



Michael D. Bennett pleaded guilty to resisting law enforcement<sup>1</sup> as a Class D felony and driving while suspended<sup>2</sup> as a Class A misdemeanor and was sentenced to two-and-a-half years for resisting law enforcement and one year for driving while suspended, to be served concurrently. He appeals, raising the following restated issues:

- I. Whether the trial court abused its discretion in sentencing Bennett;  
and
- II. Whether Bennett's sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

At approximately 1:40 a.m. on August 4, 2010, Shirley Police Department Officer Ryan Sutton noticed a vehicle driven by an individual later identified as Bennett driving erratically, weaving, and crossing both the center line and fog line. Officer Sutton attempted to initiate a traffic stop of Bennett's vehicle, and Bennett slowed, but continued driving. Bennett eventually pulled into a driveway, and Officer Sutton pulled in behind him. Bennett then turned his vehicle around in the homeowner's yard and drove back onto the road. With Officer Sutton in pursuit, Bennett drove down a gravel road at fifty-eight miles per hour and continued to drive erratically, making abrupt turns, and traveling at high speeds. More officers joined the pursuit, and Bennett entered the town of Greensboro driving approximately eighty miles per hour. During the pursuit, Bennett reached speeds in excess of 105 miles per hour and ran several stop signs and traffic

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<sup>1</sup> See Ind. Code § 35-44-3-3.

<sup>2</sup> See Ind. Code § 9-24-19-2.

signals. He eventually drove off the road, through a ditch, and into a cornfield, where the pursuit continued on foot.

After Bennett was taken into custody, it was discovered that his driver's license was suspended. He was charged with resisting law enforcement as a Class D felony and driving while suspended as a Class A misdemeanor. At his initial hearing, Bennett entered a plea of guilty to the offenses. At Bennett's sentencing hearing, the trial court found his extensive criminal history and that he had recently violated "terms and conditions of either a suspended sentence or probation" to be aggravating circumstances. *Tr.* at 26. The trial court found Bennett's guilty plea and mental health issues to be mitigating circumstances. He was sentenced to two-and-a-half years for resisting law enforcement as a Class D felony and one year for driving while suspended as a Class A misdemeanor, with both sentences to run concurrently. Bennett now appeals.

## **DISCUSSION AND DECISION**

### **I. Abuse of Discretion**

Trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.* Sentencing decisions rest within the sound discretion of the trial court and are reviewed

on appeal 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.*

A trial court may abuse its discretion by entering a sentencing statement that omits mitigating factors that are clearly supported by the record and advanced for consideration. *Id.* at 490-91. Because the trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion in failing to “properly weigh” such factors. *Id.* at 491. Once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then “impose any sentence that is . . . authorized by statute; and . . . permissible under the Constitution of the State of Indiana.” Ind. Code § 35-38-1-7.1(d).

Bennett argues that the trial court abused its discretion when it sentenced him, specifically in its finding of mitigating circumstances. He contends that the trial court abused its discretion by not finding his guilty plea and his mental health issues to be significant mitigating circumstances. He also claims that it was an abuse of discretion not to have considered alternatives to incarceration when sentencing him.

In its oral sentencing statement, the trial court did find both Bennett’s guilty plea and his mental health issues to be mitigating factors and clearly stated that it considered both when it sentenced him but found them outweighed by the aggravating factors found. *Tr.* at 26. Therefore, any argument that the trial court failed to find Bennett’s guilty plea and mental health issues as mitigating factors is unsupported by the record. To the extent

that Bennett is arguing that the trial court did not give these mitigating circumstances sufficient weight, we note that a trial court cannot now be said to have abused its discretion in failing to “properly weigh” such factors. *Anglemyer*, 868 N.E.2d at 491.

Additionally, it was not an abuse of discretion for the trial court to not consider an alternative to incarceration when sentencing Bennett. Consideration and imposition of alternatives to incarceration is a “matter of grace” left to the discretion of the trial court. *Million v. State*, 646 N.E.2d 998, 1001-02 (Ind. Ct. App. 1995). Based on Bennett’s extensive criminal history and numerous probation violations due to committing further offenses, we cannot say that the trial court abused its discretion when it sentenced Bennett to incarceration. We conclude that the trial court did not abuse its discretion in sentencing Bennett.

## **II. Inappropriate Sentence**

“This court has authority to revise a sentence ‘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.’” *Spitler v. State*, 908 N.E.2d 694, 696 (Ind. Ct. App. 2009) (quoting Ind. Appellate Rule 7(B)), *trans. denied*. “Although Indiana Appellate Rule 7(B) does not require us to be ‘extremely’ deferential to a trial court’s sentencing decision, we still must give due consideration to that decision.” *Patterson v. State*, 909 N.E.2d 1058, 1062-63 (Ind. Ct. App. 2009) (quoting *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007)). We understand and recognize the unique perspective a trial court brings to its sentencing decisions. *Id.* at 1063. The defendant bears the burden of persuading this court that his sentence is inappropriate. *Id.*

We initially note that, although Bennett raises the contention that his sentence was inappropriate because of the trial court's alleged reliance on improper aggravating circumstances and failure to consider significant mitigating circumstances, he does not fully develop any argument explaining why his aggregate two-and-a-half year sentence was inappropriate in light of the nature of the offense and his character. "A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record." *Wingate v. State*, 900 N.E.2d 468, 475 (Ind. Ct. App. 2009) (quoting *Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005), *trans. denied*); *see also* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant's briefs be supported by cogent reasoning and citations to authorities, statutes, and appendix or parts of record on appeal). Therefore, in light of Bennett's failure to provide a cogent argument in support of his claim, Bennett has waived such claim on appeal.

Waiver notwithstanding, Bennett's sentence was not inappropriate. While driving with a suspended driver's license, Bennett led the police on a chase, at speeds of up to 105 miles per hour, driving erratically, and failing to stop at multiple intersections. Once his vehicle was stopped, he continued to flee on foot. At the time of sentencing, Bennett had twenty-two prior convictions, which included evading arrest and assault on a police officer, and multiple other arrests and previous charges. At the time of the present case, he had several active warrants and other pending charges against him. He had six prior driving while suspended convictions, which included three in 2009. He also had several prior violations of probation and was on bond in another county when he committed the

present offense. We, therefore, conclude that Bennett's two-and-a-half year aggregate sentence was not inappropriate in light of the nature of the offense and character of the offender.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.