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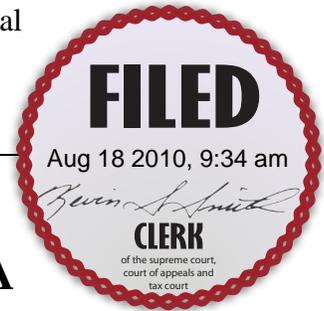
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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM P. RUEL,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 45A03-0911-CR-515

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0902-FD-00025

August 18, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

William P. Ruel (“Ruel”) pleaded guilty to Class D felony failure to return to lawful detention. The trial court sentenced Ruel to a two-year term, which was the maximum allowed under the plea agreement. Ruel appeals and argues that the trial court abused its discretion when it sentenced Ruel to two years and that his sentence is inappropriate in light of the nature of the offence and the character of the offender.

We affirm.

Facts and Procedural History

On November 25, 2008, Ruel was convicted of Class D felony theft and sentenced to two years to be served in a work release program. On February 17, 2009, Ruel left the work release program with instructions to return by 5:00 p.m. that same day. As of February 19, 2009, he had not returned to the program. A corrections officer called Ruel’s brother and heard Ruel talking in the background. Ruel was heard to say that he had “f***ed up.” Ruel’s brother told the corrections officer that Ruel ran out of the house.

On February 19, 2009, the State charged Ruel with Class D felony failure to return to a lawful detention. Ruel pleaded guilty pursuant to a plea agreement that included a sentencing cap of two years. The trial court took the plea under advisement. On October 2, 2009, the trial court held a sentencing hearing, accepted the guilty plea, entered the conviction and sentenced Ruel to an executed term of two years. Ruel now appeals.

Discussion and Decision

Ruel initially argues that the trial court abused its discretion when it sentenced him to the maximum sentence of two years allowed under the plea agreement. Ruel believes

that the trial court failed to properly consider his criminal history. He contends that his prior history was neither recent enough nor of such substance so as to support the maximum sentence of two years under the guilty plea agreement.

Sentencing decisions rest within the sound discretion of the trial court. 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. at 491 (citations omitted). However, Ruel is merely arguing that trial court abused its discretion in failing to properly weigh his criminal history. Under the post-Blakely statutory regime, a trial court cannot abuse its discretion by failing to properly weigh aggravators and mitigators as is the case here. See id.

Ruel also argues that his sentence is inappropriate under Indiana Appellate Rule 7(B), which provides: “The Court may revise 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.” In Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007), our supreme court explained:

It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

“[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” Id.

The nature of the offense before us is very telling. After Ruel was given the benefit of a probation term within the work release program, he failed to return and eluded authorities for over a month. Ruel could have returned at any time but he remained on the run until he was arrested pursuant to an arrest warrant. The nature of the offense supports Ruel's sentence.

Similarly, Ruel's character easily supports the sentence. Ruel has an extensive criminal history and a history of failing to complete probation. Ruel's criminal history consists of six misdemeanors and three felonies. As a juvenile, Ruel was found to have committed acts that would constitute theft if committed by an adult. As an adult, he pleaded guilty in 1989 to a misdemeanor charge of disorderly conduct. In 1990, he pleaded guilty to a misdemeanor charge of operating while intoxicated. In 1991, he pleaded guilty to misdemeanor public intoxication. In 1993, Ruel pleaded guilty to misdemeanor possession of marijuana and three other traffic infractions. In 1996, he pleaded guilty to misdemeanor disorderly conduct.

In 1999, Ruel pleaded guilty to misdemeanor furnishing alcohol to a minor, and his probation was terminated unsatisfactorily on November 11, 2001. Also, in 2001, Ruel pleaded guilty to Class B felony neglect of a dependent resulting in serious bodily injury. After receiving a three-year suspended sentence on his conviction, Ruel's probation was revoked twice before it was unsatisfactorily terminated after serving a year in jail in 2007. In 2000, Ruel pleaded guilty to Class D felony operating with a blood alcohol content of .10% or more. After completing his prison term, Ruel was placed on probation which was ultimately revoked in 2005. Ruel's most recent conviction was for

Class D felony theft in 2008. The sentence for the theft conviction consisted of two years in the work release program. His decision not to return to the program is what brings him to our attention in this case. Ruel's continuing involvement with the criminal justice system has been almost uninterrupted since 1985, and his probation has been revoked on several occasions for several convictions.

Conclusion

The trial court cannot abuse its discretion by failing to properly weigh Ruel's criminal history. The nature of the offense and the character of the offender also support Ruel's two year sentence.

Affirmed.

RILEY, J., and BRADFORD, J., concur.