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IN THE
COURT OF APPEALS OF INDIANA

JIMMY DALE EDWARDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 53A01-0702-CR-63
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Douglas R. Bridges, Judge
Cause No. 53C05-0408-FA-629

August 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Jimmy Dale Edwards appeals his sentences for criminal confinement as a class B felony,[1] resisting law enforcement as a class D felony,[2] and being an habitual offender.[3] Edwards raises two issues, which we revise and restate as:

I. Whether the trial court's resentencing statement fails to comply with the order on remand to identify all aggravating and mitigating circumstances and the reasons for those findings;

II. Whether the trial court abused its discretion in sentencing Edwards; and

III. Whether the trial court erroneously failed to award Edwards credit for both time served and good time credit.

We affirm.

The relevant facts, as stated in our prior decision, follow:

> On July 26, 2004, C.S., the victim, was working as a caretaker for a sixteen-year-old boy with disabilities. C.S. took the boy to Lake Monroe on that date because the boy liked to swim. Upon their arrival, C.S. noticed Defendant sitting in a red convertible in the parking lot area with his car door open. C.S. and the boy walked down to the lake, stayed approximately ten minutes, and then returned to C.S.'s car because it was unusually cold on that day and not suitable for swimming.
>
> When C.S. and the boy returned from the lake, Defendant yelled to C.S. that he needed help. When C.S. walked over to the car, Defendant indicated that he needed her to turn the ignition switch while he watched.

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[1] Ind. Code § 35-42-3-3 (2004).

[2] Ind. Code § 35-44-3-3 (2004).

[3] Ind. Code § 35-50-2-8 (Supp. 2005).

C.S. walked over to the driver's side door, which was open, leaned in, and turned the ignition key. The car's engine started.

Defendant then pushed C.S. and said "Get in here." C.S. observed a knife in Defendant's right hand. C.S. attempted to exit the driver's side door area, but Defendant blocked her exit. C.S. ended up inside the car with her head down near the passenger's side floorboards. Defendant attempted to bind C.S.'s legs, but C.S. prevented Defendant from doing so by kicking and screaming. Defendant then began to strangle C.S. with his hands. C.S. scratched Defendant's face and poked him, while still screaming. Defendant told C.S. he was going to kill her. C.S. opened the passenger-side car door, and managed to escape the vehicle while Defendant continued to attempt to pull C.S. back into the vehicle. Defendant was backing the car up while C.S. escaped. C. S. was able to retrieve her cell phone and wallet from the passenger seat of Defendant's car before running toward her car.

C.S. called the Monroe County 911 dispatcher to report what had happened, and then drove to the entrance of the lake until Monroe County Sheriff's Detective Brad Swain arrived. The dispatcher broadcast C.S.'s description of Defendant's vehicle. Sergeant Ann Maxwell, who was on patrol in the area of Lake Monroe, heard the dispatch and observed a red convertible matching the broadcast description traveling at a high rate of speed toward her. Sergeant Maxwell activated the emergency lights and pursued Defendant's vehicle catching it after going around several sharp curves. Ultimately, Defendant ran from the vehicle, which had sustained significant body damage. Sergeant Maxwell yelled, "Sheriff's Department, stop," but Defendant did not stop. Sergeant Maxwell pursued Defendant on foot, but Defendant escaped. A K-9 unit brought to the scene lost Defendant's trail. C.S. was brought to the scene where she was able to identify the car. Police officers recovered C.S.'s lip balm, a Slimfast bar, and a shoe C.S. lost during her struggle to escape from Defendant's car.

Defendant was arrested the following day and charged with attempted murder, criminal confinement, resisting law enforcement, and the status offense of being a habitual offender.

Defendant's jury trial began on June 15, 2005. On June 17, 2005, the jury found Defendant guilty of criminal confinement as a Class B felony, and resisting law enforcement, as a Class D felony. The State ultimately dismissed the count alleging that Defendant committed the offense of attempted murder after the jury failed to reach an agreement about that count. Defendant admitted to his status as an habitual offender.

Edwards v. State, No. 53A05-0509-CR-537, slip op. at 2-4 (Ind. Ct. App. 2006).

At the sentencing hearing, Edwards asked the trial court to consider the following mitigating factors: (1) his age; (2) that he had held the same job for thirty-four years and was close to retirement; (3) that his imprisonment would result in undue hardship to his family; and (4) that he had admitted to being an habitual offender. The trial court found no mitigating factors and found Edwards's criminal history to be an aggravating factor. The trial court sentenced Edwards to a term of eighteen years imprisonment on the criminal confinement conviction, a term of three years imprisonment on the resisting law enforcement conviction, a term of twenty-five years imprisonment on the habitual offender admission, all executed, to be served consecutively.

On appeal, we reversed and remanded for resentencing, in part because the trial court's sentencing statement was "not specific enough for review" and because the trial court failed to specify which conviction was to receive the habitual offender enhancement. Id. at 9. At the resentencing hearing, the trial court found no mitigating factors and found as aggravating factors Edwards's criminal history and the fact that he was on probation when he committed the present offenses. The trial court imposed the original sentence, applied the habitual offender enhancement to the conviction for criminal confinement, and held that Edwards was entitled to 588 days of credit time "plus good time credit against the sentence announced." Transcript at 5.

I.

The first issue is whether the trial court's resentencing statement fails to comply with the order on remand to identify all aggravating and mitigating circumstances and the reasons for those findings. Edwards argues that the trial court failed, pursuant to the order on remand, to specify particular instances of his criminal history that the court considered significant in enhancing his sentence. If a trial court imposes a sentence based upon aggravating or mitigating circumstances, it must include in the record a statement of its reasons for selecting a particular sentence.[4] See Ind. Code § 35-38-1-3. The following elements must be included in the court's sentencing statement: (1) all significant aggravating and mitigating circumstances; (2) the reason why each circumstance is determined to be mitigating or aggravating; and (3) a demonstration that the mitigating and aggravating circumstances have been evaluated and balanced. Pennington v. State, 821 N.E.2d 899, 903 (Ind. Ct. App. 2005). When a defendant's criminal history is used as an aggravating factor to support an enhanced sentence, the trial court must recite the incidents comprising the criminal history. Battles v. State, 688 N.E.2d 1230, 1235 (Ind. 1997). Stating that the defendant has a criminal history is merely conclusory and must be substantiated by specific facts. Hammons v. State, 493 N.E.2d 1250, 1254 (Ind. 1986), reh'g denied. However, it is not necessary to remand to articulate specific facts when a defendant's prior felony convictions are readily apparent

[4] We note that the present offense occurred after Blakely v. Washington, 542 U.S. 296 (2004), was decided, but before the April 25, 2005 amendments to the Indiana sentencing statutes. See Ind. Code § 35-50-2-5 (Supp. 2005). Thus, the old sentencing statutes apply along with Blakely.

based on the presentence report and the prosecutor's comments in the record. Mayes v. State, 744 N.E.2d 390, 396 (Ind. 2001).

Here, the trial court did not recite the incidents comprising Edwards's criminal history. However, Edwards's presentence report reveals numerous felony convictions, including convictions for aggravated assault and battery, burglary, and stalking, and felony and misdemeanor convictions for operating while intoxicated. The trial court referred to the presentence report at the sentencing hearing, and Edwards noted no errors in it, although he clarified that the victim of the prior burglary and stalking convictions was his ex-wife. Finally, both the State and Edwards's counsel commented on Edwards's prior convictions at the sentencing hearing. Thus, we are able to conclude that, although the trial court did not sufficiently articulate the facts of Edwards's prior convictions, the court did engage in the underlying evaluative process as required by Ind. Code § 35-38-1-3. See Pennington, 821 N.E.2d at 904 (holding that the court properly enhanced defendant's sentence where defendant's criminal history was apparent from the presentence report and from comments of those involved in the sentencing hearing).

II.

The next issue is whether the trial court abused its discretion in sentencing Edwards. Sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Pierce v. State, 705 N.E.2d 173, 175 (Ind.

1998). In order for a trial court to impose an enhanced sentence, it must: (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found to those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. Veal v. State, 784 N.E.2d 490, 494 (Ind. 2003). Edwards argues that: (A) the trial court failed to find his admission to being an habitual offender to be a mitigating factor; and (B) the trial court improperly found his criminal history to be an aggravating factor.

A. Mitigator

"The finding of mitigating factors is not mandatory and rests within the discretion of the trial court." O'Neill v. State, 719 N.E.2d 1243, 1244 (Ind. 1999). The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Gross v. State, 769 N.E.2d 1136, 1140 (Ind. 2002). "Nor is the court required to give the same weight to proffered mitigating factors as the defendant does." Id. Further, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Sherwood v. State, 749 N.E.2d 36, 38 (Ind. 2001), reh'g denied. However, the trial court may "not ignore facts in the record that would mitigate an offense, and a failure to find mitigating circumstances that are clearly supported by the record may imply that the trial court failed to properly consider them." Id. 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. Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999).

Edwards argues that the trial court failed to assign mitigating weight to his admission to being an habitual offender. Specifically, Edwards argues that, because his admission saved the State the expense and inconvenience of proceeding with a jury trial on his status as an habitual offender, his admission "ought to be compensated by some reduction in sentence." Appellant's Brief at 19. A defendant's admission to being an habitual offender is the equivalent of a guilty plea. Stanley v. State, 849 N.E.2d 626, 630 (Ind. Ct. App. 2006). A defendant who admits to being an habitual offender assents to all of the elements of the habitual offender charge, thereby relieving the State of proving that the predicate offenses were unrelated. Id. Indiana courts have recognized that a guilty plea is a significant mitigating circumstance in some circumstances. Trueblood v. State, 715 N.E.2d 1242, 1257 (Ind. 1999), reh'g denied, cert. denied, 531 U.S. 858, 121 S. Ct. 143 (2000). Where the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned. Sensback v. State, 720 N.E.2d 1160, 1164 (Ind. 1999). However, a guilty plea is not automatically a significant mitigating factor. Id. at 1165. The significance of a guilty plea is lessened if it is made on the eve of trial and after the State has already expended significant resources. Primmer v. State, 857 N.E.2d 11, 16 (Ind. Ct. App. 2006), trans. denied.

Here, a jury was convened and found Edwards guilty of criminal confinement and resisting law enforcement. Edwards admitted to being an habitual offender at that time. The State would already have been prepared to try the habitual offender phase of the trial. Thus, the State spent significant time and resources on this case, and we cannot say that

the trial court abused its discretion in not assigning mitigating weight to his admission to being an habitual offender.[5] See Gillem v. State, 829 N.E.2d 598, 605 (Ind. Ct. App. 2005) (holding that the trial court did not abuse its discretion in according no weight to defendant's guilty plea where the State spent significant time and resources on the case), trans. denied.

B. Aggravator

Edwards argues that the trial court improperly considered his criminal history as an aggravating factor.[6] Specifically, he argues that his criminal history "evinces neither the depravity nor recalcitrance capable of justifying a forty-six-year sentence." Appellant's Brief at 17. The significance of a criminal history "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999), reh'g denied. For example, a "non-violent misdemeanor ten years in the past . . . would hardly warrant adding ten or twenty years to the standard sentence" in a murder case. Deane v. State, 759 N.E.2d 201,

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[5] Although Edwards states that his gainful employment with the same employer for a period of thirty-four years "reflects positively on his character", he concedes that "it may not be an independent mitigating circumstance which must be given weight under Indiana law." Appellant's Brief at 20. Edwards cites no authority for the proposition, nor does he argue, that the trial court abused its discretion in not considering his gainful employment as a mitigating factor. Failure to put forth a cogent argument acts as a waiver of the issue on appeal. Davenport v. State, 734 N.E.2d 622, 623-624 (Ind. Ct. App. 2000), trans. denied. Thus, Edwards has waived the issue on appeal.

[6] Edwards also argues that, after the Supreme Court's holding in Blakely v. Washington, 542 U.S. 296 (2004), "while a prior crime can serve as a basis for enhancement, a fact or facts about that crime derived from police reports and other second-hand information cannot be used to enhance a penalty beyond the statutory maximum unless they too have been determined by a jury or admitted by the defendant." Appellant's Brief at 15-16. Here, there is no evidence that the trial court relied on particular

205 (Ind. 2001). Here, Edwards has prior felony convictions for aggravated assault and battery, burglary, and stalking. These convictions relate to the present case in gravity and nature, as the victims have consistently been women.[7] Furthermore, Edwards has felony and misdemeanor convictions for operating while intoxicated. Although, taken separately, convictions for operating while intoxicated may not support an enhanced sentence for criminal confinement, Edwards's significant criminal history as a whole reveals a pattern of contempt for the law. We cannot say that the trial court abused its discretion in considering Edwards's criminal history as an aggravating factor.[8] See Johnson v. State, 837 N.E.2d 209, 215 (Ind. Ct. App. 2005) (holding that the trial court did not abuse its discretion by giving defendant's criminal history, which included three prior felony convictions, significant aggravating weight), trans. denied.

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facts from Edwards's prior convictions to enhance his sentence.

[7] At the sentencing hearing, Edwards's counsel conceded that the conviction for aggravated assault and battery "shows a consistency against [sic] crimes against women" but attempted to distinguish the convictions for burglary and stalking because they were offenses "against his ex-wife." Transcript at 553.

[8] Edwards was on probation for operating while intoxicated without endangerment when he committed the present offense, and the trial court found his probationary status to be an aggravating factor at the resentencing hearing. Edwards cites Prickett v. State, 856 N.E.2d 1203, 1209 (Ind. 2006), for the proposition that "probationary status alone cannot sustain a substantial enhancement when the defendant's criminal history lacks significance." Appellant's Brief at 17. In Prickett, the defendant had been convicted of child molesting as a class A felony and child molesting as a class B felony. The defendant's criminal history consisted of juvenile adjudications for incorrigibility, burglary, theft and misdemeanor convictions for illegal consumption of alcohol as a minor, mischief, and conversion. Prickett, 856 N.E.2d at 1208. The Indiana Supreme Court held that "[n]one of [defendant's] prior offenses bears any relation to the crime for which the sentence enhancement was applied" and that defendant's probationary status alone did not support the enhancement. Id. at 1209. Here, however, Edwards's felony convictions relate to the present offense, and his probationary status further supports an enhanced sentence.

III.

The next issue is whether the trial court erroneously failed to award Edwards credit for both time served and good time credit. A person imprisoned for a felony generally shall be released upon completion of the fixed term of imprisonment, "less the credit time the person has earned with respect to that term." Ind. Code §§ 35-50-6-1(a), 35-50-6-2. See Robinson v. State, 805 N.E.2d 783, 789 (Ind. 2004). The time spent in confinement before sentencing applies toward a prisoner's fixed term of imprisonment. Id. The amount of additional credit is primarily determined by the prisoner's credit time classification. Id. The applicable statute provides:

> (a) A person assigned to Class I earns one (1) day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing.
> (b) A person assigned to Class II earns one (1) day of credit time for every two (2) days he is imprisoned for a crime or confined awaiting trial or sentencing.
> (c) A person assigned to Class III earns no credit time.

Ind. Code § 35-50-6-3. The statute also provides: "A person imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I." Ind. Code § 35-50-6-4(a). Ind. Code § 35-38-3-2(b)(4) provides that a judgment of conviction and sentence must include "the amount of credit, including credit time earned, for time spent in confinement before sentencing." Edwards argues that the trial court "miscalculate[d] the total number of actual days [he] was confined and in addition fail[ed] to specify the amount of credit time to which he is entitled." Appellant's Brief at 22.

Edwards argues that he is entitled to 858 days credit for time served from July 27, 2004, the date of his arrest, to December 1, 2006, the date of the resentencing hearing. At the sentencing hearing of August 4, 2005, the trial court noted that Edwards had violated the conditions of his suspended sentence on a prior conviction and revoked the remaining twenty-one months of that suspended sentence. Of the time Edwards had been incarcerated pending the present charges (374 days), the trial court credited nine months (270 days) of time served and good time credit toward the balance of the revoked suspended sentence and declared that that sentence had been served completely. The trial court then awarded Edwards "104 days of credit and good time credit" and entered this number of days in the sentencing order. Transcript at 555. Thus, of the 374 days between Edwards's arrest and first sentencing, the trial court applied 270 days to the sentence from Edwards's prior conviction for operating while intoxicated and then awarded the remaining 104 days as credit time for the present offense. At the resentencing hearing of December 1, 2006, the trial court added the intervening 484 days to the original amount of 104 days, for a total of 588 days credit for time served. Edwards's calculation of 858 days fails to account for the 270 days applied to the prior suspended sentence that the trial court revoked. Thus, the trial court did not err in calculating Edwards's 588 day credit for time served.

Edwards also argues that the trial court "failed to specify the amount of [good time credit] to which he is entitled." Appellant's Brief at 22. The trial court's sentencing order, as Edwards correctly points out, awarded him 588 "actual days credit" and makes

no mention of credit time. Appendix at 32. Sentencing judgments that report only days spent in presentence confinement and fail to expressly designate credit time earned shall be understood by courts and by the Department of Correction automatically to award the number of credit time days equal to the number of presentence confinement days. Robinson, 805 N.E.2d at 792. In the event of any presentence deprivation of credit time, the trial court must report it in the sentencing judgment. Id. Because the omission of designation of the statutory credit time entitlement is thus corrected by this presumption, such omission may not be raised as an erroneous sentence. Id.

Here, the trial court's omission of Edwards's credit time from the sentencing order raises the presumption that Edwards's credit time equals his actual days credit. The presumption is confirmed by the trial court's statement at the resentencing hearing that "[t]he court believes that the defendant is now entitled as of this date to five hundred and eighty eight (588) days of credit plus good time credit against the sentence announced." Resentencing Transcript at 5. We find no reversible error in the trial court's calculation of credit for both time served and good time credit. See Robinson, 805 N.E.2d at 792 (holding that omission of credit time from the sentencing judgment may not be raised as an erroneous sentence where the credit time is presumed to equal the number of presentence confinement days).

For the foregoing reasons, we affirm Edwards's sentence for criminal confinement as a class B felony, resisting law enforcement as a class D felony, and being an habitual offender.

Affirmed.

MAY, J. and BAILEY, J. concur