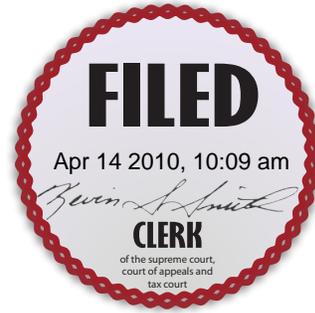


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JESSE CHABES,)
)
Appellant/Defendant,)
)
vs.) No. 45A03-0910-CR-458
)
STATE OF INDIANA,)
)
Appellee/Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause Nos. 45G02-0807-FB-61, 45G02-0808-FD-81

April 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Jesse Chabes appeals the sentence imposed by the trial court following his guilty plea to Class C felony Stalking¹ and Class A misdemeanor Invasion of Privacy.² We affirm.

FACTS AND PROCEDURAL HISTORY

The stipulated factual basis entered during the July 27, 2009 plea hearing provides as follows:

Stalking, a Class C Felony

2. That [S.C.] is the victim in Cause #45G02-0807-FB-00061.
3. That on or about January 5, 2008, [Chabes] contacted [S.C.] by telephone, making threats and stated that [S.C.] “better get out of the house in five minutes.”
4. That at said time, an Ex Parte Order of Protection (Cause No. 45D06-0712-PO-00118) was in place prohibiting [Chabes] from contacting [S.C.].
5. That on or about March 8, 2008, [Chabes] was at the home of [S.C.] which is located on Delaware Street in Hobart, Lake County, Indiana.
6. That at said time and place, Amy Mebert, the sister of [S.C.], found [Chabes] under the bed of one of [S.C.’s] daughters, hiding.
7. That at that time, an Ex Parte Order of Protection (Cause No. 45D06-0712-PO-00118) was in place ordering [Chabes] to stay away from the residence of [S.C.].
8. That on or about July 17, 2008, [Chabes] was at the home of [S.C.] which is located on Delaware Street in Hobart, Lake County, Indiana.
9. That at that time, an Ex Parte Order of Protection (Cause No. 45D06-0712-PO-00118) was in place ordering [Chabes] to stay away from the residence of [S.C.].
10. That on or about July 20, 2008, [Chabes] was at the home of [S.C.] which is located on Delaware Street in Hobart, Lake County, Indiana.
11. That at said time and place, [Chabes] entered said home, rummage[d] through [S.C.’s] purse, and then took a Dodge Magnum after taking the key out of [S.C.’s] purse.
12. That at that time, an Ex Parte Order of Protection (Cause No. 45D06-0712-PO-00118) was in place ordering [Chabes] to stay away from the residence of [S.C.].

¹ Ind. Code § 35-45-10-5 (2007).

² Ind. Code § 35-46-1-15.1 (2007).

13. That [S.C.] has stated that she fears for her life and believes that [Chabes] is capable of doing harm to her or her children.

14. That between January 5, 2008 and July 20, 2008, [Chabes] did knowingly or intentionally stalk [S.C.] and during the said stalking [made] an explicit or implicit threat with the intent to place [S.C.] in reasonable fear of serious bodily injury or death.

15. That these actions by [Chabes] were contrary to I.C. 35-45-10-5 and against the peace and dignity of the State of Indiana.

Invasion of Privacy, a Class A Misdemeanor

16. That [M.C.] is the victim in Cause #45G02-0808-FD-00081.

17. That a No Contact Order was issued under Cause #45G02-0804-FC-00059 wherein [M.C.] was the named victim.

18. That pursuant to said No Contact Order, [Chabes] was prohibited, while said case was pending, from visiting any location where [Chabes] knows [M.C.] to be located and from having any direct or indirect contact with [M.C.]

19. That on or about July 20, 2008, [Chabes] was at a residence located on Delaware Street located in Hobart, Lake County, Indiana.

20. That [M.C.] resides at said residence with her mother, sister, and brother.

21. That [Chabes] knew that [M.C.] lived at said residence.

22. That on or about July 20, 2008, [Chabes] did knowingly or intentionally violate a no contact order that was issued as a condition of pretrial release.

23. That these actions by [Chabes] were contrary to I.C. 35-46-4-15.1 and against the peace and dignity of the State of Indiana.

Pre-Sentence Investigation Report pp. 33-34.

On July 21, 2008, the State charged Chabes with Class D felony Operating a Vehicle after having been found to be a Habitual Traffic Offender and Class A misdemeanor Invasion of Privacy under Cause No. 45F02-0808-FD-81 (“Cause No. FD-81”). Two days later, the State charged Chabes with Class B felony Burglary, Class C felony Stalking, Class D felony Auto Theft, Class D felony Intimidation, and Class D felony Operating a Vehicle after having been found to be a Habitual Traffic Offender under Cause No. 45G02-0807-FB-61 (“Cause No. FB-61”). The State subsequently amended the charging information in Cause

Nos. FB-61 and FD-81 to reflect the accurate dates for Chabes's alleged criminal actions.

On July 27, 2009, the parties filed a Stipulated Plea Agreement. Pursuant to the terms of the parties' plea agreement, Chabes pled guilty to stalking under Cause No. FB-61 and invasion of privacy under Cause No. FD-81. In exchange for Chabes's guilty plea, the State agreed to dismiss all remaining charges. The trial court accepted the plea agreement and scheduled a sentencing hearing on August 28, 2009.

At the conclusion of the August 28, 2009 sentencing hearing, the trial court sentenced Chabes to an aggregate six-year sentence, with four years to be served in the Lake County Sheriff's Work Release Program if Chabes was eligible or the Department of Correction if Chabes was not eligible for the work release program, and two years suspended to probation. Chabes filed a motion to consolidate his appeals of the sentences imposed under Cause Nos. FB-61 and FD-81 on September 17, 2009, which was subsequently granted by the trial court. This appeal follows.

DISCUSSION AND DECISION

Chabes argues on appeal that his sentence is inappropriate in light of the nature of his offenses and his character. Indiana Appellate Rule 7(B) provides that we "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." The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

Our review of the nature of Chabes's offenses reveals that Chabes repeatedly violated

an order of protection prohibiting him from contacting S.C. or from visiting S.C.'s home. In fact, during one of these violations, Chabes was found hiding under S.C.'s daughter's bed. In addition, Chabes knowingly or intentionally violated a no contact order prohibiting him from visiting the residence of his daughter, M.C.

Moreover, our review of Chabes's character reveals that Chabes has a substantial criminal history as well as a history of violating previous conditions while on probation. Chabes's criminal history includes a juvenile adjudication for acts which would constitute battery, as well as adult convictions for assault, battery, operating while intoxicated, public intoxication, and reckless driving. With regard to Chabes's character, the trial court stated as follows:

The Court certainly takes into account the wishes of the family in regard to an appropriate sentence for Mr. Chabes, that is not a controlling factor, however. Mr. Chabes' conduct over time has been deplorable, to say the least. It's criminal and a great deal of damage has been done. And I note that the sentence that the Court is going to hand down is based on the information contained in the stipulated factual basis statement only, that is what the Court has to base it on, along with the background information and Mr. Chabes' criminal history, which is horrendous. I would be remiss in my obligation as Judge to hand down just a sentence in this case were I to simply impose probation. We're way past that point at this juncture.

Tr. pp. 46-47. Like the trial court, we do not believe that an executed sentence is inappropriate in the instant matter because we are unconvinced by Chabes's claim that his criminal history does not reflect poorly on his character. Although Chabes claims that his criminal history can be largely attributed to his prior alcohol abuse, the record reveals that Chabes continued to commit criminal acts even after he allegedly quit abusing alcohol as is

evidenced by the fact that he committed the instant crimes during a period in which he claims that he was not abusing alcohol. We are also unconvinced that Chabes's guilty plea reflects particularly well on his character because Chabes received the substantial benefit of having numerous felony and misdemeanor charges dismissed in exchange for his guilty plea. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (providing that a guilty plea is not necessarily a showing of remorse and does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one), *trans. denied*.

Further, we recognize that Chabes's family has suffered much as a result of Chabes's previous alcohol abuse and criminal activity. However, we do not find a partially executed sentence to be inappropriate despite Chabes's desire to engage in family counseling to try to repair the damage he has caused his family. Based on our review of the evidence, we see nothing in Chabes's character or in the nature of his offenses that would suggest that his sentence is inappropriate.

The judgment of the trial court is affirmed.

RILEY, J., and MATHIAS, J., concur.