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IN THE
COURT OF APPEALS OF INDIANA

JEROME CROWDER,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 09A02-1008-CR-852
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE CASS CIRCUIT COURT
The Honorable Leo T. Burns, Judge
Cause No. 09C01-0708-FC-37

March 31, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jerome Crowder ("Crowder") pleaded guilty in Cass Circuit Court to Class C felony operating a motor vehicle while privileges are forfeited for life and was sentenced to four years executed in the Department of Correction. Crowder now appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

Crowder's driving privileges were forfeited for life in August 2003. On August 14, 2007, Crowder purchased a vehicle as a gift for his wife. Crowder was driving the vehicle home when he was stopped by police, who subsequently discovered that his driving privileges were forfeited for life.

On August 16, 2007, the State charged Crowder with Class C felony operating a motor vehicle while privileges are forfeited for life. On May 21, 2009, Crowder pleaded guilty without the benefit of a plea agreement. On July 22, 2010, the trial court sentenced Crowder to four years executed in the Department of Correction. Crowder now appeals.

Discussion and Decision

A. *Mitigating Circumstances*

Sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. Id. "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. at 491.

A trial court may abuse its sentencing discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. Id. at 490-491. However, even if the trial court is found to have abused its discretion in sentencing the defendant, the error is harmless if the sentence imposed was not inappropriate. Mendoza v. State, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (citing Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007) (holding that in the absence of a proper sentencing order, we may either remand for resentencing or exercise our authority to review the sentence pursuant to Appellate Rule 7(B))), trans. denied.

In this case, the trial court did not specifically delineate aggravating and mitigating circumstances in its written and oral sentencing statements. Instead, the trial court made the following statement from the bench:

> Well, there is a lot to wade through here. I've heard and listened to a significant amount of information. It's up to me to distill this down and do what is, to do justice in regard to the criminal laws in the State of Indiana. As I distill it down, what I have before me is an adult man who admitted to operating a motor vehicle after being adjudicated as a habitual traffic violator for life. . . . There's plenty in the report here for a Court to find aggravating circumstances. The well[-]presented defense case today urges the Court to mitigate somehow. The distillation process in my mind makes this an advisory sentence case. I have a C felony. The Legislature tells me that the advisory sentence for committing a C felony is four years in the Department of Correction. That's the order of the Court today. Commitment to the Department of Correction for four years. Mr. Crowder is not a good candidate for probation.

Tr. pp. 64-65.

Crowder does not argue that the trial court abused its discretion by failing to enter a sufficiently detailed sentencing statement. Instead, he argues that the trial court erred by failing to "afford significant consideration" to his history of mental illness and by "fail[ing] to acknowledge that [Crowder's] sentence would create an undue hardship for his two dependent children." Appellant's Br. at 11. To the extent that Crowder argues that the trial court should have assigned greater weight to these purported mitigators, we note that the relative weight or value assignable to properly found aggravators and mitigators is not subject to review for an abuse of discretion. Anglemyer, 868 N.E.2d at 491. Moreover, even assuming that the trial court abused its discretion by failing to identify these circumstances as mitigating, the error was harmless because, as set forth below, the sentence imposed was not inappropriate under Indiana Appellate Rule 7(B). See Mendoza, 869 N.E.2d at 556.

B. *Inappropriate Sentence*

Crowder also argues that his four-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. Alvies v. State, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing Anglemyer, 868 N.E.2d at 491). This appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that a court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the

character of the offender." Anglemyer, 868 N.E.2d at 491. However, "we must and should exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007).

Crowder committed Class C felony operating a vehicle while privileges are forfeited for life, for which the sentence range is two to eight years, with an advisory sentence of four years. Ind. Code § 35-50-2-6 (2004). The trial court sentenced Crowder to the four-year advisory sentence. "[T]he advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Anglemyer, 868 N.E.2d at 494. Nevertheless, Crowder argues that the executed advisory sentence is inappropriate in light of his difficult upbringing, his mental illness, recent positive changes he has made in his life, and the hardship his incarceration will cause to his children. Crowder asks this court to revise his sentence to order it be served on home detention.

Crowder's offense appears to be unremarkable in nature: Crowder testified that he was aware that his driving privileges were forfeited for life, but nevertheless chose to drive. The General Assembly has classified Crowder's offense as a Class C felony, together with the resultant sentencing range.

However, Crowder's character alone, as reflected in his lengthy criminal history, easily supports the imposition of the advisory sentence. Crowder's criminal history includes convictions for possession of a controlled substance with intent to deliver, operating a vehicle while intoxicated, public intoxication, operating a vehicle while an habitual traffic violator, check deception, disorderly conduct, criminal mischief, intimidation, domestic battery, and battery resulting in bodily injury. Moreover, Crowder has not fared well when offered alternatives to incarceration; indeed, he has violated probation no less than twenty-two times and was on probation at the time of the instant offense. Under these facts and circumstances, we cannot conclude that Crowder's executed, four-year advisory sentence was inappropriate.

Conclusion

Even assuming the trial court abused its discretion by failing to identify Crowder's mental illness and the hardship to his dependents as mitigating circumstances, the error was harmless because Crowder's executed, four-year advisory sentence is not inappropriate in light of the nature of the offense and character of the offender.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.