

STATEMENT OF THE CASE

Kunta Steward appeals his sentence following his conviction for Reckless Homicide, a Class C felony. He presents two issues for our review, which we restate as:

1. Whether the trial court abused its discretion when it identified an aggravating circumstance at sentencing.
2. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 19, 2006, Steward and his friend Luke Darr were visiting Paul Carnahan and others inside Carnahan's mobile home. As Steward was removing a gun from his waistband, the gun discharged and struck Darr in the back of the head, killing him. Police arrested Steward, and the State charged him with involuntary manslaughter, reckless homicide, and carrying a handgun without a license.

On October 23, 2006, Steward pleaded guilty to reckless homicide, and the State dismissed the other two charges. The plea agreement left sentencing open to the trial court's discretion. At the conclusion of the sentencing hearing, the trial court identified two aggravators, namely, Steward's criminal history and the "egregious facts of the crime[.]"¹ Appellant's App. at 106. The trial court also identified two mitigators, namely, his guilty plea and accepting responsibility for his actions. The trial court found

¹ In its oral sentencing statement, the trial court stated that it considered "the loss of Mr. Darr's life . . . very strongly in the equation" in weighing aggravators and mitigators. Appellant's App. at 168. While Steward correctly notes that an element of a crime cannot be used as an aggravator, he does not challenge the trial court's oral sentencing statement. Instead, his argument is limited to whether the trial court abused its discretion in its written sentencing statement.

that the aggravators outweighed the mitigators and imposed an eight year sentence, with two years suspended to probation. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Abuse of Discretion

Steward first contends that the trial court abused its discretion when it identified the “egregious facts of the crime” as an aggravator.² In particular, Steward asserts that he “did not admit to egregious facts as none were discussed at the sentencing hearing, a jury did not make a finding of particularly flagrant acts, therefore the use of unidentified egregious facts as an aggravating factor” constitutes an abuse of discretion. Brief of Appellant at 12. We cannot agree.

Subject to the review and revise power under Indiana Appellate Rule 7(B), sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (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.

Here, at the guilty plea hearing, Steward admitted to the factual basis for his plea as follows:

[O]n August the 19th, 2006, at approximately 11:57, Posey County Dispatch received a call of a gunshot wound at 6124 Gregory Lane. When we arrived, we discovered Luke Darr had been shot in the back of the head. There was a .44 handgun on the ground. There were a number of witnesses present in the trailer. At the time, Mr. Steward informed us that he had

² Steward characterizes his argument on this issue as a Blakely challenge. However, because Steward was sentenced under the new advisory sentencing scheme, he can only assert that the trial court abused its discretion in identifying aggravators. See Anglemyer, 868 N.E.2d at 491.

arrived at the trailer and had the .44 on his person in his waistband. He took the .44 from his waistband, and when he did, the weapon discharged striking Mr. Darr in the back of the head.

Guilty Plea Transcript at 4-5. In addition, Steward testified that he had consumed beer prior to the shooting. Each of those admitted facts goes to the nature and circumstances of the crime, which is a valid aggravator.

In his reply brief, which was filed after our Supreme Court's opinion in Anglemyer, Steward contends that the trial court's oral and written sentencing statements are inadequate to permit meaningful appellate review. In Anglemyer, our Supreme Court held in relevant part that: 1) the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence; and 2) the reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion. 868 N.E.2d at 491. And the court observed:

[A] statement of reasons for imposing a particular sentence serves numerous other goals beyond the two primary goals. An attempt by the sentencing judge to articulate his [or her] reasons for a sentence in each case should in itself contribute significantly to the rationality and consistency of sentences. A statement by the sentencing judge explaining the reasons for commitment can help both the defendant and the public understand why a particular sentence was imposed. An acceptance of the sentence by the defendant without bitterness is an important ingredient in rehabilitation, and acceptance by the public will foster confidence in the criminal justice system.

Id. at 489 (quoting Abercrombie v. State, 417 N.E.2d 316, 319 (Ind. 1981)).

Here, while the trial court did not specify in either of its sentencing statements which facts it found egregious, the admitted factual basis for Steward's plea provides adequate grounds for the challenged aggravator. For instance, that Steward shot Darr in the back of the head, without more, sets this crime apart from other reckless homicides

and can be, therefore, characterized as egregious. Steward has not demonstrated that the trial court abused its discretion when it issued its oral and written sentencing statements.

Issue Two: Appellate Rule 7(B)

Steward next contends that his sentence is inappropriate in light of the nature of the offense and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” Anglemyer, 868 N.E.2d at 491 (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Under Appellate Rule 7(B), we assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson, 856 N.E.2d at 142 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Anglemyer, 868 N.E.2d at 494 (quoting Childress, 848 N.E.2d at 1080) (alteration in original).

Again, Steward takes umbrage with the trial court’s characterization of the offense as “egregious.” In particular, Steward points out that testing conducted by the Indiana State Police showed that the gun used in the crime had “functional defects [that] occur at random.” Appellant’s App. at 104. Steward maintains that that evidence supports a determination that the shooting was purely accidental, and, therefore, was not egregious. But, again, the evidence shows that Steward shot Darr in the back of the head. That, without more, supports the trial court’s statement on the nature of the offense.

With regard to his character, Steward suggests that the trial court made too much of his criminal history. He points out that he has not previously committed a felony offense. But Steward acknowledges an “extensive misdemeanor record, including at least one crime of violence.” Brief of Appellant at 13. Indeed, the presentence investigation report shows that Steward committed eight misdemeanor offenses between 1997 and 2005. In addition, Steward has previously had his probation revoked.

In essence, in making his argument under Appellate Rule 7(B), Steward argues that the trial court should have found that the mitigators outweighed the aggravators. But the trial court’s determination on the weight accorded each aggravator and mitigator is not subject to review for an abuse of discretion. See Anglemyer, 868 N.E.2d at 491. Regardless, the trial court did assess the two mitigators significant weight in suspending two years of Steward’s sentence to probation. We cannot say that Steward’s sentence is inappropriate in light of the nature of the offense and his character.

Affirmed.

MATHIAS, J., and SHARPNACK, J., concur.