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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM NEWHOUSE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-1001-CR-34
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kurt M. Eisgruber, Judge
Cause No. 49G01-0902-FB-23195

December 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

William Newhouse appeals his twenty-four year sentence, alleging the trial court considered an improper aggravator and abused its discretion when failing to allow him to enter a rehabilitation program in lieu of incarceration. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

On February 5, 2009, Newhouse was arrested after police received a call about a possible "peeping tom" and found Newhouse standing outside the victim's bedroom window with his genitalia exposed. He was charged with two counts of Class B felony burglary,[1] one count of Class B felony attempted burglary,[2] one count of Class D felony stalking,[3] three counts of Class D felony voyeurism,[4] one count of Class D felony attempted residential entry,[5] one count of Class A misdemeanor public indecency,[6] and one count of Class C misdemeanor public nudity.[7] He entered a plea of guilty to all counts. The court sentenced Newhouse to twenty-four years, with twelve years to be served in the Department of Correction, two years served in Community Corrections work release, and ten years suspended.

DISCUSSION AND DECISION

Sentencing decisions rest within the sound discretion of the trial court and we review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision

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[1] Ind. Code § 35-43-2-1.
[2] Ind. Code §§ 35-43-2-1 and 35-41-5-1(a).
[3] Ind. Code § 35-45-10-5.
[4] Ind. Code § 35-45-4-5.
[5] Ind. Code §§ 35-43-2-1.5 and 35-41-5-1(a).
[6] Ind. Code § 35-45-4-1.

is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions drawn therefrom. *Id.* We review for an abuse of discretion the court's finding of aggravators and mitigators to justify a sentence, but we cannot review the relative weight assigned to those factors. *Id.* at 490 - 491. When reviewing the aggravating and mitigating circumstances identified by the trial court in its sentencing statement, we will remand only if "the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record, and advanced for consideration, or the reasons given are improper as a matter of law." *Id.*

Newhouse argues the trial court improperly considered the alleged duration of one of his crimes as an aggravating circumstance. The trial court stated during sentencing:

> The State has indicated certain aggravators – the circumstances – the time over which this happened with a four or five month window if not longer – we're not sure – I think can be aggravating . . . the circumstances of this crime and the way it happened – the markers, the nature and circumstances and duration of it all.

(Tr. at 108-109.) In its charging information, the State alleged Newhouse committed stalking and

> . . .said course of conduct included at least two (2) of the following actions:
> 1. On or about or between September 17, 2008 and January 14, 2009, William Newhouse, went to [victim]'s residence, and/or entered her screened porch, and/or watched [victim] inside her residence, and/or left cigarette butt(s) inside her screened porch, and/or watched [victim] as she walked a dog; and/or
> 2. On or about January 15, 2009, William Newhouse went to [victim]'s residence and/or entered her screened porch, and/or watched [victim] inside her residence, and/or masturbated on a door leading into her bedroom, and/or left cigarette butt(s) outside her bedroom window; and/or
> 3. On or about January 17, 2009, William Newhouse went to [victim]'s

[7] Ind. Code § 35-45-4-1.5.

> residence and/or entered her screened porch, and/or watched [victim] inside her residence, and/or masturbated on a door leading into her bedroom, and/or 4. On or about February 5, 2009, William Newhouse went to [victim]'s residence and/or attempted to enter her screened porch, and/or watched [victim] inside her residence, and/or masturbated while watching her.

(App. at 72.) At his guilty plea hearing, when asked about the first incident which allegedly occurred between September 17, 2008, and January 14, 2009, Newhouse answered, "I don't recall that incident though – no, I never seen [sic] her outside of her apartment." (Tr. at 26.) Newhouse asserts that because he did not admit to the first incident as alleged in the charging information, the court could not use the alleged duration of that crime as an aggravator. We cannot agree.

A trial court may find the nature and circumstances of the crime to be an aggravating circumstance. *Plummer v. State*, 851 N.E.2d 387, 391 (Ind. Ct. App. 2006). The victim testified to the duration of Newhouse's crime, stating she "felt a sense someone was watching [her]" and "kept smelling cigarette smoke – really strong cigarette smoke in [her] bedroom," (Tr. at 43), in the late fall of 2008. She testified she called the police in January 2009 because she saw a man running from her screened patio. Our Indiana Supreme Court has long held that "allegations of prior criminal activity need not be reduced to conviction before they may be properly considered as aggravating circumstances by a sentencing court." *Tunstill v. State*, 568 N.E.2d 539, 544-545 (Ind. 1991). Based on testimony of the victim, the trial court could consider the duration of the incidents as an aggravator, even though Newhouse did not plead guilty to those crimes.

Newhouse also argues the trial court should have given more consideration to a rehabilitation plan presented during sentencing by a former director of the Sex Offender Management Program, who stated "the best treatment for Newhouse's sexual issues," (Appellant's Br. at 14), would come from a program with a "specialized therapist to individually tailor a program based on Newhouse's unique individual needs, desires and aptitudes." (*Id*. at 15.) However, the trial court considered Newhouse's need for rehabilitation, as it ordered Newhouse to "start [his] sex offender therapy right away even when you're in that Community Corrections work release . . . ." (Tr. at 110.) It is apparent the trial court found Newhouse in need of rehabilitation, and did not abuse its discretion in denying his request to be rehabilitated as he desired. *See King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008) ("As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities.").[8]

CONCLUSION

Newhouse has not demonstrated the trial court abused its discretion in its finding of aggravating circumstance,[9] and did not abuse its discretion when denying his request for placement in a rehabilitation program in lieu of incarceration. Thus we affirm his sentence.

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[8] Newhouse framed his argument regarding the trial court's failure to place him in his desired rehabilitation program as if the trial court did not consider his need for rehabilitation as a mitigator. As the trial court clearly considered such, we remind counsel to properly phrase its arguments as to facilitate appellate review, not to confuse it. Further, we note that failure to make a cogent argument regarding an issue amounts to waiver thereof, *see* Ind. Appellate Rule 46(A)(8)(a) and *Lyles v. State*, 834 N.E.2d 1035, 1051 (Ind. Ct. App. 2005), *trans denied*, although we decide this issue notwithstanding that waiver.

[9] Newhouse also argues the punitive aspect nature of twelve years of his sentence incarcerated violates Indiana Constitution Article I, Section 18 of the Indiana Constitution, which states, "[t]he penal code shall be founded on principles of reformation, and not of vindictive justice." His argument is misplaced; "Section 18 applies

Affirmed.

ROBB, J., and VAIDIK, J., concur.

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only to the penal code as a whole and not to individual sentences." *Scruggs v. State*, 737 N.E.2d 385, 387 n.3 (Ind. 2000).