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**IN THE
COURT OF APPEALS OF INDIANA**



JOSEPH JAMES,

Appellant- Defendant,

vs.

STATE OF INDIANA,

Appellee- Plaintiff,

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No. 46A05-1008-CR-530

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Richard R. Stalbrink, Jr., Judge
Cause No. 46D02-0907-FB-36

May 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Joseph James pleaded guilty to stalking, a Class C felony, and was sentenced to eight years at the Indiana Department of Correction. James now appeals his sentence, raising as the sole issue for our review whether his fully-executed sentence is inappropriate in light of the nature of his offense and his character. Concluding the eight-year executed sentence is not inappropriate, we affirm.

Facts and Procedural History

This case arises from the latest in a long history of incidents between James and the victim. On December 1, 2008, James was incarcerated at the Westville Correctional Facility serving a sentence for stalking the victim. As part of his sentence, James was prohibited from making contact, directly or indirectly, with the victim. Nonetheless, James sent a letter to the CEO of LaPorte Hospital, the victim's employer, referencing his alleged relationship with the victim. There was no official reason for James to contact the hospital. As a result of this letter, the State charged James with stalking, a Class B felony; stalking, a Class C felony, and invasion of privacy, a Class D felony.

James and the State entered into a plea agreement by which James entered a plea of guilty to stalking as a Class C felony and the remaining charges were dismissed. The sentence was left to the discretion of the trial court. Following a sentencing hearing, the trial court entered, in pertinent part, the following sentencing order:

The Court finds that there are aggravating factors in this matter. The court finds that there is a history of criminal behavior and activity involving the same or similar crimes on multiple occasions over the last ten (10) years, all of which involve the same victim. The court finds that the imposition of a reduced sentence or suspended sentence would depreciate the seriousness of the crime. The court notes for the record that a

revocation of probation for the same crime against the same victim is still currently pending and unresolved

The court finds that the plea of guilty is a mitigating factor, however, the plea also calls for the dismissal of additional more serious charges and therefore the fact that a plea was entered will not be given the weight that it normally would.

The Court now finds that the aggravating factors far outweigh the mitigating factors, and having found as such sentences [James] as follows:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by the court that [James] shall be committed to the Department of Corrections [sic] for classification and confinement for a period of eight (8) years.

Appellant's Appendix at 8-9. James now appeals his sentence.

Discussion and Decision

I. Standard of Review

Although a trial court may have acted within its lawful discretion in determining a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007). Indiana Appellate Rule 7(B) 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.” 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), but may look to any factors appearing in the record, Schumann v. State, 900 N.E.2d 495, 497 (Ind. Ct. App. 2009). The defendant must persuade this court that his or her sentence has met the inappropriateness standard of review. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as inappropriate 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 facts that come to light in a given case.” Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008).

II. Inappropriate Sentence

James was sentenced to eight years for his Class C felony stalking conviction. A Class C felony is subject to a sentence ranging from two to eight years, with an advisory sentence of six years. Ind. Code § 35-50-2-6(a). James contends his eight-year executed sentence is inappropriate because the maximum sentence should be reserved for the worst offenses and the worst offenders and because a suspended sentence would better serve to transition James back into society.

As for James’s argument that his is not among the worst offenses and he is not among the worst offenders, our supreme court has observed that “the maximum possible sentences are generally most appropriate for the worst offenders.” Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002) (quotation omitted). The court has also observed, however, that

[t]his is not . . . a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Id. (emphasis in original). Therefore, we focus less on comparing the facts of any given case to others, real or hypothetical, and more on assessing the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals

about the defendant's character. Brown v. State, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), trans. denied.

In considering the nature of James's offense, it appears on the surface to be fairly innocuous. He wrote a letter to the victim's employer that references his alleged relationship with the victim and contains several statements directed to her. The letter, although somewhat nonsensical, is not particularly inflammatory or threatening on its face. However, on consideration of the entire record, this is but the latest event in a twenty-year history of James harassing the victim and her family through both direct and indirect channels, involving her extended family, friends and neighbors, and employer. James wrote the letter while incarcerated for stalking the same victim and in violation of a court order that he not have any contact with the victim or her family, directly or indirectly.

In considering the nature of James's character, he has harassed the victim, her family, friends, and co-workers for nearly twenty years. Since 2000, the police and courts have been involved in trying to curb this behavior. James has been convicted of invasion of privacy, harassment, and stalking, all in relation to the victim in this case. It is apparent from the victim impact statement submitted at the sentencing hearing that James's behavior has caused great distress and concern for the victim on behalf of herself, her husband, and her children. She references "hundreds" of letters which have become more threatening and hostile, James's acts of waiting outside her place of employment, outside her children's school, and following her and her family in his vehicle. Transcript at 64. At a hearing several months prior to his sentencing in this case, James was heard to threaten the victim, saying, "I will kill that fucking bitch and

her kids.” Id. at 35. When discussing with a private community corrections organization the possibility of going on GPS monitoring as part of his sentence, James asked what would happen if he were to cut off the monitoring bracelet. Even while incarcerated and under a no-contact order, James has been unable to curb his conduct.

It is apparent James is a troubled individual with no awareness that his conduct is wrong. James argues two years of his sentence should be suspended to supervised probation to allow him to receive treatment and transition back into society. James notes this would actually result in a longer period of supervision than a fully-executed sentence because he would not be receiving day-for-day good time credit while on probation. Although the particulars of a sentence – for instance, community corrections versus incarceration or, as here, executed time versus probation – are subject to inappropriateness review just as the length of a sentence is, Jenkins v. State, 909 N.E.2d 1080, 1085 (Ind. Ct. App. 2009), trans. denied, a defendant challenging the placement of a sentence must convince us not that another placement would be more appropriate but that the ordered placement is inappropriate, King v. State, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). James made this argument regarding a period of supervision to the trial court at the sentencing hearing. After hearing the concerns of the victim through her victim impact statement and the victim advocate, who believed that a fully executed sentence would give the victim the most peace of mind for the longest period of time because if he is not incarcerated, he has the possibility of access to the victim even if he is being monitored, the trial court ordered a fully executed sentence. Under these facts and circumstances, and giving due consideration to the trial court’s decision, we cannot say that James’s eight-year executed sentence is inappropriate.

Conclusion

James has failed to persuade us that his eight-year executed sentence for stalking is inappropriate in light of the nature of his offense and his character. His sentence is therefore affirmed.

Affirmed.

NAJAM, J., and CRONE, J., concur.