



Rodney Simmons appeals his sentence for Class C felony stalking.<sup>1</sup> He contends the trial court inadequately explained its reasoning for the sentence and erroneously considered the effect of the crime on the victim. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

In 2008, a fifty-five year old widow, Brenda Townsend, began dating Simmons, who later moved into Townsend's house. At some point, Simmons assaulted Townsend, and Townsend decided to end the relationship. Simmons said he would not move out of the house unless the police forced him to leave. Townsend obtained a protective order,<sup>2</sup> and the police removed Simmons from her house on September 23, 2009.

Following Simmons' removal, someone broke into Townsend's garage and, on several occasions, vandalized her car. On October 20, 2009, Townsend saw Simmons exit her garage with a baseball bat. She intentionally set off her security alarm, and Simmons fled. On October 23, Simmons accosted Townsend at her workplace, and a neighbor saw Simmons at Townsend's garage later that evening. Thereafter, someone jarred Townsend's garage door off its tracks and damaged her security cameras. Officers took Simmons into custody when they found him near Townsend's house on October 27.

On October 30, the State charged Simmons with stalking. The following day, while at a casino, Townsend spotted Simmons. Townsend's brother and Simmons argued, and security guards escorted Simmons off the property. On November 7, Simmons called

---

<sup>1</sup> Ind. Code § 35-45-10-5(a)-(b)(2).

<sup>2</sup> In addition to obtaining the protective order, Townsend purchased a security system for her house and installed security cameras on her property. She also bought a reinforced steel door.

Townsend several times during the middle of the night and threatened to murder her.

A jury found Simmons guilty of Class C felony stalking, and the trial court sentenced Simmons to six years in prison.

### **DISCUSSION AND DECISION**

The Legislature assigned a two to eight year sentence range for Class C felonies and set an advisory sentence of four years. Ind. Code § 35-50-2-6. Simmons challenges his six-year sentence and requests we reduce it under Appellate Rule 7(B), which permits us to “revise a sentence authorized by statute if, after due consideration of the trial court’s decision, . . . the sentence is inappropriate in light of the nature of the offense and the character of the offender.”

Simmons asserts his sentence is inappropriate because the trial court inadequately explained its reasoning for the sentence and erroneously considered the effect of the crime on the victim. These arguments fall within the purview of abuse of discretion, not under Rule 7(B). *See Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218 (Ind. 2007). There is an abuse of discretion when the trial court’s conclusions are “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.” *Matter of L.J.M.*, 473 N.E.2d 637, 640 (Ind. Ct. App. 1985).

A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record. *Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005), *trans. denied*. Because Simmons did not present a cogent Rule

7(B) argument, he waived this argument. *Id.*

Similarly, because Simmons does not ask us to review under abuse of discretion or provide a standard of review therefor, he waives any abuse of discretion argument. *See id.* Notwithstanding the waiver, the sentence was not erroneous.

1. Abuse of Discretion

Trial courts must enter a sentencing statement that articulates the mitigating and aggravating factors. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). Simmons argues the trial court “failed to enter into any explanation why the impact of the crime on the victim justified” the six-year sentence. (Appellant’s Br. at 6.) The trial court was not required to give such an explanation, and the trial court identified the mitigating and aggravating factors during the sentencing hearing. The court noted as mitigating factors Simmons’ letter of apology<sup>3</sup> and the fact that Simmons has three dependent children.<sup>4</sup> As an aggravating factor, the court identified Simmons’ criminal history<sup>5</sup>, which includes a previous convictions for second degree burglary, two separate convictions of first degree criminal mischief, and a conviction of retaliating against a participant in the legal process.

We may not review the relative weights the trial court assigned the mitigating and aggravating factors, *see Anglemyer*, 868 N.E.2d at 490, and thus we do not hold the trial court abused its discretion in sentencing him.

---

<sup>3</sup> The judge explained that he detected a “blame the victim” sentiment in Simmons’ letter.

<sup>4</sup> None of Simmons’ dependent children reside with him.

<sup>5</sup> Simmons’ criminal history comes from Kentucky convictions.

## 2. Inappropriateness of Sentence

Under the Indiana Constitution, we have the authority to revise the sentence imposed by the trial court. Ind. Const. art. 7 § 4; *Buchanan v. State*, 767 N.E.2d 967, 972 (Ind. 2002).

Appellate Rule 7(B) authorizes revision if a sentence is inappropriate in light of the nature of the offense and the character of the offender. We find no reason to change Simmons' sentence.

We find the nature of Simmons' offense particularly disturbing. Simmons invaded Townsend's property on multiple occasions, once with a bat, after threatening to kill her. Simmons violated the intimacy and protection of Townshend's home.<sup>6</sup> After the State charged Simmons with stalking, he confronted Townsend twice more. Simmons' defiance for the law after being charged also worsens the offense.

Simmons' character does not merit revising his sentence. He has previously been convicted of burglary, criminal mischief, and retaliating against a participant in the legal process. Simmons' criminal history indicates a disregard for the law, which reflects poorly on his character.

In light of Simmons' character and offense, we cannot hold his six-year sentence is inappropriate.

---

<sup>6</sup> The statutory definition of stalking does not require Simmons to invade Townshend's property. In this way, he went over and above the underlying offense.

## CONCLUSION

Simmons did not ask us to review his sentence for an abuse of discretion, and he therefore waived this argument. Notwithstanding this waiver, the trial court did not abuse its discretion. Neither has Simmons demonstrated his sentence is inappropriate, and we decline to revise it under Appellate Rule 7(B).

Affirmed.

BAKER, J., and BRADFORD, J., concur.