

Appellant/Defendant James Eugene Roberts appeals the sentence imposed by the trial court following his guilty plea to Class A felony Dealing in Cocaine.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual basis entered during the April 17, 2009 plea hearing, on or about November 19, 2008, Roberts knowingly or intentionally delivered cocaine to another person within one thousand feet of a family housing complex, *i.e.*, the Enterprise Apartments, and school property, *i.e.*, St. Boniface or St. Mary's School. On December 3, 2008, the State charged Roberts with Class A felony dealing in cocaine, two counts of Class B felony possession of cocaine, and Class D felony dealing in a controlled substance. Roberts pled guilty to the Class A felony dealing in cocaine charge on April 17, 2009. In exchange for Roberts's plea, the State agreed to dismiss the remaining charges as well as a charge of Class A misdemeanor check deception that was filed under cause number 79D06-0811-CM-1564. The trial court conducted a sentencing hearing on July 17, 2009, at the conclusion of which the trial court sentenced Roberts to a term of thirty years of incarceration with five years suspended to probation.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion in Sentencing Roberts

Roberts contends that the trial court abused its discretion in sentencing him following his guilty plea for Class A felony dealing in cocaine. In raising this claim, Roberts challenges the aggravating and mitigating factors relied on by the trial court at sentencing.

¹ Ind. Code § 35-48-4-1 (2008).

Specifically, Roberts argues that the trial court improperly considered his prior probation violations to be a separate aggravating factor from his criminal history. Roberts also argues that the trial court failed to find the financial hardship that would allegedly be suffered by his children as a result of his incarceration to be a mitigating factor.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *modified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable probable, and actual deductions to be drawn therefrom.” *Id.* (quotation omitted). When imposing a sentence in a felony case, the trial court must provide a reasonably detailed sentencing statement explaining its reason for imposing the sentence. *Id.*

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering 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, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy 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 490-91.

In sentencing Roberts, the trial court found the following aggravating factors: 1) Roberts’s serious criminal history; 2) Roberts’s prior probation violations; and 3) in pleading

guilty, Roberts received the benefit of “some reduced charges.” Tr. p. 32. The trial court also found the following mitigating factors: 1) Roberts took responsibility for his crime by pleading guilty; 2) Roberts has taken advantage of correctional and rehabilitative programs; 3) Roberts cooperated with law enforcement officers; 4) Roberts suffers from mental illness; 5) Roberts has shown remorse for his actions; and 6) Roberts had a difficult childhood. After considering each of these factors, the trial court found that the aggravating factors were balanced with the mitigating factors and, as a result, imposed a thirty-year advisory term² with five years suspended to probation.

Roberts argues that the trial court abused its discretion in sentencing him because it improperly found both his criminal history and his prior probation violations to be aggravating factors because his probation violations, the latest of which Roberts’s claims occurred in June of 2003, were not recent. Indiana Code section 35-38-1-7.1 (2008) provides that the trial court can consider a recent probation violation as an aggregating factor at sentencing, and the Indiana Supreme Court has opined that a probation violation can stand on its own as an aggravator. *Ryle v. State*, 842 N.E.2d 320, 323 n.5 (Ind. 2005). Indiana Code section 35-38-1-7.1, however, does not define the term recent, and Roberts has failed to provide any relevant authority supporting his claim that his latest probation violation could not be considered recent in accordance with the statute. Here, the Pre-Sentence Investigation Report (“PSI”) filed with the trial court prior to sentencing indicates that Roberts’s probation

² Indiana Code section 35-50-2-4 (2008) provides that a person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty years.

was unsuccessfully terminated in 1999, his placement on home detention was unsuccessfully terminated in 2003, and Roberts was arrested in 2006 for failure to appear in accordance with the terms of his probation. We believe that Roberts's history, as reported in the PSI, demonstrates that Roberts has failed to comply with the terms of his alternative sentencing or probation as recently as 2006. In light of *Ryle*, and Roberts's failure to prove that his latest probation violation, which despite Roberts's claims to the contrary appears to have occurred in 2006, could not be considered recent in accordance with Indiana Code section 35-38-1-7.1, we conclude that the trial court did not abuse its discretion in considering Roberts's prior probation violations to be a separate aggravating factor at sentencing.

Roberts also argues that the trial court abused its discretion by failing to find the financial hardship that would allegedly be suffered by his children as a result of his incarceration to be a mitigating factor. The allegation that the trial court failed to find a mitigating factor requires Roberts to establish that the mitigating evidence is both significant and clearly supported by the record. *Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999). Here, the record demonstrates that Roberts acknowledged during the sentencing hearing that he was unemployed and basically homeless, he was not required to pay child support for his younger son, he was in arrearage in his child support obligation for his older son in an amount over \$2500, and he had not even visited his older son since 2006. (Tr. 19, 23-25) In light of Roberts's acknowledgement of his inability to provide financial assistance for his children prior to his arrest and his failure to support or visit his older son, we conclude that Roberts's claim is clearly not supported by the record. We are therefore unable to conclude

that the alleged financial hardship that would allegedly be suffered by Roberts's children as a result of his incarceration would be significant. We conclude that the trial court did not abuse its discretion in this regard.³

II. Whether Roberts's Sentence Is Appropriate

Roberts also challenges his sentence by claiming that it is inappropriate in light of the nature of his offense and his character. Indiana Appellate Rule 7(B) provides that "The 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 defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

Roberts claims that his advisory thirty-year sentence is inappropriate in light of the nature of his offense because the nature of his offense is not overly egregious. Roberts sold approximately .29 grams of cocaine to an individual within 1000 feet of both a family housing complex and a school. Although Roberts claims that he received no financial gain from the sale, he acknowledges that he sold the cocaine at the dealer's request in exchange for shelter and cocaine for personal use. Roberts claims that "this was not a 'deliberate' attempt to deal near a school or a family housing complex," Appellant's Br. p. 8, but

³ To the extent that Roberts claims that the trial court did not afford the aggravating and mitigating factors with the appropriate weight, we note that "[b]ecause the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence ... a trial court cannot now be said to have abused its discretion in failing to 'properly weigh' such factors." *Anglemyer*, 868 N.E.2d at 491.

admitted during the guilty plea hearing that he knowingly did so.

With regard to his character, Roberts claims that although he has a criminal history, his advisory thirty-year sentence was nonetheless inappropriate. Specifically, Roberts claims that many factors including his remorse, mental illness, difficult childhood, cooperation with law enforcement, ability to take advantage of rehabilitative programs while incarcerated, and desire to help care for his minor child reflect positively on his character. Roberts also claims that his prior service in the United States Army, from which he claims to have been honorably discharged in 1991, reflects positively on his character. While we commend Roberts for his prior military service, we do not believe that this prior service mitigates the seriousness of his criminal history, which includes prior felony convictions for burglary, sexual misconduct with a minor, forgery, and failure to register as a sex offender. Roberts's criminal history also includes an unsuccessful term on in-home detention and prior probation violations, which suggests that, despite Roberts's claim that he is able and willing to take advantage of rehabilitative programs offered by the court, prior attempts to reform Roberts's behavior through an alternative to incarceration were not successful. We cannot say that Roberts's advisory thirty-year sentence is inappropriate in light of these circumstances.

The judgment of the trial court is affirmed.

KIRSCH, J., and CRONE, J., concur.