

STATEMENT OF THE CASE

Appellant-Defendant, Joshua Trentz (Trentz), appeals his sentence after pleading guilty to attempted burglary, a Class C felony, Ind. Code §§ 35-43-2-1; 41-5-1.

We affirm.

ISSUE

Trentz raises two issues on appeal, which we consolidate and restate as the following single issue: Whether the trial court properly sentenced him.

FACTS AND PROCEDURAL HISTORY¹

On November 12, 2008, eleven-year old T.G. was home alone, getting ready to leave for school when she heard what sounded like sawing coming from the back door of the house. She went to investigate and found Trentz and an accomplice attempting to break into the house. T.G. called 911. The police caught Trentz and his accomplice while trying to gain access to the house. Trentz admitted to police that he was attempting to break into the residence.

On November 13, 2008, the State filed an Information charging Trentz with Count I, attempted burglary, a Class B felony, I.C. §§ 35-43-2-1; 41-5-1, and Count II, attempted residential entry, a Class D felony, I.C. §§ 35-43-2-1.5; 41-5-1. On May 14, 2009, the State amended the Information by adding Count III, attempted burglary, a Class C felony, I.C. §§

¹ We caution Trentz' counsel that a mere statement of "the facts relevant to this sentencing appeal . . . are recited in the Statement of the Case" is inappropriate in the Statement of the Facts section of his appellate Brief. (Appellant's Br. p. 4). Indiana Appellate Rule 46 clearly specifies that the Statement of the Case and the Statement of the Facts sections of an appellate brief serve different purposes. The Statement of the Case briefly describes the nature of the case, and the course of the proceedings relevant to the issues presented for review whereas the Statement of the Facts describes the facts relevant to the issues.

35-43-2-1; 41-5-1. That same day, Trentz and the State entered into a plea agreement whereby Trentz agreed to plead guilty to Count III in exchange for the State dismissing Counts I and II. Pursuant to the terms of the plea agreement, sentencing was left to the discretion of the trial court. On June 12, 2009, during the sentencing hearing, the trial court sentenced Trentz to a term of two years, with one year executed and one year suspended to probation.

Trentz now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Trentz contends that the trial court abused its discretion when it imposed a term of two years, with one year suspended, for his conviction of attempted burglary, a Class C felony. A person who commits a Class C felony shall be imprisoned for a fixed term of between two and eight years, with the advisory sentence being four years. I.C. § 35-50-2-6. Accordingly, Trentz was given the minimum sentence for a Class C felony, with half of the sentence suspended to probation.

As long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *aff'd 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.* One way in which a trial court may abuse its discretion is by failing to enter a sentencing statement at all. *Id.* Another example includes entering a sentencing statement that explains reasons for imposing a sentence,

including aggravating and mitigating factors, which are not supported by the record. *Id.* at 490-91.

Because 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 by failing to properly weigh such factors. *Id.* at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id.*

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id.* Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id.* It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

A. *Aggravator*

Trentz asserts that the trial court improperly sentenced him to two years because it failed to adequately weigh his lack of criminal record in light of the absence of any aggravating circumstances.

In its sentencing order, the trial court stated as follows:

MITIGATING CIRCUMSTANCES: The [c]ourt considers the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

1. The defendant is likely to respond affirmatively to probation or short term imprisonment because [of] lack of criminal record.
2. The defendant has pled guilty and admitted responsibility.
3. The defendant's age.

AGGRAVATING CIRCUMSTANCES: The [c]ourt considers the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment: NONE.

The court finds that the mitigating factors outweigh the aggravating factors.

(Appellant's App. p. 34).

It is clear from the record that the trial court did consider Trentz' lack of criminal history as a mitigating factor. As far as he now asserts that this mitigator was improperly weighed, this argument is no longer available for our review. *See id.*

B. Nature and Character

Furthermore, we find Trentz' sentence appropriate in light of the nature of the offense and character of the offender. With regard to the nature of the offense, we note that the record reflects that Trentz attempted to break into a residence where an eleven-year old child was home alone. Although Trentz may not have been aware that T.G. was in the house, Trentz was there with an accomplice who was armed with a loaded weapon.

Turning to his character, the record indicates that even though Trentz has no criminal history, he has a prior arrest for dealing in marijuana. In addition, the trial court expressly

noted during the sentencing hearing that Trentz has a history of delinquent and anti-social behavior. As a minor, he was suspended from school for having gang symbols on his papers and gym shirt. He also had an odor of marijuana on his jacket. In his pre-sentence investigation report, Trentz admitted that he had been a member of the Insane Deuces gang from the ages of thirteen to fifteen and had re-associated with them at the time of this offense. Based on the facts before us, we find that the trial court properly sentenced Trentz.

CONCLUSION

Based on the foregoing, we conclude that Trentz' sentence is appropriate in light of his character and nature of the offense.

Affirmed.

VAIDIK, J., and CRONE, J., concur.