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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM E. CATHEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-1006-CR-314
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable David D. Kiely, Judge
Cause No. 82D02-0905-FD-464

February 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

William E. Cathey appeals his sentence following his convictions for two counts of Class D felony theft. Cathey raises a single issue for our review, which we restate as whether the trial court abused its discretion when it sentenced him.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 19, 2009, Cathey stole twelve DVDs from a Vanderburgh County Target store and attempted to steal about $1,000 in merchandise from a nearby Wal-Mart. On May 21, the State charged Cathey with two counts of theft, each as a Class D felony.

On April 26, 2010, Cathey pleaded guilty to each of the two charges against him without the benefit of a plea agreement. At his sentencing hearing, the court found Cathey's criminal history to be an aggravating factor. Cathey has a prior felony conviction for criminal confinement and another felony conviction for resisting law enforcement. The court also found the fact that Cathey was on probation when he committed the thefts to be an aggravating factor. The court found Cathey's guilty plea to be mitigating, but it rejected his other proffered mitigators. The court then ordered Cathey to serve two years for each conviction, to run concurrently. This appeal ensued.

DISCUSSION AND DECISION

Cathey contends that the trial court abused its discretion in sentencing him.[1] Sentencing decisions rest within the sound discretion of the trial court and are reviewed

[1] Cathey misstates the standard of review by reciting the review we use under our authority to review and revise sentences pursuant to Indiana Appellate Rule 7(B). However, the substance of Cathey's argument on appeal addresses the trial court's discussion of which mitigators and aggravators

on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified 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.

> 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. . . .
>
> [However, 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 can not now be said to have abused its discretion in failing to "properly weigh" such factors.

Id. at 490-91.

Cathey contends that the trial court abused its discretion for two reasons. First, Cathey argues that the trial court improperly considered his criminal history an aggravator rather than a mitigator. But this argument is, in essence, a request for this court to reweigh that factor, which we may not do. See id.

Cathey also asserts that the trial court did not properly consider his proffered mitigators that his imprisonment will cause an undue hardship on his ability to support

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were significant and worthy of consideration. As such, we limit our review to the substance of Cathey's appellate arguments.

his three minor children and that he expressed remorse for the crimes he committed.[2] But Cathey has not shown that either of those mitigators was significant. See, e.g., Ousley v. State, 807 N.E.2d 758, 763 (Ind. Ct. App. 2004) ("our concern upon appeal is to determine whether the trial court improperly overlooked a significant mitigating factor that is clearly supported by the record."). Thus, the trial court did not abuse its discretion when it did not accord them mitigating weight, and we affirm Cathey's sentence.

Affirmed.

DARDEN, J., and BAILEY, J., concur.

[2] Cathey also suggests that the trial court did not give proper mitigating weight to his guilty plea. Again, we will not reconsider the weight the trial court assigns to aggravators and mitigators. Anglemyer, 868 N.E.2d at 490-91.