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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

ROBERT D. KING, JR.
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

KEVIN E. TAYLOR,)

Appellant-Defendant,)

vs.)

No. 49A02-0809-CR-824

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Patricia Gifford, Judge

Cause No. 49G04-0806-FB-153403 & 49G04-0712-FD-255314

April 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Kevin Taylor appeals his sentence for two counts of burglary as class B felonies.¹

Taylor raises one issue, which we revise and restate as:

- I. Whether the trial court abused its discretion in sentencing Taylor; and
- II. Whether Taylor's sentence is inappropriate in light of the nature of the offense and the character of the offender.²

We affirm.

The relevant facts follow. On or about May 29, 2008, Taylor broke and entered the building or structure and dwelling of Dennis Gergely with the intent to commit the felony of theft. On the same day, Taylor also broke and entered the building or structure and dwelling of Michael Cuticchia with intent to commit the felony of theft.

The State charged Taylor with two counts of burglary as class B felonies and two counts of theft as class D felonies. Taylor pled guilty to two counts of burglary as class B felonies and admitted a violation of probation under Cause Number 49-G04-0712-FB-255314 ("Cause Number 314"). As part of the plea agreement, the State dismissed the remaining two counts of theft as class D felonies. The plea agreement provided for

¹ Ind. Code § 35-43-2-1 (2004).

² Taylor also argues that Article 1, Section 18 of the Indiana Constitution "states that the penal code shall be founded on principles of reformation and not of vindictive justice," and "that to incarcerate someone so young beyond the minimal non-suspendable time is vindictive, not reformation." Appellant's Brief at 7. Taylor fails to make a cogent argument in support of his assertion or cite to authority. Consequently, this issue is waived. *See, e.g., Cooper v. State*, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority"); *Shane v. State*, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument). Moreover, we note that the Indiana Supreme Court has held that "particularized, individual applications are not reviewable under Article 1, Section 18 because Section 18 applies to the penal code *as a whole* and does not protect fact-specific challenges." *Ratliff v. Cohn*, 693 N.E.2d 530, 542 (Ind. 1998), reh'g denied.

“[o]pen sentencing” with a cap of twelve years on the initial executed portion of the sentence. Appellant’s Appendix at 20.

After a combined hearing on the violation of probation and the burglary charges, the trial court accepted the guilty pleas and held that the new convictions constituted a violation of probation. The trial court revoked Taylor’s probation and ordered him to serve one year in the Department of Correction on the revocation.

The trial court found Taylor’s age and prompt acceptance of responsibility as mitigators, and found his juvenile history as an aggravator and the fact that Taylor had been on probation for less than three months for B felony robberies when he committed the current offenses as a “severe aggravating factor.” Transcript at 21-22. The trial court also noted: (1) that Taylor’s juvenile history established that the juvenile court utilized all means available to correct his behavior and the least restrictive means available through the juvenile court failed; (2) Taylor’s adult criminal history; (3) that Taylor has established a pattern of abusing the lenient treatment afforded him previously; and (4) that Taylor is in need of rehabilitation that can best be provided by a penal facility and that Taylor is likely to reoffend if he is not committed to the Department of Correction. The trial court sentenced Taylor to ten years for each count of burglary as a class B felony and ordered the sentences to be served concurrently with each other but consecutive to the one-year sentence imposed for violating his probation under Cause Number 314.

The first issue is whether the trial court abused its discretion in sentencing Taylor. 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 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 that should have been found, is not subject to review for abuse of discretion. Id.

Taylor argues that the trial court failed to consider as a mitigator his capability to reform. “The finding of mitigating factors is not mandatory and rests within the discretion of the trial court.” O’Neill v. State, 719 N.E.2d 1243, 1244 (Ind. 1999). The

trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Gross v. State, 769 N.E.2d 1136, 1140 (Ind. 2002). "Nor is the court required to give the same weight to proffered mitigating factors as the defendant does." Id. Further, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Sherwood v. State, 749 N.E.2d 36, 38 (Ind. 2001), reh'g denied. However, the trial court may "not ignore facts in the record that would mitigate an offense, and a failure to find mitigating circumstances that are clearly supported by the record may imply that the trial court failed to properly consider them." Id. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999).

Taylor appears to argue that he is someone capable of reform because his grandmother indicated that Taylor could live with her when he was released from custody and that counseling to address psychological issues might benefit Taylor. Taylor also mentions that he was supported at his sentencing by a mentor from the Big Brother's organization.

The record reveals that, as a juvenile, Taylor was adjudicated a delinquent for acts that would constitute battery as a class A misdemeanor and criminal mischief as a class B misdemeanor if committed by an adult. As an adult, Taylor was convicted of two counts of theft as class D felonies and two counts of burglary as class B felonies in March 2008. Taylor received suspended sentences, and, less than three months later, committed the

current offenses. At sentencing, the trial court noted that Taylor has established a pattern of abusing the lenient treatment afforded him previously. Given Taylor's criminal history, we cannot say that Taylor's ability to reform is both significant and clearly supported by the record. Thus, the trial court did not abuse its discretion by not finding his grandmother's support or Taylor's ability to reform as mitigators.

Taylor also appears to argue that the trial court should have considered his acceptance of responsibility, guilty plea, and age of twenty-one years as mitigators. However, the trial court did find Taylor's age and prompt acceptance of responsibility as mitigators. To the extent that Taylor argues that the trial court failed to give these mitigators proper weight, pursuant to Anglemyer, the relative weight or value assignable to reasons properly found is not subject to our review for abuse of discretion. Consequently, we cannot review Taylor's arguments. See, e.g., Anglemyer, 868 N.E.2d at 491.

II.

The next issue is whether Taylor's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v.

State, 848 N.E.2d 1073, 1080 (Ind. 2006). Taylor argues that “he should have received a more lenient sentence.” Appellant’s Brief at 6.

Our review of the nature of the offense reveals that Taylor broke and entered the building or structure and dwelling of Dennis Gergely with the intent to commit the felony of theft. Taylor also broke and entered the building or structure and dwelling of Michael Cuticchia with intent to commit the felony of theft.

Our review of the character of the offender reveals that, as a juvenile, Taylor was charged with committing an act that would constitute battery as a class A misdemeanor if committed by an adult. While Taylor was on informal home detention, Taylor was adjudicated a delinquent for acts that would constitute battery as a class A misdemeanor and criminal mischief as a class B misdemeanor if committed by an adult. As an adult, in November 2007, Taylor was charged with four counts of theft as class D felonies, two counts of possession of paraphernalia as class A misdemeanors, and two counts of burglary as class B felonies. In March 2008, Taylor was convicted of two counts of theft as class D felonies and two counts of burglary as class B felonies and the remaining charges were dismissed. Taylor received suspended sentences, and, less than three months later, committed the current offenses.

Here, twenty-one-year-old Taylor pled guilty to two counts of burglary as class B felonies and admitted a violation of probation. Taylor apologized for his actions, but the trial court recognized that he was the sentencing judge for Taylor’s previous convictions and noted:

It was not so long ago, Mr. Taylor, that I don't [sic] recall you presenting yourself in much the same light making very similar statements to me. I think the earnestness of your remarks might have played better if you had had the fortune to draw a different judicial officer than the one who sentenced you barely three months ago.

Transcript at 21.

After due consideration of the trial court's decision, we cannot say that the advisory sentence of ten years imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender.

For the foregoing reasons, we affirm Taylor's sentence.

Affirmed.

CRONE, J. and BRADFORD, J. concur