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IN THE
COURT OF APPEALS OF INDIANA

GLENN A. PHARRIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 84A01-0701-CR-27
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable James R. Walker, Judge
Cause No. 84D06-0608-FA-2595

July 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Glenn A. Pharris appeals the forty-five-year sentence imposed following his guilty plea to Attempted Murder,[1] a class A felony. Specifically, Pharris argues that "the trial court did not properly balance the aggravators and the mitigators in arriving at the sentence." Appellant's Br. p. 6. Pharris also asserts that the trial court erred in refusing to identify several mitigating factors that were apparent from the record. As a result, Pharris contends that the sentence is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm the judgment of the trial court.

FACTS

In April 2006, Gary Rood picked up Pharris, who was hitchhiking in Terre Haute, and offered him a ride home. The two became friends, and Rood assisted Pharris through the summer because Pharris apparently suffered from emphysema and was not employed. Specifically, Rood paid Pharris to cut his grass. On August 19, 2006, Rood was "burning" some music CDs for Pharris on a computer. Appellant's App. p. 16. At some point, Pharris asked Rood if he had any money or credit cards. Following this inquiry, Pharris suddenly slashed Rood's throat with a knife, pushed him to the floor and continued stabbing him. Pharris then shoved Rood into a bathroom where he stabbed Rood again and hit him with a glass ashtray and other items.

After Rood lost consciousness, Pharris took Rood's wallet and car keys. At some point, Rood awoke and heard his vehicle being driven away. Rood then reported the incident to the police, and Pharris was eventually arrested. On August 23, 2006, Pharris was charged

[1] Ind. Code § 35-42-1-1; Ind. Code § 35-41-5-1.

with attempted murder, class A felony robbery, class D felony auto theft, class D felony resisting law enforcement, and with being a habitual offender. Pursuant to an agreement negotiated with the State, Pharris agreed to plead guilty to the attempted murder charge in exchange for the dismissal of all remaining charges. The plea agreement also provided that sentencing was left to the trial court's discretion.

Following acceptance of the plea agreement, the trial court conducted a sentencing hearing on December 26, 2006. At that time, the trial court determined that Pharris's criminal history was an aggravating circumstance. Specifically, Pharris's juvenile delinquency adjudications began in 1972. Pharris had eleven prior felony convictions as an adult, including two convictions for class B felony robbery. Pharris also had four convictions for class C felony burglary. The trial court stated to Pharris that "your criminal history involves serious offenses over a prolonged period of your adult life and I find that to be a very significant aggravating circumstance." Appellant's App. p. 6.

The trial court then determined that Pharris's decision to plead guilty—including accepting responsibility for the crime—was the sole mitigating circumstance. The trial court specifically found that the aggravating circumstance outweighed the mitigating factor and sentenced Pharris to forty-five years of incarceration. Pharris now appeals.

DISCUSSION AND DECISION

Pharris contends that his sentence must be vacated because the trial court improperly weighed the aggravating and mitigating circumstances in deciding to impose a forty-five year

sentence. Pharris further maintains that the trial court erred when it did not identify several mitigating circumstances that were supported by the record. Therefore, Pharris requests that we revise his sentence in accordance with Indiana Appellate Rule 7(B) because forty-five years is inappropriate when considering the nature of the offense and his character.

I. Anglemyer and the Amended Sentencing Scheme

Before addressing the merits of Pharris's arguments, we observe that on April 25, 2005, the General Assembly amended Indiana's felony sentencing statutes,[2] which now provide that the person convicted is to be sentenced to a term within a range of years, with an "advisory sentence" somewhere between the minimum and maximum terms. See Ind. Code §§ 35-50-2-3 to -7. Relevant here is Indiana Code section 35-50-2-4, which provides that "[a] person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years."

When determining the sentence to impose on a defendant, the trial court "may consider" certain enumerated aggravating and mitigating circumstances in addition to other matters not listed in the statute. I.C. §§ 35-38-1-7.1(a) to -7.1(c). Furthermore, the legislature provided that a trial court "may impose any sentence that is . . . authorized by statute . . . regardless of the presence or absence of aggravating circumstances or mitigating circumstances." I.C. § 35-38-1-7.1(d).

Notwithstanding this provision, the legislature kept in place a requirement that, when

[2] Pharris committed the crimes after the April 2005 amendment of the sentencing statutes; thus, we will apply the amended versions thereof.

sentencing a defendant for a felony conviction, if the trial court finds aggravating or mitigating circumstances, it must create "a statement of the court's reasons for selecting the sentence it imposes." I.C. § 35-38-1-3(3). Our Supreme Court recently concluded, therefore, that the "new statutory regime" mandates that trial courts must enter sentencing statements whenever imposing sentences for felony convictions. Anglemyer v. State, --- N.E.2d ---, No. 43S05-0606-CR-230, slip op. p. 9 (Ind. June 26, 2007).

Sentencing statements are not required to contain a finding of aggravators or mitigators; rather, they need include only a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." Id. If the statement does, however, include a finding of aggravators or mitigators, then it must "identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating." Id.

Essentially, a defendant may now make two types of challenges to the trial court's imposition of a felony sentence—process-based and result-based. We review challenges to the trial court's sentencing process for an abuse of discretion. Id. at 10 (concluding that "[s]o long as the sentence is within the statutory range, it is subject to review only for abuse of discretion"). The trial court may abuse its discretion in the following ways during the sentencing process: (1) by failing to enter a sentencing statement; (2) by entering a sentencing statement that includes reasons not supported by the record; (3) by entering a sentencing statement that omits reasons clearly supported by the record and advanced for consideration; or (4) by entering a sentencing statement that includes reasons that are

improper as a matter of law. Id. We hasten to note that even if we conclude that the trial court erred during the sentencing process, we have "the option to remand to the trial court for a clarification or new sentencing determination [or] we may exercise our authority to review and revise the sentence." Windhorst v. State, -- N.E.2d --, No. 49S04-0701-CR-32, slip op. p. 4-5 (Ind. June 26, 2007) (internal citations omitted).

If a defendant chooses to challenge the result of the sentencing process—i.e., the sentence itself—then he or she must do so via Appellate Rule 7(B), which provides that the "[c]ourt may review a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." See Anglemyer, slip op. at 10-11 (holding that because "a trial court [cannot] now be said to have abused its discretion in failing to 'properly weigh'" aggravators and mitigators, if the trial court enters a proper sentencing statement then the only way a defendant can challenge the sentence is via Rule 7(B)).

II. Sentencing Process

Here, the trial court determined that Pharris's lengthy prior criminal history was the "primary aggravator" that justified the forty-five year sentence. Appellant's App. p. 7. It also recognized that Pharris's decision to plead guilty and his show of remorse were mitigating circumstances but that the aggravating factor outweighed those mitigators. Id. at 7-8. In light of this determination, Pharris first alleges that the sentence must be vacated because the trial court abused its discretion by improperly weighing "the aggravators and mitigators." Appellant's Br. p. 6.

As noted above, Anglemyer held that a trial court "cannot now be said to have abused its discretion in failing to 'properly weigh' such factors." Slip op. at 10. In light of this pronouncement, Pharris's claim that the trial court improperly weighed the mitigators and aggravators fails.

In a related issue, Pharris asserts that that the trial court abused its discretion when it did not identify various mitigating circumstances that were apparent from the record. In particular, Pharris contends that the trial court erred in failing to identify his "problem with drugs and/or alcohol" as a significant mitigating circumstance. Appellant's Br. p. 10-12. Pharris further asserts that the trial court should have identified his alleged depression and failing physical health as mitigating factors.

We note that an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Anglemyer, slip op. at 13 (citing Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999)). In other words, a trial court is not obligated to find a circumstance to be mitigating merely because it is advanced as such by the defendant. Spears v. State, 735 N.E.2d 1161, 1167 (Ind. 2000). However, when a trial court fails to find a mitigator clearly supported by the record, a reasonable belief arises that the trial court improperly overlooked that factor. Banks v. State, 841 N.E.2d 654, 658 (Ind. Ct. App. 2006), trans. denied.

Notwithstanding Pharris's claim that the trial court should have found his drug and alcohol problems to be mitigating factors, we note that our trial courts have previously found a defendant's drug addiction to be an aggravating circumstance, which the trial court here did

not do. See Burgess v. State, 854 N.E.2d 35, 40 n.5 (Ind. Ct. App. 2006) (upholding trial court's determination that defendant's risk of reoffending was a valid aggravator because of his methamphetamine addiction). In essence, the circumstances here demonstrated that Pharris has continually flaunted the law while he was under the influence of alcohol and illegal substances. Tr. p. 13-14. Indeed, the trial court commented that "from your history it appears that it's more likely than not you would commit another crime." Appellant's App. p. 9. Thus, we cannot conclude that the trial court abused its discretion in not identifying Pharris's drug and alcohol problems as mitigating factors.

Pharris also contends that the trial court erred in refusing to identify his alleged depression as a significant mitigating factor. At the sentencing hearing, Pharris's sister testified that "I think [Pharris] had a problem with depression. Probably moodiness." Tr. p. 15. Although the record demonstrates that Pharris was once treated for depression and received mental health services while in the Indiana Department of Correction, the record shows that he was not currently taking any prescribed medication and he had no subsequent mental health services. PSI at 7.

In any event, Pharris has not established that his alleged depression affected his ability to differentiate between right and wrong. Thus, we cannot conclude that the trial court erred when it did not identify Pharris's purported depression as a mitigating factor. See McManus v. State, 814 N.E.2d 253, 265 (Ind. 2004) (holding that defendant's sentence was proper notwithstanding evidence of depression and other mental abnormalities that did not interfere with the defendant's capacity to appreciate the criminality of his conduct or to conform his

conduct to the requirements of the law).

Finally, Pharris argues that the trial court erred when it did not identify his physical ailments—most notably his alleged emphysema—as a significant mitigating circumstance. Interestingly, Pharris' alleged breathing problems have not deterred him from engaging in criminal activity, smoking cigarettes and marijuana, drinking alcohol, or even cutting grass. Tr. p. 18-19, 25; Appellant's App. p. 16. Hence, we cannot say that the trial court abused its discretion when it did not identify Pharris's physical problems as a mitigating circumstance.

III. Appropriateness

Indiana Appellate Rule 7(B) provides that this court has the constitutional authority to revise a sentence 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, sentence review under Appellate Rule 7(B) is very deferential to the trial court's decision, Martin v. State, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003), and we refrain from merely substituting our judgment for that of the trial court. Foster v. State, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003). 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).

Regarding the nature of the offense, the record reveals that Pharris committed a wholly unexpected brutal and savage knifing and beating of an individual who had shown nothing but kindness towards him. Appellant's App. p. 16. The trial court specifically commented "I do agree with the State that, I think the injury to this victim was greater than the elements necessary . . . to show the elements of the offense, especially with the bashing of

the heard with multiple items, being pushed down, being bashed multiple times with the ashtray." Appellant's App. p. 7. In our view, the savagery and intensity of Pharris's attack on Rood make this offense perhaps even more chilling than other attempted murder cases. State's Ex. 1-8; Appellant's App. p. 16. In short, Pharris's "nature of the offense" argument does not help his inappropriate sentence claim.

In considering Pharris's character, we have briefly discussed his drug and alcohol problems above. Pharris admitted that he "drinks too much." PSI at 7. Prior to his arrest for the instant offenses, Pharris smoked marijuana on a daily basis, and he admitting using alcohol and drugs "from the age of fifteen to forty-one." Id. Moreover, Pharris stated that when he was arrested, he had consumed over a pint of whiskey and had taken some "pain pills." Id. Even though Pharris received some substance abuse counseling or treatment while incarcerated, it is apparent that he has not been deterred from further abuse.

As we have also discussed, Pharris's prior criminal history consists of a lengthy juvenile record and convictions for eleven felonies as an adult. PSI at 2-4. In sum, it is apparent that Pharris has not been deterred from criminal conduct. Thus, in light of the nature of the offense and Pharris's character, we cannot conclude that the forty-five year sentence was inappropriate.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.