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ATTORNEY FOR APPELLANT:

MARIELENA DUERRING
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MICHAEL HUMMEL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0907-CR-347
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0805-FB-42

December 16, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Michael Hummel (Hummel), appeals his sentence for robbery resulting in bodily injury, a Class B felony, Ind. Code § 35-42-5-1(1).

We affirm.

ISSUES

Hummel raises one issue on appeal, which we restate as the following two issues:

(1) Whether the trial court abused its discretion by finding as aggravating factors his history of substance abuse and the extent of the victim's injury; and

(2) Whether his sentence is inappropriate in light of his character and the nature of his offense.

FACTS AND PROCEDURAL HISTORY

On April 4, 2008, Linda Fields (Fields) was walking across her employer's parking lot to begin her day at work. Fields was approached by Hummel, who grabbed her purse. Fields did not release her grip on the purse, and she was subsequently pulled by Hummel to a nearby car where his accomplice was waiting in the driver's seat. Hummel got in the car and his accomplice proceeded to drive away while Fields was still hanging on to her purse, causing her to be dragged several hundred feet before she let go of the purse. Fields stated that as a result of the incident, she has permanent scarring on her right leg, and her right arm has a chip in the bone.

On May 23, 2008, the State filed an Information charging Hummel with robbery resulting in bodily injury, a Class B felony, I.C. § 35-42-5-1(1). On January 22, 2009,

without the benefit of a plea agreement, Hummel withdrew his plea of not guilty and entered a plea of guilty. On March 26, 2009, the trial court held Hummel's sentencing hearing. The trial court found as aggravating factors: 1) Hummel's juvenile criminal history; 2) his use of marijuana beginning at age 13; 3) his failure to cease violating criminal law, despite being sanctioned in the past; 4) his use of alcohol beginning at age 11; 5) the victims severe injury and permanent scarring, and 6) the fact that "each use of marijuana and alcohol constitute a separate and distinct criminal offense for which [Hummel] was not arrested or convicted." (Appellant's App. p. 24). The trial court found as mitigating factors: 1) Hummel's acceptance of responsibility for the crime; 2) his age of 20 years; 3) his abusive childhood; 4) the fact that he paid $750 restitution at sentencing; 5) he earned his G.E.D. while out on bond; 6) he completed a drug treatment program; 7) he apologized to the victim; and 8) he had special education status in school.

Finding that the aggravating factors outweighed the mitigating factors, the trial court sentenced Hummel to 14 years imprisonment with three years suspended to formal probation for a total of 11 years to be served in the Department of Correction. The trial court also ordered Hummel to perform 100 hours of community service and pay restitution in the amount of $2,000.

Hummel now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

Hummel contends that the trial court abused its discretion by sentencing him to an executed sentence of 11 years. As long as a sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemeyer v. State*, 868 N.E.2d 482, 491, *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* One way in which a trial court may abuse its discretion is by entering a sentencing statement that explains the reasons for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. *Id*. at 490-91.

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion by failing to properly weigh such factors. *Id*. at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id*.

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id*. Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence

is inappropriate in light of the nature of the offense and the character of the offender. *Id*. Where a defendant asks us to exercise our appropriateness review, the burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other considerations that come to light in a given case. *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

II. *Aggravators*

Here, Hummel first argues that the trial court abused its discretion in considering his history of alcohol and marijuana addiction as an aggravating factor. Specifically, Hummel claims his substance abuse problems were an attempt to "cope with his troubled youth and home life." (Appellant's Br. p. 4). Hummel also claims that his prior substance abuse should not be an aggravating factor because he completed a treatment program on his own accord.

We have previously held that a defendant's history of substance abuse can be considered an aggravating factor by the trial court at sentencing. *Roney v. State*, 872 N.E.2d 192, 199 (Ind. Ct. App. 2007). Therefore, the trial court can only be found to have abused its discretion in considering Hummel's history of substance abuse to be an aggravating factor if the record does not support that finding. *See Anglemeyer v. State*, 868 N.E.2d 482, 490-491 (Ind. 2007). The Presentence Investigation Report states that Hummel began drinking at age 11 and began using marijuana at age 13. (Appellant's App. p. 42).

Furthermore, the fact that Hummel attended substance abuse treatment shows that he had a substance abuse problem. Based on the foregoing, the record supports the trial court's finding that Hummel's history of substance abuse was a proper aggravating factor.

Next, Hummel argues that the trial court abused its discretion in considering the extent of the victim's injury as an aggravating factor. Specifically, Hummel contends that there was no evidence "to corroborate [the victim's] claims of permanent scarring or bone chips." (Appellant's Br. p. 4). We have previously held that the severity of a resulting injury can be considered an aggravating factor by the trial court at sentencing. *Hulfachor v. State*, 813 N.E.2d 1204, 1209 (Ind. Ct. App. 2004). So, as stated above, the trial court can then only be found to have abused its discretion in finding the victim's injury an aggravating factor if the record does not support that finding. *See Anglemeyer v. State*, 868 N.E.2d 482, 490-491 (Ind. 2007). The victim in this case was dragged several hundred feet by a motor vehicle, and she stated in her Victim Impact Statement that she has "perminent [sic] scars on right hip [and] leg," her "right arm has [a] chip in it," and she has "to take pain pills to do [her] job." (Appellant's App. p. 44). Furthermore, the victim incurred $1,600 in hospital bills receiving treatment for her injuries. (Appellant's App. p. 46). Based on the foregoing, the record supports the trial court's finding that the severity of the victim's injury was a proper aggravating factor.

III. *Appropriateness of the Sentence*

In addition, we find that Hummel's sentence is appropriate in light of his character and the nature of the crime. With regard to Hummel's character, we note that he has used

alcohol since age 11 and used marijuana since age 13, he was adjudicated as a juvenile for several burglary charges, and he had only been out of the Indiana Boys' School for one year when he committed this crime. Although Hummel's attainment of his G.E.D. and completion of addiction treatment is commendable, both of these actions were done after the crime was committed.

Initially, we note that Hummel does not make any argument that his sentence is inappropriate in light of the nature of the offense. Accordingly, he has waived appellate review of his sentence under Indiana Appellate Rule 7(B). See *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (holding defendant waived Rule 7(B) argument where he did not present a cogent argument that his sentence was inappropriate in light of his character). Waiver notwithstanding, Hummel's sentence is not inappropriate in light of the nature of the offense. We observe that Hummel grabbed the victim's purse while she was in her employer's parking lot, pulled her to his accomplice's car, and then continued to hold onto the purse while the car dragged the victim several hundred feet resulting in injury.

Altogether, Hummel has not demonstrated that his sentence is inappropriate considering the nature of his offense and his character.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when sentencing Hummel and that his sentence is not inappropriate when the nature of his offense and his character are considered.

Affirmed.

BAKER, C.J., and FRIEDLANDER, J., concur.