her bed while she slept. Police apprehended Cart some time during the night after he had left Badger's residence. As a result of the incident, Badger continually experiences fear and plans to move.

The same day, the State filed an Information charging Cart with Count I, public intoxication, a Class B misdemeanor, I.C. § 7.1-5-1-3, and Count II, residential entry, a Class D felony, I.C. § 35-43-2-1.5. On March 13, 2007, Cart and the State entered into a plea agreement in which Cart agreed to plead guilty to Class D felony residential entry charge and the State would, in turn, dismiss the Class B misdemeanor public intoxication charge. The

parties agreed to cap the sentence at the eighteen-month advisory term and agreed to allow the trial court to determine what amount, if any, of the sentence to suspend. I.C. § 35-50-2-7.

At the sentencing hearing on May 15, 2007, the trial court sentenced Cart to eighteen months in accordance with the terms of the plea agreement. The trial court specified that Cart was to serve twelve months of the sentence in the Department of Correction with the remaining six months suspended to probation. During the hearing, the trial court addressed Cart as follows:

> Well, Mr. Cart, the, um, plea agreement gives me parameters to work in here and the, uh, the recommendation, of course, from probation is one thing, the State is recommending something a little more severe and I find myself kind of in the middle between the recommendations. Entering someone else's home is a serious situation. And, it doesn't appear to me that you've taken it that seriously since you haven't addressed what you…you say made you be there, the intoxication or the depression or whatever. So, the sanction needs to be harsh. What I'm going to order is eighteen months in [sic] Department of Correction. Of those eighteen months, twelve months will be executed and six months will be suspended. And, I think you need to spend the twelve months actually incarcerated, not in work release. So I'm going to take you into custody today to begin serving that twelve-month executed sentence. The pre-sentence investigation indicates that you have…you spent two days in jail after the arrest so you've got credit for two and that doubles to four, four days of credit against the twelve months. The other six months that are suspended will turn into six months of probation. And, the main reason I'm considering probation here at all is because I think there needs to be, um, supervision and some substance abuse treatment enforced by the court.

(Transcript pp. 28-29).

Cart now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Sentencing Statement*

Cart first argues that the trial court abused its discretion because it failed to enter a sentencing statement that set forth the reasons or circumstances justifying his sentence. A trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *reh'g granted on other grounds*, 875 N.E.2d 218 (2007). If a trial court finds aggravating or mitigating circumstances, a sentencing statement must identify all such aggravating or mitigating circumstances and explain the bases for their determination. *Anglemeyer*, 868 N.E.2d at 490. When a trial court "fails to enter a sentencing statement at all," or enters "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 reason," or enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration," or considers reasons that "are improper as a matter of law," it has abused its discretion. *Id.* at 490-491.

Additionally, the trial court is under no obligation to weigh aggravating or mitigating factors when imposing a sentence. *Id.* at 491. The trial court may mention pertinent factors during its sentencing statement that relate to the defendant's crime without considering those factors either aggravating or mitigating. *Sallee v. State*, 777 N.E.2d 1204, 1215 (Ind. Ct. App. 2002).

We find that the trial court entered a sentencing statement that explains the reason for Cart's sentence, as supported by the record. In its sentencing statement, the trial court mentioned, "And, it doesn't appear to me that you've taken it that seriously since you haven't addressed what you … you say made you be there …." (Tr. p. 28). During the sentencing hearing, Cart testified that, on the evening of May 31, 2006, he was "cut-off" from drinking alcohol at a bar because he was highly intoxicated and that he was "brought out of the bar" on at least two occasions because he was so intoxicated. (Tr. p. 22). Cart stated he was drunk at the time of the incident and did not remember leaving Badger's house. Subsequently, after bonding out of jail, Cart continued to drink. When defense counsel asked him if he always consumed alcohol to the point of becoming intoxicated, he answered in the affirmative.

Cart also testified that he was depressed and "messed up." (Tr. p. 22). He admitted to not having sought help for his depression. Cart also stated that he had been suicidal on two occasions and, though he had spoken to counselors on those occasions, he "more or less lied" to them. (Tr. p. 25).

Additionally, in imposing the sentence, the trial court relied on Cart's testimony that, in the eleven months during which Cart's residential entry charge was pending in Madison County, Cart did not address the alcohol and depression issues that contributed to his uninvited presence in Badger's house. The trial court further stated that it only considered probation at all so that Cart could receive court-enforced substance abuse treatment. Thus, we find the trial court did not abuse its discretion.

Cart also argues that the trial court failed to consider his guilty plea and remorse as mitigating factors. We disagree. A trial court is under no obligation to evaluate mitigating factors in a manner desired or suggested by the defendant. *Frey v. State*, 841 N.E.2d 231, 234 (Ind. Ct. App. 2006). Nonetheless, if the trial court fails to identify a mitigating factor that the record clearly supports, there is reasonable belief that the mitigator was inappropriately overlooked. *Id.* In the present case, the plea agreement does not necessarily constitute a mitigating factor because Cart received a substantial benefit in having the public intoxication charge dropped. *See Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999) (guilty plea not automatically considered a mitigator where defendant received benefits for her guilty plea when the State agreed to drop robbery and auto theft charges). Additionally, Cart did not show any indication that he was remorseful until defense counsel asked him directly. The record indicates that Cart's level of remorse increased when he heard the trial court's sentencing order. *See Gibson v. State*, 856 N.E.2d 142, 148 (Ind. Ct. App. 2006) (stating that in light of firsthand observations, trial court may properly decline to give remorse significant mitigating weight). Consequently, the trial court did not abuse its discretion by failing to consider Cart's proposed mitigators.

II. *Appropriateness of Cart's Sentence*

Cart argues next that the trial court sentenced him inappropriately in light of his character and the nature of the offense. We disagree. Indiana Appellate Rule 7(B) allows this court to revise a sentence if we determine that the sentence is inappropriate in view of the nature of the offense and the character of the defendant. *See* Ind. Appellate Rule 7(B); *see*

also Childress v. State, 848 N.E.2d 1073, 1079 (Ind. 2006). It is the defendant's burden to persuade the reviewing court that his sentence "has met the inappropriateness standard of review," as articulated by Indiana Appellate Rule 7(B). *Childress* 848 N.E.2d at 1080. Cart has not satisfied this burden.

Pursuant to I.C. § 35-50-2-7, residential entry as a Class D felony carries an advisory sentence of eighteen months, a minimum sentence of six months, and a maximum sentence of three years. The trial court imposed the advisory sentence. The trial court determined that Cart's violation was serious and, because Cart failed to appear as though he had taken his actions seriously, he should serve twelve months of the sentence incarcerated. Also, the trial court expressed that Cart would benefit from court-enforced substance abuse treatment. Consequently, the trial court imposed six months suspended to probation so that Cart may receive treatment under the court's supervision.

Neither the nature of the offense nor the defendant's character justifies revising Cart's sentence. Cart's actions in the year following his entry into Badger's residence speak to his character. Those actions indicated that he neither recognized, nor was motivated to change, the alcohol or depression issues that led to his behavior. He admittedly drove on a suspended drivers' license, abused alcohol, and failed to seek treatment for the depression and substance abuse.

Also, the nature of Cart's offense had a detrimental effect on Brooke Badger. She testified that she continually experiences fear and no longer feels safe in the home she has known for fourteen years. Consequently, her plans to move resulted directly from Cart's

uninvited entry into her home. Thus, the defendant's sentence is not inappropriate in light of his character and the nature of the offense.

CONCLUSION

Based on the foregoing reasons, we conclude that the trial court properly entered a sentencing statement explaining the reasons or circumstances for the defendant's sentence and that the defendant's sentence is not inappropriate in light of his character and the nature of the offense.

Affirmed.

KIRSCH, J., and MAY, J., concur.