

Wesley L. Daniels was convicted of escape¹ as a Class D felony and driving while suspended² as a Class A misdemeanor following a bench trial and was sentenced to 910 days for the escape conviction and 70 days for the driving while suspended conviction, ordered to run concurrently for an executed sentence of 910 days. He appeals raising the following two restated issues:

- I. Whether the trial court abused its discretion when it admitted three community impact statements into evidence during Daniels's sentencing; and
- II. Whether Daniels's sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 1, 2009, Daniels was serving a sentence on home detention through Marion County Community Corrections for an attempted residential entry conviction. His home detention supervisor had assigned him a permanent job search schedule, which allowed Daniels to leave his residence on Monday through Wednesday between the hours of 10:00 a.m. and 2:00 p.m. in order to search for employment. According to Daniels's individual activity report, on that morning, he left his residence at 9:45 a.m. He picked up his fifteen-year-old cousin, D.H., around 10:30 a.m. Around 12:30 p.m., off-duty Indianapolis Metropolitan Police Officer Michael Maxwell ("Officer Maxwell") was driving through his patrol area and observed Daniels's vehicle in the driveway of a home.

¹ See Ind. Code § 35-44-3-5(b).

² See Ind. Code § 9-24-19-2.

Because Officer Maxwell was the crime watch coordinator for the neighborhood, he was familiar with the area and did not recognize the vehicle as being associated with the home. Daniels was sitting in the driver's seat, and D.H. was knocking on the door of the residence. As Officer Maxwell approached the residence, he saw D.H. return to the vehicle and enter the passenger side. Officer Maxwell pulled into the driveway behind Daniels's vehicle and activated his lights and siren. He approached the vehicle and asked for identification from both Daniels and D.H. Although he was provided verbal identification information from D.H. and an Indiana identification card from Daniels, Officer Maxwell was unable to verify their identity at that time because his computer was not receiving a signal. The officer returned Daniels's identification and inquired as to what the two were doing. Daniels replied that they were out looking for jobs and volunteered that he was on home detention. D.H. told the officer that his friend Jacob lived at the residence. Officer Maxwell moved his patrol car and allowed Daniels to back out of the driveway. Later, when the officer was able to retrieve information from his computer, he learned that Daniels's license was suspended.

On April 6, 2009, the State charged Daniels with escape as a Class D felony for violating the terms of his home detention and driving while suspended as a Class A misdemeanor. On August 27, 2009, Daniels was found guilty as charged after a bench trial. During the sentencing hearing, the State introduced three community impact statements that were admitted into evidence over the objection of Daniels. The impact statements were from members of the Greater Binford Redevelopment Group ("BRAG"), a crime watch group in the area that consisted of thirty-seven neighbors. At the

conclusion of the sentencing hearing, the trial court found two mitigating circumstances: (1) Daniels's crime did not cause any harm to any person or property; and (2) imprisonment could impose a significant hardship to his dependants. It found Daniels's lengthy criminal history, which consisted of a juvenile adjudication, one misdemeanor conviction, and three felony convictions, to be an aggravating circumstance. After finding that the aggravating circumstances outweighed the mitigating circumstances, the trial court sentenced Daniels to 910 days for escape and 70 days for driving while suspended, with the sentences to run concurrently. Daniels now appeals.

DISCUSSION AND DECISION

I. Admission of Community Impact Statements

A trial court has broad discretion in ruling on the admissibility of evidence. *Scott v. State*, 855 N.E.2d 1068, 1071 (Ind. Ct. App. 2006). We will consider the conflicting evidence most favorable to the trial court's ruling and any uncontested evidence favorable to the defendant. *Taylor v. State*, 891 N.E.2d 155, 158 (Ind. Ct. App. 2008), *trans. denied, cert. denied* (2009). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or it misinterprets the law. *Id.*

Daniels argues that the trial court abused its discretion when it allowed three community impact statements to be admitted during his sentencing. He contends that it was error to admit these statements because they were unsworn, inaccurate, and contained unsubstantiated allegations against him. He also claims that the admission of

these impact statements was prejudicial to him because the trial court may have been influenced by the improper and inaccurate information contained within them.

The strict rules of evidence, other than those regarding privilege, do not apply to sentencing hearings. Ind. Evidence Rule 101(c)(2). ““However, this is not to suggest hearsay is always proper.”” *Cloum v. State*, 779 N.E.2d 84, 92 (Ind. Ct. App. 2002) (quoting *Thomas v. State*, 562 N.E.2d 43, 48 (Ind. Ct. App. 1990)). A balance must be struck between generally allowing hearsay information regarding a defendant’s life and insuring that a defendant is not sentenced on inaccurate information. *Id.* “Furthermore, a defendant being sentenced must be given the opportunity to refute any information he claims is inaccurate.” *Id.*

In the present case, during sentencing, the State was allowed to admit over Daniels’s objection three community impact statements. These statements were not signed and did not identify the authors. The statements also contained references to the fact that Daniels had been convicted of burglary, other references to burglaries, statements that Daniels was a repeat offender and had broken into numerous homes in the neighborhood, and that thefts and break-ins had occurred during the present alleged crime. *State’s Sent. Ex. 1*.³

The purpose of the victim impact statement is to guarantee that the interests of the victim of a crime are fully and effectively represented at the sentencing hearing. *Cloum*, 779 N.E.2d at 93 (citing *Loveless v. State*, 642 N.E.2d 974, 978 (Ind. 1994)).

³ The exhibit volume contains exhibits from both the trial and the sentencing hearing. We therefore refer to the exhibit admitted at sentencing as State’s Sent. Ex. 1.

“Nonetheless, when a victim impact statement strays from the effect that a crime had upon the victim and others and begins delving into substantive, unsworn, and otherwise unsupported allegations of other misconduct or poor character on the part of the defendant, caution should be used in assessing the weight to be given to such allegations, especially where the defendant is not provided an opportunity to respond directly to them.” *Id.*

The community impact statements in this case were unsworn and anonymous and contained unsupported allegations of other misconduct not included in the charged offenses and other poor character of Daniels. Although the trial court allowed the statements to be admitted, it gave Daniels the opportunity to argue what weight the statements should be given. Daniels’s counsel informed the trial court that, although the statements indicated that Daniels had been convicted of burglary, this was inaccurate as he had never been charged with burglary. *Tr.* at 138-39. His counsel also voiced concern because the statements were not signed, did not contain names, and there was uncertainty as to who authored the statements. *Id.* at 139. Further, there was no indication that the trial court relied upon the statements in sentencing Daniels as the court made no mention of them when imposing the sentence, and the only aggravating circumstance found was Daniels’s criminal history. We therefore conclude that, although it may have been error to admit the statements as they had no indicia of reliability, any error was harmless because Daniels was afforded the opportunity to rebut the information contained in the statements and there was no indication that the trial court relied upon them.

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.*

Daniels argues that his sentence was inappropriate in light of the nature of the offense and the character of the offender. He specifically contends that the trial court incorrectly characterized his criminal history as lengthy. He further asserts that some of his prior offenses were not significant to the current offense and should not have been used to enhance his sentence.⁴

As to the nature of the offense, nothing in the record indicates anything particularly egregious about Daniels’s crimes. As to Daniels’s character, the record showed that he had a criminal history that consisted of: a juvenile true finding for

⁴ Daniels also seems to argue that the trial court abused its discretion in failing to give his criminal history the proper weight as an aggravating circumstance. To the extent that he is arguing that the trial court abused its discretion in the weight given to an aggravating circumstance, this is no longer a proper consideration for our review. “The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse.” *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007).

disorderly conduct, which would have been a Class B misdemeanor if committed by an adult; an adult conviction for criminal trespass as a Class A misdemeanor; and three adult felony convictions consisting of dealing in cocaine as a Class B felony, attempted residential entry as a Class D felony, and theft as a Class D felony. He also had several additional offenses, for which he had been arrested, that were either dismissed or for which no action had been sought.⁵ Further, due to Daniels's arrests for the instant offenses, two probation violations were filed. We conclude that Daniels's sentence was not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.

⁵ Daniels contends that it was error for the State to include his arrests not ending in convictions as elements of his criminal history. "When evaluating the character of an offender, a trial court may consider the offender's arrest record in addition to actual convictions." *Johnson v. State*, 837 N.E.2d 209, 218 (Ind. Ct. App. 2005), *trans. denied* (2006). "[A] record of arrests, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State." *Id.* (quoting *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005)). Therefore, it is not error to consider Daniels's arrest record when determining whether a sentence was inappropriate in light of the character of the offender.