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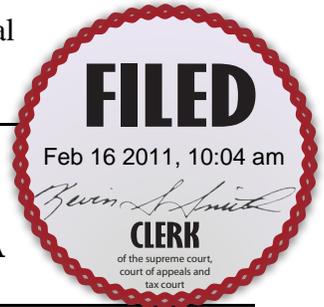
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**IN THE  
COURT OF APPEALS OF INDIANA**

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KEITH HOPKINS, )

Appellant-Defendant, )

vs. )

No. 02A05-1007-CR-426

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Frances C. Gull, Judge  
Cause No. 02D04-1002-FB-30

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**February 16, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Keith Hopkins (“Hopkins”) pled guilty without a plea agreement to Possession of a Firearm by a Serious Violent Felon, as a Class B felony,<sup>1</sup> and Invasion of Privacy, as a Class A misdemeanor.<sup>2</sup> He now appeals, raising for our review 1) whether the trial court abused its discretion in finding aggravating circumstances in his prior criminal history and failures at rehabilitation; and 2) whether his sentence was inappropriate under Appellate Rule 7(B).

We affirm.

## **Facts and Procedural History**

Hopkins has a criminal history that includes convictions for Robbery, as a Class C felony, as well as several misdemeanor convictions. On February 20, 2010, Hopkins went to the Fort Wayne home of Leith Hutchinson (“Hutchinson”). Prior to this date, a protective order was served upon Hopkins that prohibited him from having contact with Hutchinson and her home. Hopkins knowingly and intentionally violated this order.

After he left Hutchinson’s home, Hopkins encountered members of the Fort Wayne Police Department. Hopkins was arrested, and a search of his car uncovered a firearm. Hopkins knew the gun was in the car, knew of his status as a violent felon, and knew he was not permitted to have a firearm.

On February 25, 2010, Hopkins was charged with Possession of a Firearm by a Serious Violent Felon and Invasion of Privacy. On June 8, 2010, Hopkins entered and the

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<sup>1</sup> Ind. Code § 35-47-4-5.

<sup>2</sup> I.C. § 35-46-1-15.1.

court accepted guilty pleas to both charges. On June 28, 2010, the court entered judgments of conviction on both charges. Hopkins was sentenced to twelve years of imprisonment for Possession of a Firearm by a Serious Violent Felon, and one year of imprisonment for Invasion of Privacy, with the sentences to run consecutively.

This appeal followed.

### **Discussion and Decision**

#### Whether the Trial Court Abused its Discretion in Finding Aggravators

Hopkins argues that the trial court abused its discretion in finding aggravators because “the failure to rehabilitate is so akin to the aggravator of prior criminal history that it should not have been given much weight” and because “the court used the Defendant’s criminal record as proof of failure of rehabilitation and used that same factual basis of his criminal record as an aggravator of criminal history.” (Appellant’s Br. 10.) This, Hopkins asserts, “is an inappropriate double counting ... and as such the failure to rehabilitate aggravator should be substantially discounted.” (Appellant’s Br. 10.) At another point, Hopkins draws our attention to the claimed appropriate use of “aggravating or mitigating circumstances to enhance the presumptive sentence.” (Appellant’s Br. 9.)

Addressing first Hopkins’s claim regarding appropriate use of aggravators and mitigators in presumptive sentencing, we remind Hopkins that the Indiana General Assembly amended the sentencing statutes in the wake of Blakely v. Washington, 542 U.S. 296 (2004), to provide for advisory, not presumptive sentences. Anglemyer v. State, 868 N.E.2d 482, 487 (Ind. 2007) (citing Blakely, *supra*; Smylie v. State, 823 N.E.2d 679 (Ind. 2005); and I.C. §

35-50-2-3 to -7), decision clarified on reh'g, 875 N.E.2d 218, 2007 (Ind. 2007).

The imposition of sentencing and its appellate review now follows the scheme set forth in Anglemyer:

To summarize, the imposition of sentence and the review of sentences on appeal should proceed as follows:

1. The trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.
2. The reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion.
3. The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse.
4. Appellate review of the merits of a sentence may be sought on the grounds outlined in Appellate Rule 7(B).

Id. at 491 (emphasis added). Hopkins's arguments that the trial court's weighing of his failure to rehabilitate was improper and, therefore, must fail.

Hopkins's claims that the trial court used the same factual basis for aggravators related to his criminal history and failure to rehabilitate must also fail. The trial court's sentencing statement found as aggravating circumstances Hopkins's "prior criminal record and failed efforts at rehabilitation." The court went on to recite in a single list Hopkins's numerous offenses, which constitute prior criminal history, and his history of failure to comply with the requirements of probation, which demonstrated Hopkins's failure to rehabilitate separate from his continued criminal activity. Because the trial court set forth a sentencing statement with reasonable detail, see id., we find no abuse of discretion.

### Whether Hopkins's Sentence was Inappropriate

Even where an abuse of discretion may have occurred in a sentencing statement—or even in failing to enter a sentencing statement of any kind—this court may independently review sentences under Appellate Rule 7(B). Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007) (citing Williams v. State, 827 N.E.2d 1127, 1128 (Ind. 2005)). Thus, in addition to his claim that the trial court abused its discretion in identifying aggravating circumstances, Hopkins argues that his sentence is inappropriate under Rule 7(B).

In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

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 through Indiana Appellate Rule 7(B), which provides that a 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 burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that “sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to “leaven the outliers.” Id. at 1225. “Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors

that come to light in a given case.” Id. at 1224.

Hopkins was convicted of Possession of a Firearm by a Serious Violent Felon, as a Class B felony, and Invasion of Privacy, as a Class A misdemeanor. The sentencing range for Possession of a Firearm by a Serious Violent Felon runs between six and twenty years imprisonment, with an advisory term of ten years. I.C. § 35-50-2-5. The maximum term of imprisonment for Invasion of Privacy is one year. I.C. § 35-50-3-2. Hopkins was sentenced to twelve years imprisonment for Possession of a Firearm, two years more than the advisory sentence, and one year of imprisonment for Invasion of Privacy, the maximum possible sentence, with the sentences to run consecutively.

With the exception of a dispute between Hopkins and the State during the sentencing hearing regarding whether Hopkins was holding a gun when attempting to contact Hutchinson at her home, there is little that sets Hopkins’s offense apart from the statutory provisions that criminalize his conduct in this case.

As to his character, Hopkins, who was twenty-three years old at the time of his guilty plea and sentencing, has a history of criminal activity and probation violations. He was convicted of Robbery as a Class C felony in 2004. In 2005, while still on probation, Hopkins was convicted of driving while never having received a license; the suspended sentence imposed in that case was revoked in 2006 and he served thirty days in the Allen County Jail as a result. In 2006, Hopkins was convicted of underage consumption of alcohol and was sentenced to thirty days in the Allen County Jail. After being discharged from the probation imposed for his robbery conviction, Hopkins was convicted of possession of marijuana in

2009 and again sentenced to probation. Though he completed some portion of the requirements of his probation, Hopkins ultimately violated probation by committing the acts which are the subjects of this case, and in turn his suspended sentence in his 2009 conviction was revoked. Finally, while the current case was pending before the trial court, Hopkins was charged with Invasion of Privacy, as a Class A misdemeanor, in a separate case.

Hopkins presented evidence at the sentencing hearing that he was a good father, worked, and attempted to attend college. In addition, Hopkins pled guilty to both counts in this case and accepted responsibility for his actions. Yet Hopkins's guilty plea and acceptance of responsibility do not so outweigh his history of criminal conduct and probation violations as to make his sentence inappropriate in light of the nature of his offense and his character.

### **Conclusion**

The trial court did not abuse its discretion in finding aggravating circumstances or in weighing those circumstances when it set Hopkins's sentence. Hopkins's sentence is not inappropriate in light of the nature of his offense and his character.

Affirmed.

NAJAM, J., and DARDEN, J., concur.