



Willie Herman appeals his sentence for Class D felony possession of marijuana.<sup>1</sup> We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Herman was charged with Class B felony attempted robbery,<sup>2</sup> two counts of Class D felony possession of marijuana, and two counts of Class A misdemeanor resisting law enforcement.<sup>3</sup> At trial, the following exchange took place between Herman and the prosecuting attorney:

Q: Now after you were arrested, Officer Woods indicates that she found a small amount of marijuana on your person. Is that correct?

A: Yes sir.

Q: She did do that?

A: Yes sir.

Q: Where was it on your person?

A: In one of my pockets.

(Trial Tr. at 214.)<sup>4</sup> The jury later found Herman guilty of one count of Class D felony possession of marijuana.

During sentencing, Herman asserted his admission during trial to possession of marijuana should be considered a mitigating circumstance. However, the State noted in response, “the defendant did obviously go to trial and [on] this particular count any

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<sup>1</sup> Ind. Code § 35-48-4-11.

<sup>2</sup> Ind. Code §§ 35-42-5-1 and 35-41-5-1.

<sup>3</sup> Ind. Code § 35-44-3-3.

<sup>4</sup> The court reporter prepared two transcripts, one titled “Trial Transcript” and one titled “Sentencing Transcript.” Each of those begins with a page numbered “1” in violation of Appellate Rule 28(A)(2), which provides “[t]he pages of the Transcript shall be numbered consecutively regardless of the number of volumes the Transcript requires.”

acceptance of responsibility would be mitigated by the fact that the marijuana in this case was found in his pocket. I mean, the evidence available to the State with respect to that count was overwhelming.” (Sentencing Tr. at 5-6.) The trial court found aggravating factors in Herman’s criminal history and failed attempts at rehabilitation, found no mitigating factors, and pronounced a two-year sentence.<sup>5</sup>

### **DISCUSSION AND DECISION**

When the trial court imposes a sentence within the statutory range, we review for an abuse of discretion.<sup>6</sup> *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007). We may reverse a decision that 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.* (quoting *In re L.J.M.*, 473 N.E.2d 637, 640 (Ind. Ct. App. 1985)).

Our review of the trial court’s exercise of discretion in sentencing includes an examination of its reasons for imposing the sentence. *Id.* “This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the

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<sup>5</sup> The sentencing range for a Class D felony is six months to three years, with an advisory sentence of one and one-half years. Ind. Code § 35-50-2-7.

<sup>6</sup> Herman also asserts his sentence is inappropriate based on his character and the nature of the offense, pursuant to Ind. Appellate Rule 7(B). However, he does not offer an argument supported with cogent reasoning and citation to the record, and thus that assertion is waived. *See* App. R. 46(A)(8)(a); *Matheney v. State*, 688 N.E.2d 883, 907 (Ind. 1997) (finding issue waived for failure to make cogent argument).

crime . . . [and] such facts must have support in the record.” *Id.* The trial court is not required to find mitigating factors or give them the same weight that the defendant does. *Flickner v. State*, 908 N.E.2d 270, 273 (Ind. Ct. App. 2009). However, a court abuses its discretion if it does not consider significant mitigators advanced by the defendant and clearly supported by the record. *Anglemeyer*, 868 N.E.2d at 490. Once aggravators and mitigators have been identified, the trial court has no obligation to weigh those factors. *Id.* at 491.

Herman claims the trial court should have considered his acceptance of responsibility for his crime as a mitigating factor when sentencing him. Herman accepted responsibility, but not until after a jury trial had begun. Therefore, his admission did not save the State the expense of going to trial. *Cf. Trueblood v. State*, 715 N.E.2d 1242, 1257 (Ind. 1999) (guilty plea saves the State the time and expense of a trial and thus can be considered a mitigating factor in sentencing). The trial court was not required to find Herman’s acceptance of responsibility after trial commenced a mitigating factor, *see Flickner*, 908 N.E.2d at 273 (court is not required to accept defendant’s arguments as to what is a mitigating factor), and Herman has not demonstrated the trial court abused its discretion in sentencing him.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.