

STATEMENT OF CASE

Appellant-Petitioner Larry Boatwright appeals the sentence he received from his guilty plea for possession of cocaine, a class D felony.

We affirm.

ISSUE

Specifically, Boatwright makes two arguments: he claims that his three-year sentence was inappropriate in light of the nature of the offense and his character and that the court failed to consider his guilty plea as a substantial mitigating factor.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of October 29, 2005, the Lafayette Police Department responded to a noise complaint in the 1100 block of Brown Street. After they determined the noise to be coming from Boatwright's apartment, they received permission from him to search his apartment. As they were searching his home, the officers observed a partially burnt marijuana cigarette and a corner of a plastic baggie, which was determined to contain 1.1 grams of cocaine. Boatwright was arrested for possession of cocaine, a class C felony,¹ possession of marijuana, a class A misdemeanor,² and maintaining a common nuisance, a class D felony.³

¹ I.C. § 35-48-4-6(b)

² I.C. § 35-48-4-11

³ I.C. § 35-48-4-13

Boatwright pled guilty to a reduced charge of possession of cocaine as a class D felony,⁴ the State dismissed the remaining charges and withheld a petition to revoke probation based on this conviction.

The trial court sentenced Boatwright to the maximum of three years “because of his long term substance abuse problem.” (Appellant’s App. p. 76). He was ordered to serve the first eighteen months and the balance was suspended to probation. With credit for time served, Boatwright had already served the executed portion of the sentence.

DISCUSSION AND DECISION

Indiana Appellate Rule 7(B) authorizes the reviewing court to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. This court has constitutional authority to revise a sentence according to Article 7, Section 6 of our Indiana Constitution, however, this court’s review is “very deferential” to the trial court’s decision. *Asher v. State*, 790 N.E.2d 567, 570 (Ind. Ct. App. 2003).

Even though our supreme court in *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002), has said that maximum sentences should be reserved for the worst class of offenses and offenders, as argued by Boatwright, that alone is not the only factor considered by this court. The fact that Boatwright has a criminal history and a history of substance abuse is sufficient in this case. In 2000, he was convicted of public intoxication and violated his probation by failing to complete an alcohol education program. Four years later he was placed on court supervision for possession of marijuana and a year after that he was again charged with possession of marijuana and public

⁴ I.C. § 35-48-4-6(a)

intoxication. This court has determined that any criminal history is a “possible and proper aggravator.” *White v. State*, 756 N.E.2d 1057, 1062 (Ind. Ct. App. 2001). The significance of a defendant’s criminal history “varies based on the gravity, nature and number of prior offenses as they relate to the current offense.” *Wooley v. State*, 716 N.E.2d 919, 929 n.4 (Ind. 1999). We find that the trial court has not abused its discretion in his maximum sentence of three years.

In addition, the trial court did not abuse its discretion in failing to identify Boatwright’s guilty plea as a mitigating factor. Since the enactment of I.C. § 35-38-1-7.1(d), the “trial court is under no obligation to find, consider or weigh either aggravating or mitigating circumstances.” *Fuller v. State*, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006). We note, however, that this court is currently divided on whether it is to review aggravators and mitigators found or not found by the trial court. *Gibson v. State*, 856 N.E.2d 142, 146-147 (Ind. Ct. App. 2006).

Boatwright relies on the case of *Hope v. State*, 834 N.E.2d 713 (Ind. Ct. App. 2005), to support his contention that his guilty plea should be used to mitigate his sentence. *Hope* finds that a guilty plea demonstrates an acceptance of responsibility for the crime and extends a benefit to the State by avoiding a full-blown trial. But, *Francis v. State*, 817 N.E.2d 235, 237-8 (Ind. 2004) makes clear that the extent to which a guilty plea is mitigating will vary from case to case.

CONCLUSION

In this case, Boatwright did receive a benefit from his guilty plea because the State dismissed one misdemeanor, one felony charge and withheld filing a petition to revoke

probation. Also, Boatwright was given credit for time served and was immediately released to his probation. The trial court did not abuse its discretion by failing to consider Boatwright's guilty plea a substantial mitigating factor.

The sentence imposed by the trial court is affirmed.

NAJAM, J., and BARNES, J., concur.