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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY W. KRAMER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 08A02-0708-CR-735
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CARROLL SUPERIOR COURT
The Honorable Jeffrey R. Smith, Judge
Cause No. 08D01-0701-FD-5

December 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Anthony Kramer appeals his sentence for his conviction for Operating a Vehicle While Intoxicated Endangering a Person, as a Class D felony, and his adjudication as an habitual substance offender pursuant to a guilty plea. He presents the following issues for our review:

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

2. Whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 15, 2007, a deputy with the Carroll County Sheriff's Department arrested Kramer after he failed three field sobriety tests and registered a BAC of .19. The State charged Kramer with two counts of operating a vehicle while intoxicated endangering a person ("OVWI"), one as a Class D felony and one as a Class A misdemeanor. The State also alleged that Kramer was an habitual substance offender. On March 27, 2007, Kramer pleaded guilty to OVWI, as a Class D felony, and he admitted to being an habitual substance offender.

At sentencing, the trial court identified the following aggravators: Kramer's criminal history; and that he was on probation at the time of the instant offense. The trial court found no mitigators and sentenced Kramer to three years on the OVWI conviction, enhanced by eight years, with four years suspended, on the habitual substance offender adjudication. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Abuse of Discretion

Kramer first contends that the trial court abused its discretion when it did not identify any mitigating circumstances. A trial court abuses its discretion in sentencing if it (1) fails "to enter a sentencing statement at all[,]" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons," (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration," or (4) considers reasons that "are improper as a matter of law." Anglemyer v. State, 868 N.E.2d 482, 490-91 (Ind. 2007). If the trial court has abused its discretion, we will remand for resentencing "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. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion. Id.

Kramer maintains that two mitigators are "clearly supported by the record" and should have been identified by the trial court, namely, his guilty plea, and his record of "steady employment for approximately two years." Brief of Appellant at 10. It is well settled that the finding of mitigating circumstances is within the discretion of the trial court. Hackett v. State, 716 N.E.2d 1273, 1277 (Ind. 1999). The trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001). 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. Matshazi v. State, 804 N.E.2d 1232, 1239 (Ind. Ct. App. 2004), trans. denied.

Our supreme court has held that trial courts should be inherently aware of the fact that a guilty plea is a mitigating circumstance. Francis v. State, 817 N.E.2d 235, 237 n.2 (Ind. 2004). However, a guilty plea is not inherently considered a significant mitigating circumstance. Primmer v. State, 857 N.E.2d 11, 16 (Ind. Ct. App. 2006), trans. denied. 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. Id. The plea's significance may also be reduced if the circumstances surrounding the plea indicate that the defendant is not actually taking responsibility for his actions. Id. The plea may also be considered less significant if there was substantial admissible evidence of the defendant's guilt. Id.

Here, Kramer did not plead guilty until the day of trial. And Kramer's statements since his arrest, as reflected in the presentence investigation report and hearing transcripts, indicate that he has not accepted responsibility for his conduct. For example, Kramer denies having an alcohol problem despite his numerous alcohol-related convictions. Finally, there is substantial evidence of Kramer's guilt. We cannot say that the trial court abused its discretion when it did not identify Kramer's guilty plea as a mitigator. See id.

With regard to the second proffered mitigator, Kramer has not demonstrated that his work history is significant in any way. We commend Kramer for maintaining

regular employment, but there is nothing remarkable about Kramer's employment record. We cannot say that the trial court abused its discretion when it did not identify Kramer's work history as a mitigator.

Issue Two: Appellate Rule 7(B)

Kramer also contends that his sentence is inappropriate in light of the nature of the offense and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Anglemyer, 868 N.E.2d at 491 (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Under Appellate Rule 7(B), we assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Anglemyer, 868 N.E.2d at 494 (quoting Childress, 848 N.E.2d at 1080) (alteration in original).

Kramer's sentence is not inappropriate in light of the nature of the offense. Kramer's BAC was more than twice the legal limit at .19, and he failed all three field sobriety tests. The danger his driving posed to himself and others was significant. We reject Kramer's characterization of this offense as "your garden variety, run of the mill OWI [case]." Brief of Appellant at 13.

Likewise, we cannot say that Kramer's sentence is inappropriate in light of his character. Kramer's criminal history, dating back to 1982, consists of several felonies and five convictions for alcohol-related driving offenses. Moreover, when he committed the instant offense, Kramer was on probation following his felony convictions for conspiracy to commit dealing in methamphetamine and theft. Finally, Kramer denies having a drinking problem, and there is no indication that he has a serious interest in rehabilitation. In sum, Kramer has not demonstrated that his sentence is inappropriate in light of the nature of the offense and his character.

Affirmed.

BAILEY, J., and CRONE, J., concur.