



Michael Stiles (“Stiles”) pleaded guilty in Marion Superior Court to Class D felony operating a vehicle while intoxicated and to being an habitual substance offender. The court ordered him to serve 545 days for the Class D felony conviction and a separate, consecutive 1095-day sentence for the habitual substance offender adjudication. Stiles appeals his sentence and argues that the trial court abused its discretion when it failed to consider certain mitigating circumstances and erred when it treated the habitual substance offender adjudication as a separate offense. Concluding that the trial court erred when it treated the habitual substance offender adjudication as a separate offense, we correct Stiles’ sentence and reverse and remand this case to the trial court with instructions to correct its sentencing order in a manner consistent with this opinion.

### **Facts and Procedural History**

On November 23, 2009, Indianapolis Metropolitan Police Officers conducted a traffic stop of a vehicle driven by Stiles after they observed erratic driving behavior and the lack of a license plate. As a result of the stop, Stiles was asked to perform three field sobriety tests, all of which he failed. A subsequent chemical test established that Stiles’ breath contained .16 grams of alcohol per 210 liters of breath.

Stiles was charged with Class A misdemeanor operating a vehicle while intoxicated, Class A misdemeanor operating a vehicle at or about 0.15 B.A.C., Class D felony operating a vehicle while intoxicated, and Class D felony operating a vehicle with

a B.A.C. of 0.08. The charging information was later amended to include a charge that Stiles is a habitual substance offender.

On May 3, 2010, Stiles pleaded guilty to Class A misdemeanor operating a vehicle while intoxicated, Class D felony operating a vehicle while intoxicated, and to being an habitual substance offender. The State agreed to dismiss the remaining charges, and the Class A misdemeanor charge was merged with the Class D felony operating a vehicle while intoxicated charge. The trial court ordered Stiles to serve 545 days in the Department of Correction for his Class D felony operating a vehicle while intoxicated conviction. The trial court then imposed a separate and consecutive 1095-day sentence for the habitual substance offender adjudication. Stiles now appeals.

### **Discussion and Decision**

First, Stiles argues that the trial court abused its discretion when it failed to consider his guilty plea and expression of remorse as mitigating circumstances. Trial courts are required to enter sentencing statements when imposing a sentence for a felony offense, and such statements must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007); see also Ind.Code § 35-38-1-1.3 (“After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes.”). Sentencing statements serve to guard against arbitrary and capricious sentencing and provide an adequate basis for appellate review. Anglemyer, 868 N.E.2d at 489.

We review the trial court's sentencing decision for an abuse of discretion. Id. at 490. An abuse of discretion occurs if the trial court fails to issue an adequate sentencing statement. Id. If the sentencing statement includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. at 490. An abuse of discretion occurs if the record does not support the reasons given for imposing sentence, 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. Id. at 490-91.

The trial court did not consider Stiles' guilty plea as a mitigating circumstance. A defendant who pleads guilty generally deserves "some" mitigating weight to be afforded to the plea. Anglemyer, 875 N.E.2d at 220 (citing McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007)). But a trial court does not necessarily abuse its discretion by failing to recognize a defendant's guilty plea as a *significant* mitigating circumstance. Id. at 221. In this case, the evidence against Stiles was overwhelming. The officers observed erratic driving behavior, Stiles failed three sobriety tests, and Stiles' breath contained .16 grams of alcohol per 210 liters of breath. Because Stiles' decision to plead guilty was more likely the result of pragmatism than acceptance of responsibility, we conclude the trial court did not abuse its discretion by omitting reference to his guilty plea when imposing sentence. See id.

Substantial deference must also be given to a trial court's evaluation of remorse. Allen v. State, 875 N.E.2d 783, 788 (Ind. Ct. App. 2007). In this case, Stiles admitted he

made a “bad mistake” for driving while intoxicated and that he “should have thought more about what [he] was doing instead of just acting.” Tr. p. 17. On the record before us and given Stiles’ multiple convictions for driving while intoxicated, we cannot conclude that the trial court abused its discretion when it refused to consider Stiles’ remorseful statement as a mitigating circumstance.

Finally, we address Stiles’ argument concerning the separate and consecutive sentence imposed on the habitual substance offender adjudication. The State concedes that trial court treated the habitual substance offender finding as a separate conviction, and therefore, the sentence requires correction.

Indiana Code section 35-50-2-10(f) provides: “The court shall sentence a person found to be a habitual substance offender to an additional fixed term of at least three (3) years but not more than eight (8) years imprisonment, *to be added to the term of imprisonment imposed* under IC 35-50-2 or IC 35-50-3.” See also Bauer v. State, 875 N.E.2d 744, 747 (Ind. Ct. App. 2007) (“A habitual substance offender finding is not a separate crime but an enhancement of the sentence for the underlying crime to which it is attached.”)

We therefore correct Stiles’ sentence to 545 days for the Class D felony operating while intoxicated conviction and enhance that sentence by 1095 days for the habitual substance offender adjudication. Accordingly, we reverse Stiles’ sentence and remand with instructions to the trial court to correct its sentencing order in a manner consistent with this opinion.

Reversed and remanded for proceeding consistent with this opinion.

FRIEDLANDER, J., and MAY, J., concur.