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IN THE COURT OF APPEALS OF INDIANA

RICHARD WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0612-CR-1082
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0605-FC-124 and
48D01-0606-FD-156

September 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Richard Williams appeals the sentence imposed by the trial court after he pleaded guilty to two class D felonies -- non-support of a dependent and failure to return to lawful detention.

We affirm.

ISSUE[1]

1. Whether the trial court abused its discretion in sentencing him.

2. Whether the sentence is inappropriate.

FACTS

In 1988, a court adjudicated Williams the father of A.W. and ordered him to pay child support to Angelia Boyd, A.W.'s mother. In 1990, Williams was adjudicated the father of L.W. and ordered to pay child support to Boyd for L.W. A court order of September 23, 1993 ordered that Williams pay Boyd child support of $20.00 weekly for both A.W. and L.W.

In 1992, a court adjudicated Williams the father of D.W. and ordered him to pay child support to Lisa Fuller, D.W.'s mother. In 1993, Williams was adjudicated the

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[1] The State argued in its Appellee Brief that Williams had forfeited his right to appeal by not filing his notice of appeal within thirty days of the trial court's September 11, 2006 sentencing order. *See* Ind. Appellate Rule 9(A)(1) (notice of appeal must be filed within thirty days of final judgment), and App. R. 9(A)(5) (appeal forfeited "[u]nless" notice of appeal "timely filed").

Thereafter, Williams filed a Supplemental Appendix, which includes his petition for leave to file a belated notice of appeal. Therein, counsel explained that the late filing of the notice of appeal was due to the irregular timing of counsel's appointment. The trial court granted Williams' petition to file a belated notice of appeal, which order is also included in the Supplemental Appendix, as is an additional CCS reflecting the forgoing.

Because the trial court expressly authorized Williams' filing of a belated notice of appeal, it is considered "as if filed within the prescribed period." Ind. Post-Conviction Rule 2(A). Therefore, Williams has not forfeited his right to appeal.

father of twins Mah.W. and Mia.W. and ordered to pay child support to Fuller for them. A court order of March 2, 1995, ordered that Williams pay Fuller child support of $50.00 weekly for D.W., Mah.W., and Mia.W.

In October of 2005, Williams was in a work release facility as a consequence of his conviction for driving-while-suspended. On October 24, 2005, Williams was given a personal pass to leave the facility temporarily; he did not return. On November 29, 2005, the State charged him with failure to return to lawful detention, a class D felony. Williams was not arrested on that charge until April 1, 2006.

In the meantime, it was found that as of March 31, 2006, Williams had not paid child support with respect to the above five children since August of 2000 and was thereon delinquent in an amount exceeding $19,000.00. On May 2, 2006, the State alleged this delinquency in its charge that Williams had committed one count of non-support of a dependent – as a class C felony.

On August 7, 2006, Williams tendered to the trial court his written agreement with the State in which he agreed to plead guilty to the lesser included offense of nonsupport of a dependent as a class D felony, and to failure to return to lawful detention as a class D felony. The agreement provided that the sentence for the nonsupport offense was left to the discretion of the trial court and that the executed sentence for failure to return to detention would not exceed eighteen months. At the hearing on August 7, 2006, Williams admitted to the trial court that he had failed to provide support to Fuller and Boyd for his dependent children as ordered, and that he had not returned to work release on October 24, 2005, after having left the facility on a temporary personal pass.

The trial court held the sentencing hearing on September 11, 2006. The trial court cited Williams' "history of criminal activity," and his "recent violations of community corrections, probation and work release." (Tr. 40). Noting the "*Blakely* waiver" in Williams' plea agreement, it then "ma[d]e the observation that we've tried virtually every course of community corrections effort that could be tried," and that Williams had been "convicted several years ago of the very same offense," but that "even after he had fully served that sentence, he continued not to pay support, many years nothing at all." (Tr. 40, 41).[2] It further stated that Williams' guilty pleas were "a mitigating circumstance," but expressly concluded that Williams' testimony did not "indicate[] any remorse." *Id.* After "[b]alancing the factors," the trial court said it was sentencing Williams to a term of thirty months at the Department of Correction for the nonsupport offense and to eighteen months for the failure-to-return offense. (Tr. 42). It ordered the terms served consecutively. (Tr. 42).

DECISION

1. Abuse of Discretion in Sentencing

Williams argues that the trial court abused its discretion when it ordered him to serve an enhanced sentence of thirty months[3] for the class D felony offense of nonsupport of a dependent and further ordered that the two sentences imposed be served consecutively. Specifically, Williams argues that the trial court "failed to evaluate and

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[2] The trial court's written order summarized this aggravating circumstance as being that the current nonsupport offense "demonstrate[d] repeat behavior." (App. 92).

[3] The advisory sentence for a class D felony is eighteen months, with the range being from six months to three years. Ind. Code § 35-50-2-7.

balance" the aggravating and mitigating circumstances it found, and that its failure "to make specific findings to support an imposition of enhanced and consecutive sentences constitutes an abuse of discretion" such that we should revise his sentence "to the advisory term" for each offense and order those terms served concurrently. Williams' Br. at 9. We are not persuaded.

Recently, in *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), our Supreme Court explained that trial courts must "enter sentencing statements whenever imposing sentence for a felony offense." *Id.* at 490. Such a sentencing statement "must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.*

"So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." *Id.* The failure to enter a sentencing statement at all is an abuse of discretion. *Id.* Other examples of an abuse of discretion are when a sentencing statement "explains reasons for imposing a sentence – including a finding of aggravating and mitigating circumstances – but the record does not support the reasons," or when "the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration," or when "the reasons given are improper as a matter of law. *Id.* at 490-91. However, "the trial court no longer has any obligation to 'weigh' aggravating and mitigating circumstances against each other when imposing a sentence. *Id.* at 491.

Therefore, a trial court "can not now be said to have abused its discretion in failing to 'properly weigh' such factors." *Id.*

The record supports the trial court's finding that Williams has a criminal history. Indeed, according to the pre-sentence investigation report, it is extensive. Further, the record supports the trial court's finding that Williams had recently violated probation and work release conditions. Finally, the record clearly supports the trial court's finding that despite having been previously convicted of the offense of nonsupport of his dependents and that for a significant period of time Williams was neither incarcerated nor incapable of contributing to the support of his children, Williams "paid nothing," (Tr. 32), *i.e.*, he continued to fail to support his children – in blatant disregard of court orders and his obligations as a parent. The trial court properly found that Williams' guilty plea was a mitigating circumstance. However, the record does not "clearly support," *id.* at 491, Williams' other proffered mitigating circumstances -- that his failure to support did not cause harm to others, or that he expressed remorse for his failure to support his children. Therefore, we find that the trial court did not abuse its discretion when it imposed an enhanced sentence for Williams' nonsupport of a dependent.

Williams concedes that a single aggravating circumstance may support the imposition of consecutive sentences. *See Creekmore v. State*, 853 N.E.2d 523, 529 (Ind. Ct. App. 2006), *clarified other grounds on denial of reh'g*, 858 N.E.2d 230 (Ind. Ct. App. 2006). We have found that the three aggravating circumstances found by the trial court are supported by the record. Accordingly, we are not persuaded that the trial court abuse its discretion when it ordered that Williams serve his sentences consecutively.

2. Inappropriate Sentence

Although the trial court may have acted within its lawful discretion in determining a sentence, the Indiana Constitution authorizes "independent appellate review and revision" of the sentence imposed. *Anglemyer*, 868 N.E.2d at 491. This appellate authority is implemented through Appellate Rule 7(B), which provides that 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." *Id.* It is the burden of the defendant appealing his sentence to "persuade the appellate court" that his sentence "has met th[e] inappropriateness standard of review." *Id.* at 494 (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

For his inappropriateness argument "[w]ith respect to the nature of the offense," Williams simply asserts the facts that he pleaded guilty to two nonviolent offenses and that the advisory sentence for each is eighteen months. We find that a more accurate assessment of the nature of Williams' offense of nonsupport of a dependent is as follows: he is an adjudicated parent who has previously been court-ordered to pay child support, and who has previously been convicted and served a sentence for nonpayment of child support, and who has not paid support for his children over a period of years – despite being neither incarcerated nor shown to be incapable of gainful employment in order to pay said support.

Continuing his inappropriateness argument, Williams' final assertion is that with respect to his character, "he accepted full responsibility for his actions by pleading

guilty." Williams' Br. at 10. This contention fails to acknowledge that in pleading guilty to the nonsupport offense as a class D felony, he received a significant benefit – inasmuch as he had originally been charged with the class C felony offense of nonsupport. Further, the record reflects that Williams had an extensive criminal history, evidencing his utter disregard for the laws of society, and that he had also committed numerous probation violations. The record further reflects that, as noted by the trial court, various less restrictive corrections options utilized in sentencing Williams over the years had failed to deter Williams' continued failure to comply with the law.

Williams has not persuaded us that in light of the nature of his offenses and his character, the sentence imposed by the trial court is inappropriate.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.