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IN THE
COURT OF APPEALS OF INDIANA

JAMISON A. BRUCKER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A04-1011-CR-781
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0907-FD-698

June 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Jamison A. Brucker appeals his sentence for fraud as a class D felony. Brucker raises one issue, which we revise and restate as:

I. Whether the court abused its discretion in sentencing him; and

II. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On March 9, 2009, Brucker was at the residence of Brenda Reaser in Allen County, Indiana. While at the residence, Brucker took Reaser's Indiana unemployment debit card and digital camera. Brucker made a purchase using the debit card at a gas station, and the transaction was video recorded.

The State alleged, in an amended charging information, that Brucker committed fraud and receiving stolen property as class D felonies. On March 1, 2010, Brucker pled guilty to fraud, and the State dismissed the charge for receiving stolen property.[1] On March 26, 2010, Brucker failed to appear and a warrant was issued. At some point, Brucker went to Texas and later returned to Indiana.[2] On October 27, 2010, at the

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[1] The record does not contain a transcript of the guilty plea hearing.

[2] The record is unclear regarding when Brucker traveled to and returned from Texas. During the sentencing hearing, the following exchange occurred:

[Defense Counsel]:	. . . . I'd ask the Court to acknowledge that he entered a plea of guilty in a timely fashion and admitted his criminal responsibility.
Court:	And then promptly took off.
[Defense Counsel]:	Well, we had some extenuating circumstances there, Your Honor. . . . He did turn himself in. He did get on a bus and come back from Dallas, Texas.
[Brucker]:	They wouldn't even extradite me.

sentencing hearing, Brucker requested that the court acknowledge that he entered a plea of guilty in a timely fashion and admitted his criminal responsibility. The court identified as aggravating circumstances Brucker's criminal history, probation revocations, and the fact that prior attempts at rehabilitation have failed. The court further stated that "[i]t is true, [Brucker] did accept responsibility by pleading guilty . . . fifteen days prior to his trial" but that "any credit that he might have for that sort of [thing] gets washed away by his trip to Texas." Transcript at 6. The court's judgment of conviction notes the aggravating circumstances above and also states: "Mitigators acceptance of resp." See Appellant's Appendix at 10. The court found that the aggravating circumstances outweighed the mitigating circumstances. The court sentenced Brucker to an executed term of three years in the Indiana Department of Correction and ordered restitution in the amount of $317.

I.

The first issue is whether the court abused its discretion in sentencing Brucker.[3] The Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence."

[Defense Counsel]:	Because they refused to extradite him so he said, well I'll just go back. So I suppose that's not quite as bad as it could have been. He could have just stayed there.
Court:	Yeah.

Transcript at 3-4.

[3] Brucker does not include a separate heading or standard of review in arguing that the trial court abused its discretion in sentencing him. However, a portion of Brucker's arguments relates to whether the court abused its discretion in failing to identify a mitigating circumstance or weigh the aggravating and mitigating circumstances.

Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007) ("Anglemyer Rehearing"). 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 before the court." 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 490-491. 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, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. Id.

Brucker argues that the court did not recognize the "mitigating circumstance for alcohol or substance abuse." Appellant's Brief at 4. The State argues that Brucker "did not proffer his substance abuse as a possible mitigating circumstance during his sentencing hearing," and that even if he had done so, Brucker "has not actively treated his substance abuse." Appellee's Brief at 4-5.

Brucker did not argue at the sentencing hearing that his alleged substance abuse constituted a mitigating circumstance. As a result, we cannot say that the court abused its

discretion in failing to consider any alleged substance abuse problem as a mitigating circumstance. See Anglemyer, 868 N.E.2d at 492 (noting that "[a]s our courts have determined in the past, the trial court does not abuse its discretion in failing to consider a mitigating factor that was not raised at sentencing"); see also Carter v. State, 711 N.E.2d 835, 838-839 (Ind. 1999) (holding that the trial court did not abuse its discretion in failing to consider a mitigating circumstance which was not raised at sentencing); Creekmore v. State, 853 N.E.2d 523, 530 (Ind. Ct. App. 2006) (noting that "if the defendant fails to advance a mitigating circumstance at sentencing, this court will presume that the factor is not significant, and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal"), clarified on denial of reh'g, 858 N.E.2d 230.

Brucker further argues that "[a]s an alternative basis of relief, [he] requests the Court to re-weigh the aggravating and mitigating circumstances." Appellee's Brief at 5. However, we note that "[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse." Anglemyer, 868 N.E.2d at 491.

II.

The next issue is whether Brucker's sentence is inappropriate in light of the nature of the offense and the character of the offender. 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, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v.

State, 848 N.E.2d 1073, 1080 (Ind. 2006). Brucker argues that the "use of the stolen credit card at the gas station is a slight and inconsequential offense which justifies the advisory sentence of 1 ½ years given [his] criminal history," that he "utilized a stolen credit card to purchase gasoline for his vehicle, and the total restitution ordered in this case was $317.00," that "[n]early all of [his] criminal history relates to abuse of alcohol or drugs," and that "[a]ccordingly, the advisory sentence of 1 ½ years is the most appropriate sentence in this case." Appellant's Brief at 3-4.

Our review of the nature of the offense reveals that Brucker, while at the residence of Reaser, took Reaser's unemployment debit card and her camera. Brucker later made a purchase using the debit card at a gas station. The court ordered restitution in the amount of $317.

Our review of the character of the offender reveals that Brucker's criminal history consists of a number of felony and misdemeanor convictions, including, among others, evading arrest or detention, conversion, operating while never receiving a license, pointing a firearm, and resisting law enforcement as misdemeanor convictions, and perjury, intimidation, receiving stolen property, and two counts of resisting law enforcement as class D felonies. In addition, Brucker has had his probation and suspended sentences revoked on several occasions. Further, the record shows that Brucker left for Texas after he pled guilty.

Based upon the record and our review of the nature of the offense and the character of the offender, we conclude that Brucker's sentence is not inappropriate. See Shouse v. State, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006) (concluding in part that the

defendant's three-year sentence for auto theft as a class D felony was not inappropriate given the defendant's criminal history), trans. denied.

For the foregoing reasons, we affirm Brucker's sentence for fraud as a class D felony.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.