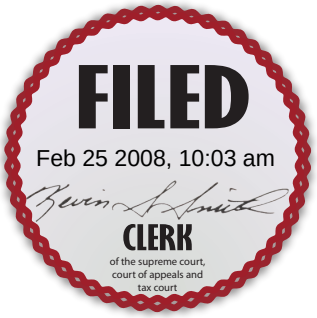

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IN THE
COURT OF APPEALS OF INDIANA

BETTY ANN TAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0711-CR-528
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0201-FB-18

February 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Betty Taylor appeals her fifteen-year sentence for Class B felony neglect of a dependent. We affirm.

Issue

Taylor raises one issue, which we restate as whether the trial court properly sentenced her.

Facts

On January 25, 2002, while under her supervision, Taylor's four-year-old son drowned in the bathtub. On January 31, 2002, the State charged Taylor with Class B felony neglect of a dependent. On August 20, 2002, Taylor pled guilty as charged. In sentencing Taylor, the trial court considered as aggravating circumstances that the victim was less than twelve years old, that Taylor had an extensive criminal history, that she committed the offense while on home detention, and that prior attempts at rehabilitation had failed. The trial court also considered the nature and circumstances of the offense as aggravating. As mitigating circumstances, the trial court considered Taylor's guilty plea and her mental health history. The trial court concluded that the aggravating circumstances outweighed the mitigating circumstances and sentenced Taylor to fifteen years. Taylor belatedly appeals her sentence.

Analysis

Taylor argues that the trial court improperly considered the aggravating and mitigating factors when it sentenced her to fifteen years. Taylor was sentenced in 2002, prior to the revision of the sentencing statutes. Accordingly, we review a trial court's

sentencing decision for an abuse of discretion, which occurs when the sentencing decision is clearly against the logic and effect of the facts and circumstances before the trial court, or the reasonable, probable, and actual deductions to be drawn therefrom. McElroy v. State, 865 N.E.2d 584, 588 (Ind. 2007). Prior to the revisions, when a trial court enhanced a presumptive sentence, it was required to state its reasons for doing so, identifying all significant aggravating and mitigating factors; stating the facts and reasons that led the court to find the existence of each such circumstance; and demonstrating that the trial court evaluated and balanced the aggravating and mitigating factors in determining the sentence. Id. This sentencing statement guards against arbitrary sentences and provides an adequate basis for appellate review. Id.

Taylor first argues that the trial court only considered her "mental health history" and not her mental retardation as a mitigating circumstance. Tr. p. 114. Upon reviewing the record, however, we do not believe that Taylor's alleged mental retardation is a separate and distinct mitigating factor.

At the sentencing hearing, the trial court stated, "And in reviewing the report from Dr. Ross, one of the doctor's [sic] that was appointed to examine you and determine competency, he documented a rather extensive mental health history that I do consider to be a mitigating circumstance." Tr. p. 114. Dr. Ross's report includes an assessment of Taylor's mental capabilities, in which he stated:

> Her composite IQ lies within the lower extreme range of intelligence. . . . [H]er IQ of 62 lies within the mildly mentally retarded range. However, one cannot necessarily say that the Defendant is mentally retarded unless she were evidencing difficulties with communication, self-care, home

> living, social-interpersonal skills, use of community resources, self-direction, functional academic skills, work-leisure, health, and safety skills. Her low IQ is likely not a result of any organic deficits, but more likely due to an impoverished environment. . . .

App. p. 223. Based on a complete reading of Dr. Ross's report it is clear that he assessed Taylor's mental capabilities, not just her mental health. The trial court clearly considered this report when it sentenced Taylor. She has not shown that the trial court did not consider or adequately weigh her mental competency.

Taylor next asserts that the trial court improperly considered the nature and circumstances of the offense as an aggravating factor. She claims that the trial court's consideration of her previous completion of services offered by the Department of Child Services "inputted [sic] a higher standard of culpability on this Defendant in that she should have been more aware of this danger due to her parenting classes as opposed to an ordinary parent." Appellant's Br. p. 14.

In assessing the nature and circumstances of the offense, the trial court stated:

> And in spite of the efforts of the Welfare Department to teach you how to parent, you still left a four year old alone in a tub, and you just told me [Taylor], that that was an everyday habit to leave your children alone. That's scary. I'm a mother. Any parent in this room . . . your attorney is a parent and knows that you don't leave children alone in a tub.

Tr. p. 113 (ellipsis in original). The trial court was not holding Taylor to a higher standard of care based on her completion of parenting classes, but was explaining that Taylor had no excuse for not knowing that leaving a young child alone in a bathtub is

unsafe. The trial court did not abuse its discretion in considering this as part of the nature and circumstances of the offense.

Taylor also argues that the trial court improperly considered her position of trust with her son as an aggravator because it is a material element of the offense. See Rogers v. State, 878 N.E.2d 269, 274 (Ind. Ct. App. 2007) ("It is true that a factor constituting a material element of a crime cannot be considered an aggravating circumstance when sentencing a defendant."), trans. denied. Even if the trial court improperly considered Taylor's position of trust as an aggravator, Taylor's criminal history alone warrants the enhancement of her sentence. See Lampitok v. State, 817 N.E.2d 630, 642 (Ind. Ct. App. 2004) ("Further, one aggravator is sufficient to uphold an enhanced sentence."), trans. denied. Taylor's criminal history, including past attempts at rehabilitation and the fact that she was on home detention when the offense was committed, was a significant aggravating factor. From 1994 to 2002, Taylor accumulated eight misdemeanor convictions and five felony convictions, ranging from Class C misdemeanor never receiving a driver's license to Class B felony dealing in cocaine.[1]

Prior to the commission of this offense, Taylor had been offered many attempts at rehabilitation and was still unable to lead a law-abiding life. Although Taylor claims this offense was unrelated to her failed rehabilitation because it was unrelated to addiction, one of the police officers on the scene noticed an odor of alcohol on Taylor's breath and

[1] At the sentencing hearing, Taylor noted that she did not recall a 1998 Class C misdemeanor check deception conviction. Even if Taylor was not convicted of this offense, our analysis of her criminal history remains the same.

approximately two and half hours after he arrived on the scene a breath test showed Taylor's blood alcohol level was still over .10. Taylor has not established that the trial court erred in considering Taylor's criminal history, including her failed attempts at rehabilitation, as aggravating. The trial court did not abuse its discretion in sentencing Taylor to an enhanced sentence.

To the extent that Taylor argues that her sentence is inappropriate based on the nature of the offense and the character of the offender pursuant to Indiana Appellate Rule 7(B), we disagree. As to the nature of the offense, at the sentencing hearing, Taylor's young daughter testified that, prior to the death of her brother, Taylor had "whooped him" with a belt, "she punched him and she stepped on his stomach," she put him in the bathtub and left the water running, she took him out of the bathtub and put him back in the bathtub, and then she went downstairs to watch television. Tr. pp. 32, 33. At some point during this incident, Taylor poured rubbing alcohol all over her son's face. This testimony was confirmed by the testimony of the pathologist. The nature of the offense certainly warrants an enhanced sentence.

Even when considering Taylor's character we are not persuaded that her sentence should be reduced. Although Taylor has a low IQ and pled guilty, her children were removed from her custody from 1997, when her son was born, because she tested positive for cocaine and marijuana. At the time of his birth, her son had cocaine in his system. Although Taylor completed parenting classes and regained custody of her children, she continued to consume alcohol and commit criminal offenses. Taylor's repeated disregard for the welfare of her children and the law and is abundantly evident.

In sum, when considering the nature of the offense and the character of the offender, we conclude that Taylor's sentence is appropriate.

Conclusion

The trial court did not abuse its discretion in sentencing Taylor, and her sentence is not inappropriate. We affirm.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.