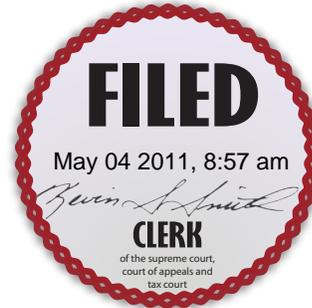


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS JAMES NEWSOM,)

Appellant-Defendant,)

vs.)

No. 71A03-1008-CR-473

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane W. Miller, Judge
Cause No. 71D08-1002-FA-8

May 4, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Thomas James Newsom appeals from his conviction and sentence for Class A felony Conspiracy to Commit Murder.¹ Newsom contends that the State failed to produce sufficient evidence to sustain his conviction and that his thirty-year, advisory sentence is inappropriately harsh. We affirm.

FACTS AND PROCEDURAL HISTORY

On the morning of December 27, 2009, Rodney Lance was robbed and shot by two men after he went out for a walk near his home in South Bend. Lance later identified his attackers as Dominique Clark and James Birch. On January 15, 2010, Clark arrived at the St. Joseph County Jail after being captured in Florida and was held on various charges, including attempted murder. Clark met fellow inmate Joseph Fuentes through a mutual friend and began a “friendly relationship” with him. Tr. p. 242. At some point, Clark approached Fuentes and told him of his desire to go home and to have “the witness” (presumably Lance) “taken care of[.]” Tr. p. 243. Fuentes and Clark decided that Clark would provide the necessary money for the contract killing if Fuentes would provide the “hit man.” Tr. p. 245

Fuentes decided that he did want to become involved, approached the authorities with the plan, and met with South Bend Police Detective Eugene Eyster on February 11, 2010. South Bend Police Detective Robert Wise was selected to pose as a contract killer named “Peelo” who Fuentes was providing to Clark. Detective Wise was provided the telephone number of Tamara Arnold, Clark’s aunt, and he contacted her on February 16, 2010, to arrange a meeting. The terms of the murder-for-hire arrangement were that

¹ Ind. Code §§ 35-42-1-1 (2009); 35-41-5-2 (2009).

“Peelo” would receive a \$1500.00 down-payment and then another \$13,500.00 “[w]hen the final job was done[.]” Tr. p. 305. Arnold and Detective Wise initially agreed to meet in Mishawaka, but she later informed Detective Wise that he would be meeting with “her other nephew instead.” Tr. p. 308.

At approximately 10:07 p.m. on February 16, 2010, Detective Wise received a telephone call from Newsom in which Newsom told him that he was en route to the rendezvous. In a transaction that was videotaped, Newsom entered Detective Wise’s vehicle and gave him money orders totaling \$1500.00. Detective Wise asked Newsom when Clark wanted “it” done and expressed concern that he would be paid the remaining money afterwards, saying, “For what I gotta do, you know, fifteen hundred, all I’m gonna do is, you know, just slap him around and call him a bad name.” Ex. 4 at 4:25-4:29. Detective Wise also asked Newsom how Clark wanted “it” done, asking if he wanted “a shotgun blast to the face” or if he wanted him to “take him out to the woods where they don’t find the body[.]” Ex. 4 at 6:28-6:50.

Meanwhile, on February 4, 2010, Newsom had completed a Federal Form 4473 at Midwest Gun Exchange, which is required by law when purchasing a firearm. On February 10, 2010, Newsome had paid a deposit on a .22 caliber semiautomatic rifle at Midwest but was unable to obtain the gun until February 18 due to a federal background check. On February 21, 2010, Newsom spoke with Clark on the telephone. The pair discussed the fact that “Peelo” was asking so many questions, because “that’s what cops do[.]” and Newsom told Clark that he was still waiting because he had \$200.00 but needed \$300.00 more. Ex. 15, track 1 at 5:20. The price of the firearm on which

Newsom had made a deposit was \$499.00. The next day, when Clark asked Newsom about “that one thing[,]” Newsom responded, “I’m gonna do it. I’m excited to do it” and said “[y]eah” when Clark asked him if he was “going solo.” Ex. 16, track 2 at 4:20-5:06.

On February 23, 2010, the State charged Newsom with conspiracy to commit murder. On June 22, 2010, the State moved to amend the charging information such that the specific act alleged to have been performed in furtherance of the conspiracy was delivery of the money to Detective Wise, which motion the trial court granted. On June 24, 2010, a jury found Newsom guilty as charged. On July 30, 2010, the trial court sentenced Newsom to thirty years of incarceration. The trial court found Newsom’s youth to be a mitigating circumstance and his juvenile record and the facts and circumstances of the crime to be aggravating circumstances.

DISCUSSION AND DECISION

I. Whether the State Produced Sufficient Evidence to Sustain Newsom’s Conspiracy to Commit Murder Conviction

Newsom contends that the State produced insufficient evidence to sustain his conspiracy to commit murder conviction. Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled:

In reviewing a sufficiency of the evidence claim, the Court neither reweighs the evidence nor assesses the credibility of the witnesses. We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. We will affirm the conviction if there is probative evidence from which a reasonable jury could have found Defendant guilty beyond a reasonable doubt.

Vitek v. State, 750 N.E.2d 346, 352 (Ind. 2001) (citations omitted).

In order to convict Newsom of conspiracy to commit murder, the State was required to prove that he knowingly performed an overt act in furtherance of an agreement to commit murder. *See* Ind. Code §§ 35-42-1-1; 35-41-5-2. Here, the specific act charged was delivering payment for the “hit” to Detective Wise. Newsom argues only that there is insufficient evidence that he was aware of the supposed purpose of the delivery when he made it. We conclude, however, that there is sufficient evidence of the required awareness from which the jury could have concluded that he was. In short, Newsom’s demeanor during his interaction with Detective Wise gives rise to a reasonable inference that he was well aware of the supposed purpose of the payment. Detective Wise repeatedly made comments and asked questions clearly indicating that he was being hired to kill somebody, such as asking Newsom if Clark wanted him to simply shoot the victim in the face with a shotgun. Newsom, however, never expressed any alarm or concern at Detective Wise’s statements and questions and did not obviously appear to be alarmed or concerned. The jury was free to conclude that a person who had not known the purpose of the transaction would have reacted differently. Moreover, Newsom and Clark’s conversation of February 21, 2010, specifically as it pertained to concerns about “Peelo,” further supports an inference that Newsom was aware that they were discussing hiring a hit man. Had Newsom not known that Clark had an illegal purpose in mind, he would not likely have been concerned that “Peelo” might be a policeman. Newsom’s argument is an invitation to reweigh the evidence, one that we decline.

II. Whether the Trial Court Abused its Discretion in Sentencing Newsom

Under our current sentencing scheme, “the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *modified on other grounds on reh’g*, 875 N.E.2d 218 (Ind. 2008). We review the sentence 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.” *Id.*

A trial court abuses its discretion if it (1) fails “to enter a sentencing statement at all[,]” (2) 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 reasons,” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration,” or (4) considers reasons that “are improper as a matter of law.” *Id.* at 490-91. If the trial court has abused its discretion, we will remand for resentencing “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” *Id.* at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion. *Id.* We may review both oral and written statements in order to identify the findings of the trial court. *See McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007).

A. Aggravating Circumstances

Newsom points out that the trial court stated on the record that he had been found as a juvenile to have committed what would be burglary if committed by an adult, when,

in fact, he had been found to have committed what would be home invasion. While this is true and may represent a misconstruction of Newsom's juvenile record, we can say with confidence that the trial court would have imposed the same sentence in any event. Newsom, who was born on March 18, 1990, has an extensive juvenile history dating back to age eight, when he was arrested and given a warning for truancy. Since then, Newsom was arrested and given warnings for battery and theft in 2000; found to have been truant in 2003; found to have committed what would be Class B misdemeanor disorderly misconduct, Class D felony theft, and Class D felony possession of a controlled substance in 2005; found to have committed what would be Class D felony residential entry in 2006; and found to have committed what would be Class D felony possession of marijuana or hashish in 2007. Newsom has been committed to the Department of Correction on three previous occasions following juvenile adjudications. In light of Newsom's long history with the juvenile justice system and his numerous other adjudications, including findings that he committed four felonies altogether, we are confident that the trial court would have imposed the same sentence even if it misconstrued his juvenile history.

B. Mitigating Circumstances

Although the trial court has an obligation to consider all mitigating circumstances identified by a defendant, it is within the trial court's sound discretion whether to find mitigating circumstances. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied*. We will not remand for reconsideration of alleged mitigating factors that have debatable nature, weight, and significance. *Id.* However, if the record clearly

supports a significant mitigating circumstance not found by the trial court, we are left with the reasonable belief that the trial court improperly overlooked the circumstance. *Moyer v. State*, 796 N.E.2d 309, 313 (Ind. Ct. App. 2003).

The trial court found Newsom's youth to be a mitigating circumstance, and to the extent Newsom challenges the weight given to it, he is not entitled to do so on appeal. *See Anglemeyer*, 868 N.E.2d at 491. Newsom also points to his allegedly troubled youth, educational progress, and employment when arrested as mitigating circumstances. However, it is well-settled that "[e]vidence of a troubled childhood does not require the trial court to find it to be a mitigating circumstance." *Page v. State*, 615 N.E.2d 894, 896 (Ind. 1993). Newsom does not explain why his troubled youth deserves to be considered mitigating. Moreover, while we applaud Newsom's efforts to better himself through education, he again does not elaborate on why this should be considered mitigating. As for Newsom's work history, he points to nothing other than his claim that he had been employed when arrested. Without more, Newsom has failed to produce a record that convinces us that the trial court abused its discretion in this regard. *See, e.g., Bennett v. State*, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003) (concluding that trial court did not abuse its discretion in failing to find work history mitigating where defendant "did not present a specific work history, performance reviews, or attendance records"), *trans. denied*. The trial court did not abuse its discretion in sentencing Newsom.

III. Whether Newsom's Sentence is Appropriate

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.” Ind. Appellate Rule 7(B). “Although appellate review of sentences must give due consideration to the trial court’s sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied.” *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted).

As for the nature of the offense, we find it be somewhat more egregious than a typical conspiracy to commit murder, as its goal was to subvert the criminal justice system by eliminating a witness against Clark. As the trial court mentioned, Newsom had no connection to Lance and all Lance ever did was be Clark’s victim, only to later be targeted for murder. Moreover, the record indicates that Newsom was willing to be much more than a courier for Clark. Newsom was in the process of purchasing a firearm and had assured Clark that he was “excited” to “go solo,” presumably in the event that the murder-for-hire did not occur.

As for Newsom’s character, his previously mentioned juvenile history does him no credit. Additionally, Newsom has one other adult conviction, for Class C misdemeanor driving without a license. And yet, at the age of nineteen, Newsom was willing to participate in a plot to murder a man he had never met and had no quarrel with, on the grounds that his testimony might keep Clark incarcerated. In light of the nature of his offense and his character, Newsom has failed to convince us that his thirty-year, advisory sentence is inappropriate.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.