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IN THE
COURT OF APPEALS OF INDIANA

ATASHIA POE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 35A02-1008-CR-966
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Jeffrey R. Heffelfinger, Judge
Cause No. 35D01-1007-CM-482

June 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Atashia Poe appeals her sentence for Class A misdemeanor driving while suspended with a prior conviction.[1] We affirm.

FACTS AND PROCEDURAL HISTORY

On July 28, 2010, the State alleged that, on July 12, 2010, Poe drove while her license was suspended and that she had a prior conviction of driving while suspended. This act is a Class A misdemeanor, *see* Ind. Code § 9-24-19-1, and carries a maximum sentence of one year. Ind. Code § 35-50-3-2. The court issued a warrant for her arrest the next day, and she appeared for an initial hearing the day after the warrant was issued. Poe waived her right to counsel and pled guilty as charged. That same day, the court sentenced her to 180 days, with no time suspended, and ordered that time served consecutive to Poe's sentence in another cause. The court also imposed $164 in court costs and suspended Poe's driving privileges for two years.[2]

DISCUSSION AND DECISION

When the trial court imposes a sentence within the statutory range, we review for an abuse of discretion. *Anglemyer v. State*, 868 N.E2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). Our review of the trial court's exercise of discretion in sentencing includes an examination of its reasons for imposing the sentence. *Id*. "This necessarily requires a statement of facts, in some detail, which are peculiar to the particular

[1] Ind. Code § 9-24-19-1. The court also ordered Poe to pay a $25 fee for committing an infraction by driving without insurance or proof of financial responsibility, *see* Ind. Code § 9-24-8-2, but Poe does not challenge that fee in this appeal.

[2] In addition to incarceration ordered when a person is convicted of driving while suspended, "the court shall recommend that the person's driving privileges be suspended for a fixed period of not less than ninety (90) days and not more than two (2) years." Ind. Code § 9-24-19-5.

defendant and the crime . . . [and] such facts must have support in the record." *Id.* A court abuses its discretion if it does not consider significant mitigators advanced by the defendant and clearly supported by the record. *Id*. Once aggravators and mitigators are identified, the trial court has no obligation to weigh those factors. *Id*. at 491.

Poe asserts the sentencing procedure was reversible error and violated her statutory rights and right to due process. In support, Poe cites *Wilson v. State*, 865 N.E.2d 1024, 1029 (Ind. Ct. App. 2007). Wilson was convicted of murder and a misdemeanor handgun offense. He appealed because the trial court would not allow him to present evidence at sentencing. There, we explained:

> The Fifth and Fourteenth Amendments of the U.S. Constitution provide in part that no person shall be "deprived of life, liberty, or property, without due process of law." . . . Wilson also refers us to Indiana Code Section 35-38-1-3, which states in relevant part: "The [convicted] person is entitled to subpoena and call witnesses and to present information in his own behalf."
>
> We must conclude that the trial court did in fact violate the statute and Wilson's federal due process rights by refusing to admit evidence presented on Wilson's behalf through the testimony of others at the sentencing hearing.

Id.

The State notes, in response, that the full text of Ind. Code § 35-38-1-3, on which the holding in *Wilson* rested, provides:

> Before sentencing a person for a felony, the court must conduct a hearing to consider the facts and circumstances relevant to sentencing. The person is entitled to subpoena and call witnesses and to present information in his own behalf. The court shall make a record of the hearing, including:
> (1) a transcript of the hearing;
> (2) a copy of the presentence report; and
> (3) if the court finds aggravating circumstances or mitigating circumstances, a statement of the court's reasons for selecting the sentence that it imposes.

Thus, says the State, the right to present evidence and call witnesses exists only for persons convicted of felonies. Because Poe's conviction was of a misdemeanor, the State continues, the statute and thus the holding in *Wilson* do not support Poe's request for relief.

In light of the explicit statutory language and the holding in *Wilson*, we agree with the State that Poe has not demonstrated error in her sentencing or that the trial court's procedure violated her right to due process. Nor has she provided any other legal basis on which we may reverse her sentence. Accordingly, we affirm her sentence of 180 days for Class A misdemeanor driving while suspended.

Affirmed.

FREIDLANDER, J., and MATHIAS, J., concur.