

Robert D. Neal, Jr., appeals his sentence for receiving stolen property as a class D felony and resisting law enforcement as a class A misdemeanor. Neal raises two issues, which we revise and restate as whether the trial court abused its discretion in sentencing him.¹ We affirm.

The relevant facts follow. On or about March 21, 2010, Neal and his wife Amanda were at the home of Doris DeFord in Owen County, Indiana. At some point Neal, who had a “BB pistol in his possession at the time,” knocked on DeFord’s bedroom door and then forced the door open and said “give me the pills, bitch.” Transcript at 66. Neal took DeFord’s purse and plasma television, and DeFord followed Neal and yelled at him to stop. Neal pushed DeFord to the ground and shouted for Amanda to get into his pick-up truck. As Neal backed up the truck, he almost hit DeFord. At some point, Neal stopped and Amanda discarded the purse. Spencer Town Marshal Rannix Tinsley noticed and began to follow Neal’s pick-up truck. Marshal Tinsley attempted to stop Neal, but Neal did not stop. Neal parked his truck at an apartment complex, and Marshal Tinsley, whom Neal recognized as a police officer, ordered Neal to stop. However, Neal ran into the apartments. Neal and Amanda were eventually apprehended, and DeFord’s television was found facedown in the back of Neal’s truck.

¹ Neal also argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. The plea agreement provided in part that Neal “waives his appellate rights under App. Rule 7(B).” Appellant’s Appendix at 40. Neal therefore has waived the right to appeal the appropriateness of his sentence under Ind. Appellate Rule 7(B). See Creech v. State, 887 N.E.2d 73, 75 (Ind. 2008) (holding that a defendant may waive the right to appellate review of his sentence as part of a written plea agreement); Brattain v. State, 891 N.E.2d 1055, 1057 (Ind. Ct. App. 2008) (noting that the defendant waived his right to appeal his sentence where the plea agreement provided in part that the defendant waived the right under Ind. Appellate Rule 7 to review of the sentence imposed).

In March 2010, the State charged Neal with: Count I, receiving stolen property as a class D felony, Count II, resisting law enforcement as a class A misdemeanor; and Count III, robbery as a class C felony.² On June 11, 2010, the parties entered into a plea agreement, filed with the court on June 14, 2010, pursuant to which Neal agreed to plead guilty to Counts I and II and the State agreed to dismiss Count III. On July 20, 2010, the court held a guilty plea and sentencing hearing, at which Neal pled guilty to receiving stolen property under Count I and resisting law enforcement under Count II. The court sentenced Neal to three years under Count I and one year under Count II. The court ordered ninety days suspended to probation and that the sentences under Counts I and II be served consecutive to each other.

The issue is whether the court abused its discretion in sentencing Neal. The Indiana Supreme Court has held that “the trial court must enter a statement including reasonably detailed reasons or circumstances 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). We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances before the court.” Id. A trial court abuses its discretion if it: (1) fails “to enter a sentencing statement at all;” (2) enters “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;” (3) enters a sentencing

² The State filed an information on March 22, 2010 charging Neal under Counts I and II and an additional information on March 24, 2010 charging Neal under Count III.

statement that “omits reasons that are clearly supported by the record and advanced for consideration;” or (4) considers reasons that “are improper as a matter of law.” Id. at 490-491. If the trial court has abused its discretion, we will remand for resentencing “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 491. However, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. Id.

Neal argues that the court abused its discretion by imposing consecutive sentences. Specifically, Neal argues that the court stated specific reasons for imposing the three-year and one-year sentences but that “when it specified that the sentences would be served consecutively, the trial court offered no rationale for that decision.” Appellant’s Brief at 9. Neal further argues that “[a] trial court may rely on the same reasons to impose the sentence on each count and to order consecutive sentencing,” but “that does not mean a trial court, having found aggravating circumstances when imposing sentence[s] on each count, may simply order consecutive sentencing without stating the reason for that decision.” Id. In support of his argument, Neal argues that the Indiana Supreme Court’s decision in Blanche v. State, 690 N.E.2d 709 (Ind. 1998), “can only be construed as holding that a trial court need not recite the individual aggravating circumstances used to impose consecutive sentences when it is relying on the same aggravating circumstances used to enhance the sentence on the individual counts” but that “Blanche does not approve a trial court’s complete silence as to its reasons for imposing consecutive sentences.” Appellant’s Brief at 10.

The State argues that it is clear from the court's statements that it relied upon Neal's criminal history to support both the enhanced sentences and the imposition of consecutive sentences. The State also appears to argue that trial courts are not always required to state that they relied on the same factors in imposing consecutive and enhanced sentences.

This court has stated:

The decision to impose consecutive sentences lies within the discretion of the trial court. A trial court is required to state its reasons for imposing consecutive sentences or enhanced terms. However, a trial court may rely on the same reasons to impose a maximum sentence and also impose consecutive sentences.

Gilliam v. State, 901 N.E.2d 72, 74 (Ind. Ct. App. 2009) (internal citations omitted). A single aggravating circumstance may be sufficient to support the imposition of consecutive sentences. Id.

At the sentencing hearing in this case, the trial court stated:

[Neal], I find that the mitigating circumstance is that you plead [sic] guilty, the aggravating circumstance is that you have extensive criminal history (sic) as indicated in the presentence, several convictions. And it's clear you don't do well on probation here or anywhere else. Your sentence then is as follows . . . I sentence you on Count I to three years at the Indiana Department of Corrections, Count II: one year to be served consecutive—consecutively with each other. I suspend . . . ninety days of your sentence on condition that you pay your fees and costs as ordered, commit no violations of the law for the balance of your sentence, and that you comply with probation for ninety days.

Transcript at 76.

The court's sentencing statement in this case clearly indicates that the trial court found Neal's criminal history to be an aggravating circumstance. To the extent that Neal

claims that the trial court was required to specifically state its reasons for ordering consecutive sentences, we observe that the Indiana Supreme Court has held that “there is neither any prohibition against relying on the same aggravating circumstances both to enhance a sentence and to order it served consecutively, nor any requirement that the trial court identify the factors that supported the sentence enhancement separately from the factors that supported consecutive sentences.” Blanche, 690 N.E.2d at 716. The court here identified aggravating and mitigating factors and immediately thereafter ordered that Neal serve enhanced and consecutive sentences. We therefore cannot say that the trial court abused its discretion in ordering that Neal’s sentences be served consecutively. See Moore v. State, 907 N.E.2d 179, 181-182 (Ind. Ct. App. 2009) (holding, where the defendant argued that the trial court was required to specifically state its reasons for ordering consecutive rather than concurrent sentences, that the trial court did not abuse its discretion where the court identified aggravating and mitigating factors, concluded that the aggravating factor outweighed the mitigating factors, and immediately thereafter ordered the defendant’s sentences to be served consecutively), reh’g denied, trans. denied; see also Blanche, 690 N.E.2d at 716 (holding that there is no requirement that the trial court identify the factors that supported the sentence enhancement separately from the factors that supported consecutive sentences).

For the foregoing reasons, we affirm Neal’s sentence for receiving stolen property as a class D felony and resisting law enforcement as a class A misdemeanor.

Affirmed.

ROBB, C.J., and RILEY, J., concur.