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IN THE
COURT OF APPEALS OF INDIANA

JASON CAMPBELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0902-CR-110
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON COUNTY SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause Nos. 48D03-0806-FD-192, 48D03-0806-FC-205, 48D03-0109-CF-310

July 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Jason Campbell appeals his sentences for failure to return to lawful detention as a class D felony,[1] attempted battery with a deadly weapon as a class C felony,[2] criminal recklessness as a class B misdemeanor,[3] two counts of criminal confinement as class C felonies,[4] reckless driving as a class B misdemeanor,[5] and resisting law enforcement as a class D felony.[6] Campbell raises one issue, which we restate as whether the trial court abused its discretion in sentencing Campbell.[7] We affirm.

The relevant facts follow. In December 2001, Campbell pled guilty to burglary as a class B felony and theft as a Class D felony under Cause Number 49D03-0109-CF-310 ("Cause No. 310"). In May 2002, the trial court sentenced Campbell to a total suspended sentence of ten years in connection with those convictions. On March 10, 2008, Campbell admitted that he violated the terms of his probation. The trial court found that

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[1] Ind. Code § 35-44-3-5 (2004) (subsequently amended by Pub. L. No. 116-2009, §16 (eff. July 1, 2009)).

[2] Ind. Code § 35-42-2-1 (Supp. 2007) (subsequently amended by Pub. L. No. 120-2008, § 93 (eff. July 1, 2008); Pub. L. No. 131-2009, § 73 (eff. July 1, 2009)).

[3] Ind. Code § 35-42-2-2 (Supp. 2006).

[4] Ind. Code § 35-42-3-3 (Supp. 2006).

[5] Ind. Code § 9-21-8-52 (Supp. 2005) (subsequently amended by Pub. L. No. 70-2009, § 3 (eff. July 1, 2009)).

[6] Ind. Code § 35-44-3-3 (Supp. 2006).

[7] Campbell mentions Ind. Appellate Rule 7(B), which 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." However, Campbell makes no argument as to why his sentence is inappropriate in light of the nature of the offense and the character of the offender. Therefore, the argument is waived for failure to make a cogent argument. See Ind. Appellate Rule 46(A)(8)(a); Ford v. State, 718 N.E.2d 1104, 1107 n.1 (Ind. 1999).

Campbell violated the conditions of his probation and placed Campbell in a work release program.

On April 10, 2008, while incarcerated at the Madison County Work Release Center under Cause No. 310, Campbell was granted release to report to St. John's Hospital for medical treatment. However, Campbell failed to return to the work release center. On April 14, 2008, the State filed a petition to terminate Campbell's work release privilege based on several work release rule violations, including his failure to return to the work release center. On June 3, 2008, the State charged Campbell with one count of failure to return to lawful detention as a class D felony under Cause Number 48D03-0806-FD-192 ("Cause No. 192").

On June 10, 2008, Police Officer Chris Thompson, aware that there was an outstanding warrant for Campbell's arrest, noticed a vehicle that matched the description of a vehicle belonging to Campbell. Officer Thompson followed the vehicle, contacted police dispatch to confirm that there were active warrants for Campbell's arrest, and verified that the vehicle's license plate number showed that the vehicle belonged to Campbell. Officer Thompson stopped Campbell's vehicle and asked Campbell to step out of the vehicle, and Campbell complied. Campbell's wife, Miranda Campbell, was seated in the vehicle's passenger seat, and Officer Thompson noticed a small child in the backseat of the vehicle.

Officer Thompson asked Campbell to put his hands on top of his head so that he could pat him down for safety. Campbell appeared to get very nervous and Officer

Thompson could see Campbell's hands starting to shake. Officer Thompson asked Campbell to put his hands behind his back, and Campbell complied. As Officer Thompson attempted to place the first handcuff on Campbell's wrist, Campbell "spun to his left and tried to his [sic] the officer with his left elbow." Transcript at 79. Campbell then ran to his vehicle and jumped into the driver's seat. Officer Thompson pursued Campbell and was able to grab the vehicle's door. Campbell started to pull away with Officer Thompson's arm inside the vehicle's door frame. Officer Thompson ran with the vehicle to keep from being pulled under the vehicle's path. Officer Thompson "reached for his taser and yelled to stop the vehicle or he was going to taz [sic] [Campbell]." Id. at 79-80. Campbell swerved to the left, knocking over Officer Thompson. While this was taking place, Miranda Campbell yelled at Campbell to stop because she wanted Campbell to let her and the child out of the vehicle.

Multiple law enforcement agencies[8] pursued Campbell's vehicle at high rates of speed. Eventually, law enforcement was able to stop Campbell's vehicle by deploying stop sticks. After Campbell was taken into custody by the Sheriff's Department, law enforcement determined that the child in the backseat was M.C., one of Campbell's daughters.

On June 16, 2008, the State filed the following additional charges against Campbell in connection with the June 10th incident under Cause Number 489D03-0806-

[8] The State Police, the Chesterfield Police Department, the Pendleton Police Department, the Fortville Police Department, the Lapel Police Department, and the Madison County Sheriff's Department were involved in the pursuit.

FC-205 ("Cause No. 205"): (1) Count I, attempted battery by means of a deadly weapon as a class C felony; (2) Count II, criminal recklessness as a class B misdemeanor; (3) Count III, criminal confinement as a class C felony (with respect to M.C.); (4) Count IV, criminal confinement as a class C felony (with respect to Miranda Campbell); (5) Count V, reckless driving as a class B misdemeanor; and (6) Count VI, resisting law enforcement as a class D felony. On August 20, 2008, the State amended its charging information in Cause No. 205.[9]

On June 30, 2008, the trial court determined that Campbell violated the terms of his work release and his probation, and the trial court revoked Campbell's probation and ordered his previously suspended sentence of ten years to be served at the Indiana Department of Correction. In July 2008, Campbell requested that he be evaluated for competence to stand trial, and the trial court granted Campbell's request and appointed a psychologist and psychiatrist to evaluate Campbell. On November 3, 2008, the trial court held a competency hearing and found that Campbell was competent to stand trial.

On November 17, 2008, Campbell pled guilty under Cause No. 192 to failure to return to lawful detention as a class D felony in connection with his failure to return to the work release center on April 10, 2008, and Campbell pled guilty under Cause No. 205 to the following charges in connection with the June 10, 2008 incident: attempted battery by means of a deadly weapon as a class C felony; criminal recklessness as a class B

[9] It appears that the amended information in Cause No. 205 clarified that the reckless driving charge related to endangering the safety or property of certain individuals.

misdemeanor; two counts of criminal confinement as class C felonies; reckless driving as a class B misdemeanor; and resisting law enforcement as a class D felony.[10]

On December 1, 2008, the trial court held a consolidated sentencing hearing. During the hearing, Campbell testified that he had bipolar disorder and attention deficit hyperactivity disorder (ADHD). Campbell also testified that he was not taking medication for bipolar disorder at the time of the June 10th incident. The trial court found Campbell's criminal history, the fact that Campbell violated conditions of his probation and work release, and the fact that prior attempts at rehabilitation had failed as aggravating circumstances.

The trial court: (1) revoked Campbell's probation and reinstated his previously suspended sentence of ten years under Cause No. 310; (2) imposed a two-year sentence for failure to return to lawful detention as a class D felony under Cause No. 192; and (3) imposed an aggregate sentence of eight years in connection with Campbell's June 10th offenses under Cause No. 205, which consisted of concurrent sentences of eight years for attempted battery with a deadly weapon as a class C felony, 180 days for criminal recklessness as a class B misdemeanor, eight years for the criminal confinement of M.C. as a class C felony, eight years for the criminal confinement of Miranda Campbell as a class C felony, 180 days for reckless driving as a class B misdemeanor, and thirty months

[10] Campbell did not include a copy of his plea agreement in the appellant's appendix. According to a verbal exchange during the guilty plea hearing between the trial court, defense counsel, and the prosecutor, the plea agreement between the State and Campbell provided that Campbell would not receive an executed sentence in excess of ten years in the aggregate in connection with his offenses on April 10, 2008 and June 10, 2008 under Cause Nos. 192 and 205, but that the sentences imposed for those offenses would be "served consecutive to the sanction imposed on . . . the probation violation" under Cause No. 310. Appellant's Appendix Volume I at 73.

for resisting law enforcement as a class D felony. The trial court ordered Campbell's ten-year sentence for probation revocation under Cause No. 310, Campbell's two-year sentence for failure to return to lawful detention as a class D felony under Cause No. 192, and Campbell's aggregate eight-year sentence for his June 10th offenses under Cause No. 205 to be served consecutively at the Indiana Department of Correction.

The issue is whether the trial court abused its discretion in sentencing Campbell. Specifically, Campbell appears to challenge one aggravator found by the trial court and challenges the trial court's failure to find certain mitigators. 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." Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007) (the "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." Id. at 490.

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 that should have been found, is not subject to review for abuse of discretion. Id.

Campbell appears to argue that the trial court should have considered his criminal history to be a mitigator rather than an aggravator. Specifically, Campbell argues that the trial court gave his criminal history too much weight because "he has no juvenile record, no prior felony convictions, history of violent behavior or fighting, and no probation violations filed against him." Appellant's Brief at 18. The record reveals that Campbell has no juvenile record. However, the presentence investigation report ("PSI") reveals that Campbell was "only 18 years old when he received his first felony conviction." Appellant's Appendix Volume II at 7. In addition to pleading guilty to theft as a class D felony and burglary as a class B felony in 2001, Campbell pled guilty to possession of marijuana in 2005, check deception in 2006, and criminal conversion in 2008, all as misdemeanor convictions. In addition, from 2001 to 2008, Campbell repeatedly violated the terms of his probation, including failure to submit to drug screening, failure of drug screens, and failure to report to programs. The PSI notes: "While he was on probation, numerous violations were filed against [Campbell] resulting in placement on In-Home Detention, placement in Work Release, placement in the COS Program, and placement in the RIGHT Program." Id. Campbell was held in contempt of court in 2006 for lying to the trial court. The PSI noted: "Since his 18th birthday . . . the defendant's criminal

record has been snowballing out of control." Id. at 10. Campbell essentially argues that the trial court failed to give the aggravator proper weight. Pursuant to Anglemyer, the relative weight or value assignable to reasons properly found is not subject to our review for abuse of discretion. Consequently, we cannot review Campbell's argument. See Anglemyer, 868 N.E.2d at 491.

Campbell argues that the trial court abused its discretion by failing to consider certain proposed mitigators. Specifically, Campbell argues that the trial court overlooked his guilty plea and his mental health. "The finding of mitigating factors is not mandatory and rests within the discretion of the trial court." Ellis v. State, 736 N.E.2d 731, 736 (Ind. 2000). The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Gross v. State, 769 N.E.2d 1136, 1140 (Ind. 2002), trans. denied. "Nor is the court required to give the same weight to proffered mitigating factors as the defendant does." Id. Further, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Sherwood v. State, 749 N.E.2d 36, 38 (Ind. 2001). The trial court may "not ignore facts in the record that would mitigate an offense, and a failure to find mitigating circumstances that are clearly supported by the record may imply that the trial court failed to properly consider them." Id. However, "an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant." Anglemyer Rehearing, 875 N.E.2d at 220-221.

With respect to the trial court's consideration of Campbell's guilty plea, the Indiana Supreme Court has held that "a defendant who pleads guilty deserves 'some' mitigating weight be given to the plea in return." Id. at 220 (quoting McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007)). The significance of a guilty plea as a mitigating factor varies from case to case. Id. at 221. "For example, a guilty plea may not be significantly mitigating when it does not demonstrate the defendant's acceptance of responsibility . . . or when the defendant receives a substantial benefit in return for the plea." Id. (citing Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999)).

Here, the evidence against Campbell was strong. Also, the plea agreement between the State and Campbell provided that Campbell would not receive an executed sentence in excess of ten years in the aggregate in connection with Campbell's offenses on April 10, 2008 and June 10, 2008. Had Campbell been convicted at trial of the charges against him, including three class C felonies, two class D felonies, and two class B misdemeanors, he could have received consecutive sentences and an aggregate sentence greater than ten years. Given the evidence against Campbell and the significant benefit that Campbell received as a result of the plea agreement, we conclude that the trial court did not abuse it discretion. See Sensback, 720 N.E.2d at 1165 (holding that the defendant received "benefits for her plea adequate to permit the trial court to conclude that her plea did not constitute a significant mitigating factor").

Campbell next argues that the trial court abused its discretion when it failed to identify his mental health as a mitigating circumstance. A defendant's mental illness may

be a valid mitigating circumstance. See Anglemyer, 868 N.E.2d at 493. The following considerations are relevant when the trial court determines the significance of a defendant's mental illness for sentencing: (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. Weeks v. State, 697 N.E.2d 28, 30 (Ind. 1998).

Here, the record reveals that Campbell was given "a diagnosis of Bi-Polar Disorder, Type II, and ADHD approximately one and one-half to two years ago . . . ." Appellant's Appendix Volume II at 9. With respect to his April 10, 2008 offense, the PSI indicates that Campbell stated: "I failed a couple of urine screens at Work Release (for opiates and benzodiazepines). I figured they were going to violate me, that's why I didn't go back." Id. at 8. This evidence does not indicate that Campbell failed to return to the work release center due to a mental illness; instead, it suggests that Campbell failed to return to the work release center because he anticipated that he would be found to have violated conditions of his work release. We cannot say that the evidence shows that Campbell was incapable of controlling his behavior on April 10, 2008 or that there was any nexus between his mental health issues and failing to return to the work release center.

With respect to his June 10, 2008 offenses, the record reveals that Campbell stated: "The only thing I remember is the cop pulling me over and (me) driving off." Id.

The record also reveals that Campbell had been diagnosed with bipolar disorder and ADHD "approximately one and one-half to two years ago." Id. at 9. Based on this evidence, Campbell argues that "[t]here is [sic] connections between the crime committed and Campbell's disorder." Appellant's Brief at 18. The trial court declined to find that Campbell's mental health to be a mitigating factor.

While Campbell had been diagnosed with bipolar disorder and ADHD approximately one and one-half to two years prior to his offenses, the duration of Campbell's mental health problems put him on notice that he needs to accept and comply with treatment. The record also reveals that Campbell was not taking his medication at the time he committed the June 10th offenses and that he had not taken his medication for "[p]robably about four (4) months." Transcript at 87. This factor does not weigh in favor of recognizing Campbell's mental illnesses as a significant mitigating circumstance.

Campbell also argues that he remembered only "the cop pulling me over and (me) driving off." Appellant's Appendix Volume II at 9. However, there is no evidence that Campbell did not remember the high speed chase due to his mental health. In addition, to the extent that Campbell's mental condition was affected by his voluntary act of failing to obtain or take medications for his mental health conditions, especially in light of his awareness for over a year and a half of his problems, we cannot conclude that this possible nexus warrants a finding that Campbell's mental illnesses are significantly mitigating. Furthermore, the record does not reveal any evidence regarding the overall limitations on Campbell's functioning due to his mental health issues. The trial court did

not abuse its discretion by failing to recognize Campbell's mental health as a mitigator. See, e.g., Wooley v. State, 716 N.E.2d 919, 931 (Ind. 1999) (holding that the trial court did not abuse its discretion by determining that the defendant's mental illness was not a mitigating factor), reh'g denied.

For the foregoing reasons, we affirm Campbell's sentence for failure to return to lawful detention, attempted battery with a deadly weapon, criminal recklessness, two counts of criminal confinement, reckless driving, and resisting law enforcement.[11]

Affirmed.

CRONE, J., and BRADFORD, J., concur.

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[11] Campbell also argues that the trial court abused its discretion when it "imposed the entire suspended portion of a prior sentence." Appellant's Brief at 12-13. However, Campbell makes no argument as to how the trial court abused its discretion when it imposed Campbell's previously suspended sentence. Therefore, Campbell waived that argument for failure to make a cogent argument. See Ind. Appellate Rule 46(A)(8)(a); Ford, 718 N.E.2d at 1107 n.1.

Even assuming that Campbell did not waive this issue, we cannot say that the trial court abused its discretion by ordering him to serve his suspended sentence of ten years. A trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Id. Here, the trial court sentenced Campbell in May 2002 to ten years suspended for burglary and theft convictions. In January 2006, Campbell admitted that he violated the conditions of his probation by submitting a urine specimen that tested positive for the presence of marijuana and was placed on home detention for two years. In January 2007, Campbell admitted that he violated the conditions of his in-home detention by failing to pay fees. In April 2007, Campbell admitted that he violated the conditions of his probation by failing to submit a urine screen, failing to return to in-home detention, and destroying an in-home transmitter. In March 2008, Campbell admitted that he violated the conditions of his probation because he failed to behave well in society, was alleged to have committed a new criminal offense of conversion, failed to pay probation fees or restitution, failed to comply with curfew requirement, and failed to timely report to probation. In June 2008, Campbell admitted that he violated the conditions of his probation by failing to return to the work release center. Given Campbell's numerous violations of probation, we cannot say that the trial court abused its discretion by ordering him to serve his suspended sentence of ten years in the Indiana Department of Correction. See Abernathy v. State, 852 N.E.2d 1016, 1022 (Ind. Ct. App. 2006) (holding that the trial court did not abuse its discretion by ordering defendant to serve his suspended sentence).