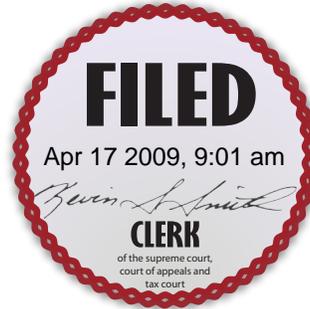


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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ALFONZO RICHARDSON, JR., )

Appellant-Defendant, )

vs. )

No. 34A02-0812-CR-1158

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE HOWARD SUPERIOR COURT  
The Honorable Lynn Murray, Special Judge  
Cause No. 34D04-0806-FB-148

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**April 17, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Alfonzo Richardson, Jr., appeals the sentence imposed after he pleaded guilty to Battery, as a Class C felony, under an open plea. Richardson presents two issues for review:

1. Whether the trial court abused its discretion when it sentenced him.
2. Whether Richardson's sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On June 21, 2008, Raymond McCown and Isi Harmon were crossing Main Street in Kokomo when Richardson and another man began to harass them. When Harmon confronted the men, Richardson's companion held McCown while Richardson fought with Harmon. When Harmon fell to the ground, Richardson stomped on Harmon's head several times. Richardson and his companion then fled. Harmon suffered serious injuries and was eventually transported by Lifeline to Indianapolis for treatment.

On June 30, 2008, the State charged Richardson with aggravated battery, as a Class B felony. The matter was set for a jury trial on November 18, 2008. But on November 17, the parties entered into an open plea. As a result, the State charged Richardson with battery, as a Class C felony; Richardson pleaded guilty to that charge; and the State moved to dismiss the aggravated battery charge. The court held the guilty plea hearing the same date, accepted the plea, and entered judgment of conviction accordingly.

On December 10, the court sentenced Richardson as follows:

It's a Class C felony because of the degree of the seriousness of the harm that was caused to the victim in this case, that the Probable Cause Affidavit, the records in this case, indicate that, and as reflected in the Victim Impact Letter that the court received and is now part of the record, that the victim in this case was almost killed as a result of the attack and the intentional battering that Mr. Richardson imposed upon him and it also indicates that this was not a matter of self-defense, that after Mr. Harmon was actually on the ground that his seriousness of his injuries, the skull fracture [from] which he nearly died, happened because you stomped on him, more than once. I'm just explaining why this is a Class C felony, why it was originally charged as a Class B felony. Mitigating factors, there is a mitigating factor that the court considers any time a defendant pleads guilty to a crime rather than proceed to trial. In this particular case I do not find that to be a strong mitigating factor at all because this was originally charged as a B felony which carried up to 20 years incarceration and that there was a substantial benefit to Mr. Richardson by pleading guilty to the C felony of which the maximum amount of time is eight years. Aggravating factors [are] primarily criminal history and that's, I've hea[r]d some discussion by counsel about that at this hearing here today and as contained in the presentence report and I would remind [you] that our record does show that Mr. Richardson was given an opportunity to review the report prior to our hearing this morning. I affirmed [sic] with him on the record that what's contained therein is in fact correct. This criminal history shows that Mr. Richardson has been charged with committing violent offenses against people, crimes against society since he was either twelve or thirteen years of age, 1995, with Battery, which is a crime against a person. He was warned and released probably because he was only twelve or thirteen and it was his first brush with the system at that time. Subsequently, while he was still a juvenile, there was a juvenile adjudication for the offenses then of Burglary, Mischief, again of Mischief, Theft, Resisting Law Enforcement, Battery again, and then Battery a last time in September of 2001, again crimes against persons, hurting people. Then as an adult when Mr. Richardson turned eighteen years of age he has a substantial prior history as an adult even though he's only been an adult for seven years, being the age twenty-five today. He has felony convictions for Receiving Stolen Property from 2002, Attempted Escape as a C felony, and then Mischief as an A misdemeanor from 2003. Theft, 2006, Receiving Stolen Property. An OWI in 2006 and then a Public Intoxication in April of 2008, just some two months before this offense occurred. In those criminal convictions, in each case there was some type of a sentence imposed and most likely, it would appear to be just from reviewing the record, be most likely by recommendation of plea which again the effort

was and the purpose was to try to dissuade Mr. Richardson from committing further offenses and obviously that purpose has not been fulfilled. Short[-]term incarceration, probation, terms of probation, terms of in-home detention, [have] not dissuaded Mr. Richardson from committing Battery Causing Serious Bodily Injury to Mr. Harmon. That is why I consider the criminal history to be a very strong aggravator in this case. Based on the identification and balancing of those aggravating and mitigating circumstances as I've here[] identified I would find that, Mr. Richardson, an appropriate sentence for you in this case is a sentence to the Indiana Department of Correction[] for a period of eight years, all executed. You are entitled to credit time for that which you've already served which by our calculations and the presentence report is 204 days of credit time.

Transcript at 30-33. Richardson now appeals

## **DISCUSSION AND DECISION**

### **Issue One: Abuse of Discretion**

Richardson contends that the trial court abused its discretion when it sentenced him. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that 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. (quotation omitted).

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. Under those circumstances, remand for resentencing may be the appropriate remedy 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 490-91.

Richardson first argues that, although the trial court listed the guilty plea as a mitigator, the court used that factor as an aggravator to enhance Richardson's sentence. In particular, he maintains that "[c]alling this an insignificant mitigating factor is used to circumvent the plea." Appellant's Brief at 9-10. But Richardson does not explain how the lesser weight assigned to that mitigator "circumvented" the open plea. As such, the argument is waived. See Ind. Appellate Rule 46(A)(8)(a). And to the extent Richardson argues that the trial court improperly weighed his guilty plea, we may not review that claim. See Phillips v. State, 869 N.E.2d 512, 515 (Ind. Ct. App. 2007) (citing Anglemyer, 868 N.E.2d at 491) ("an appellate court may not review the trial court's weighing of aggravator's and mitigators."). In any event, Richardson received a substantial benefit from his guilty plea when the State reduced the charge from a Class B to a Class C felony. Fields v. State, 852 N.E.2d 1030, 1034 (Ind. Ct. App. 2006), trans. denied. Thus, Richardson's argument must fail.

Richardson also contends that the trial court "ignored additional mitigating factors." Appellant's Brief at 10. He first argues that the trial court should have found that "[t]he offense was caused by the victim and the victim provoked the attack." Id. Richardson provides no citation to the record to show the existence of that mitigator. As such, he has waived that argument. See App. R. 46(A)(8)(a). Richardson also argues that the trial court should have found as a mitigator that he "saved the Court and victim the time, cost and expense of trial." Appellant's Brief at 10. But, as discussed above, the trial court identified the guilty plea as a mitigator. And, again, we cannot review the

weight assigned by the trial court to this factor. See Phillips, 869 N.E.2d at 515. Richardson's argument is without merit.

**Issue Two: Appellate Rule 7(B)**

Richardson next contends that his sentence is inappropriate in light of the nature of the offense and his character. But he does not cogently explain why his sentence is inappropriate in light the nature of the offense or his character. As such, the argument is waived. See App. R. 46(A)(8)(a). Waiver notwithstanding, the record shows that Richardson almost killed the victim, and he has a substantial criminal history. Accordingly, the sentence imposed by the trial court is not inappropriate.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.