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IN THE COURT OF APPEALS OF INDIANA

KEVIN ELROY HARDESTY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0702-CR-112
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0606-FD-467

September 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Kevin Elroy Hardesty ("Hardesty") appeals his three-year sentence for Failure to Register as a Sex Offender, a Class D Felony. He contends that the trial court abused its discretion by failing to find his guilty plea as a mitigating circumstance and that his sentence is inappropriate in light of the nature of his offense and his character. Finding the trial court's failure to find the mitigating circumstance harmless and that the sentence is not inappropriate, we affirm the judgment of the trial court.

Facts and Procedural History

The record shows that Hardesty, a sex offender, changed his address without notifying proper authorities. On June 7, 2006, the State charged Hardesty with Failure to Register as a Sex Offender, a Class D felony.[1] Without the benefit of a plea agreement, Hardesty pled guilty as charged. In sentencing Hardesty, the trial court found no mitigating circumstances but identified the following aggravating circumstances: (1) Hardesty's criminal history, specifically, six prior sex offenses; (2) Hardesty was on parole when he committed the current offense; and (3) Hardesty's prior attempts at rehabilitation have failed. The trial court sentenced Hardesty to the maximum term of three years in the Department of Correction. Hardesty now appeals.

Discussion and Decision

Hardesty raises two issues on appeal: (1) whether the trial court abused its discretion by failing to find his guilty plea as a mitigating circumstance and (2) whether his sentence is inappropriate in light of the nature of his offense and his character.

[1] Ind. Code § 5-2-12-9 (current version at Ind. Code § 11-8-8-17).

Because the record shows that Hardesty committed his crime on June 1, 2006, he was sentenced under Indiana's current advisory sentencing scheme, which went into effect on April 25, 2005. This scheme provides, in part, that a court may impose any sentence that is authorized by statute and permissible under the Indiana Constitution "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d) (2005). Our Supreme Court recently weighed in for the first time on the scope of appellate review of sentences under the amended statutes. *See Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *reh'g pending*. Hardesty filed his brief before *Anglemyer* was handed down. Therefore, we begin with a brief recap of the principles enunciated therein before turning to the contentions of the parties.

The *Anglemyer* Court first concluded that "under the new statutory regime Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense." *Id*. at 490. This 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*.

On appeal, there are two ways to challenge one's sentence. First, a defendant could argue that the trial court abused its discretion in imposing the sentence. *Id*. "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*. (citations omitted). A trial court can abuse its

sentencing discretion in several ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that explains reasons for imposing a sentence where the record does not support the reasons; (3) entering a sentencing statement that omits reasons that are clearly supported by the record and advanced for consideration; and (4) entering a sentencing statement in which the reasons given are improper as a matter of law. *Id*. at 490-91. If the trial court abuses its discretion in one of these or any other way, remand for resentencing may be the appropriate remedy "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Id*. at 491.

The second possible recourse for a defendant appealing his sentence is 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." The *Anglemyer* 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.

Id. With this framework in mind, we turn to Hardesty's specific arguments.

I. Mitigating Circumstances

Hardesty contends that the trial court abused its discretion by failing to find his guilty plea as a mitigating circumstance. We agree. "[A] defendant who pleads guilty deserves to have *some* mitigating weight extended to the guilty plea in return." *Cotto v.*

State, 829 N.E.2d 520, 525 (Ind. 2005) (emphasis added). "[A] guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea[.]" *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*. Here, Hardesty pled guilty without the benefit of a plea agreement; thus, he did not receive a substantial benefit in return for his guilty plea. Therefore, the trial court abused its discretion in failing to identify Hardesty's guilty plea as a mitigator.

Nonetheless, in light of the fact that Hardesty does not contest the three aggravators identified by the trial court, including Hardesty's extensive criminal history, we can say with confidence that the trial court would have imposed the same sentence even if it had considered Hardesty's guilty plea as a mitigating circumstance. *See Anglemyer*, 868 N.E.2d at 491.

II. Inappropriateness

Hardesty also contends that his sentence is inappropriate in light of the nature of his offense and his character under Indiana Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied*, *cert. denied*, 126 S. Ct. 1580 (2006). The defendant has the burden of persuading us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). After due consideration of the trial court's decision, we cannot say that Hardesty's sentence is inappropriate.

As the State concedes, there was nothing particularly egregious about the nature of Hardesty's offense. However, Hardesty's character is of greater concern. He has a criminal history that includes six felony sex offense convictions, all involving minors. Hardesty also has a history of probation and parole violations. Most notably, Hardesty was on parole when he committed the current offense. This fact reveals a blatant disregard for the law on Hardesty's part. Hardesty has failed to persuade us that his three-year sentence is inappropriate.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.