



Appellant-defendant Raymond Hannah appeals the sentence that was imposed following his guilty plea to Nonsupport of a Dependent Child,<sup>1</sup> a class C felony. Specifically, Hannah argues that his sentence must be set aside because the trial court relied on improper aggravating factors and that the sentence was inappropriate in light of the nature of the offense and his character. Concluding that Hannah was properly sentenced, we affirm.

### FACTS

On July 30, 2009, Hannah was charged with nonsupport of a dependent child, a class C felony. The State's charging information alleged that between September 12, 2003, and June 30, 2009, Hannah knowingly failed to support three of his dependent children in an amount totaling \$27,182.27.

Hannah entered into a plea agreement with the State, whereby he agreed to plead guilty to the charged offense. Although sentencing was left to the trial court's discretion, the agreement capped Hannah's executed time at two years.

At a sentencing hearing that commenced on March 15, 2010, the trial court identified Hannah's lack of emotional support for the children, his lack of visitation with them, and his minor criminal history, as aggravating factors. The trial court also identified Hannah's decision to plead guilty as a mitigating circumstance. The trial court determined that the aggravating factors outweighed the mitigating circumstance and

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<sup>1</sup> Ind. Code § 35-46-1-5(a).

sentenced Hannah to five years, with eighteen months executed, and forty-two months suspended to probation.<sup>2</sup> He now appeals.

## DISCUSSION AND DECISION

### I. Abuse of Discretion

Hannah claims that the trial court relied on improper aggravating factors when sentencing him because those particular factors are not listed in Indiana Code section 35-38-1-7.1<sup>3</sup> Notwithstanding this contention, a trial court is not strictly limited to the aggravating factors that are set forth in the statute when determining a defendant's sentence. Rodriguez v. State, 868 N.E.2d 551, 555 (Ind. Ct. App. 2007). In fact, Indiana Code section 35-38-1-7.1(c) states that “[t]he criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.” As a result, Hannah's contention fails on this basis.

We further note that the aggravating circumstances found by the trial court were supported by the record. Hannah admitted that he had no contact with three of his children for at least two-and-one-half years. Tr. p. 27-29. Also, our Supreme Court has indicated that a minor criminal history is not an improper aggravator. See Taylor v. State, 840 N.E.2d 324, 341 (Ind. 2006) (observing that while the defendant's criminal

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<sup>2</sup> The sentencing range for a class C felony is a minimum of two years and a maximum of eight years, with an advisory sentence of four years. Ind. Code § 35-50-2-6.

<sup>3</sup> The factors listed in the statute include the harm, injury, loss, or damage suffered by the victim, the defendant's criminal history, the age of the victim, and whether a crime of violence was committed. Additional factors include whether the defendant has recently violated conditions of probation or parole, and whether the victim of the offense was mentally or physically infirm. I.C. § 35-38-1-7.1.

history is a valid aggravating circumstance, it would not support a maximum sentence because the crimes were not particularly grave or related to the murder conviction). For these reasons, we conclude that the trial court did not abuse its discretion in sentencing Hannah.

## II. Inappropriate Sentence

Hannah also contends that his sentence is inappropriate pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of the offense, the record shows that Hannah has five children and has failed to pay child support for at least three of the children. Tr. p. 28-31. Moreover, the \$27,182.27 arrearage is substantial.

As for Hannah's character, he has failed to financially and emotionally support his children. As noted above, Hannah admitted that he has not seen three of his children for at least two-and-one-half years. Id. at 27-29. Although Hannah was employed during the time that he was required to pay support, he consistently failed to pay the entire amount that was due from 2003 to 2009. Appellant's App. p. 63.

When questioned by the trial court as to why it took Hannah so long to understand his obligation, Hannah explained that it was because of the threat of imprisonment and not being able to see his new wife. Tr. p. 26-27. In essence, the evidence demonstrates

that Hannah's children were not of paramount concern to him. In short, Hannah has failed to persuade us that his sentence was inappropriate.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.