

Ryan M. Allen (“Allen”) appeals his sentence after pleading guilty to one count of auto theft¹ as a Class D felony. Allen presents the following restated issue for our review: whether the trial court abused its discretion when imposing Allen’s sentence by failing to recognize certain proffered mitigating circumstances.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts revealed during Allen’s guilty plea hearing show that on May 2, 2009, Ann Marie Mack (“Mack”) parked her Chevy Suburban in her driveway in Hammond, Indiana, and went inside her house leaving her keys and purse in the vehicle. Mack and her children observed Allen get into Mack’s vehicle and proceed to drive away. Mack did not know Allen and did not give him permission to use her vehicle. Allen was later found driving Mack’s vehicle and was arrested.

The State charged Allen with carjacking as a Class B felony and auto theft as a Class D felony for the events occurring on May 2, 2009. On August 14, 2009, Allen and the State entered into a plea agreement whereby Allen would plead guilty to auto theft and the State would dismiss the carjacking charge. Allen, who was also on probation for two separate Class C felony robbery convictions, further agreed that he was in violation of his probation in those cases. The parties were free to argue sentencing.

The trial court accepted Allen’s guilty plea and sentenced him to three years executed for his Class D felony auto theft conviction. The trial court then imposed two concurrent

¹ See Ind. Code § 35-43-4-2.5.

two-year sentences for the probation violations and ordered those sentences to be served consecutively to the sentence for auto theft conviction. Allen now appeals.

DISCUSSION AND DECISION

Trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.* Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only 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, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.*

One way in which a trial court may abuse its discretion is by failing to enter a sentencing statement at all. *Id.* 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. *Id.* at 490-91. Because the trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other

when imposing a sentence, a trial court cannot now be said to have abused its discretion in failing to “properly weigh” such factors. *Id.* at 491. Once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then “impose any sentence that is . . . authorized by statute; and . . . permissible under the Constitution of the State of Indiana.” Ind. Code § 35-38-1-7.1(d).

Allen pleaded guilty to one count of Class D felony auto theft. The sentencing range for a Class D felony is a fixed term of between six months and three years with the advisory sentence being one and one-half years. Ind. Code § 35-50-2-7. Allen received a three-year executed sentence. The trial court found Allen’s prior criminal history--that he was on probation for two cases at the time of the present offense--and his violation of probation as aggravating circumstances. The trial court then found that Allen’s admission of guilt and expression of remorse were mitigating circumstances. The trial court determined that the aggravating circumstances outweighed the mitigating circumstances and imposed the three-year sentence.

Allen claims that the trial court abused its discretion when imposing his sentence for Class D felony auto theft by failing to recognize certain proffered mitigating circumstances. More specifically, Allen argues that the trial court should have recognized that Allen was in a back brace at the time of the offense, and that he was attempting to return the vehicle to Mack at the time of his arrest for the offense.

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. *Anglemyer*, 868 N.E.2d at 493. If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist. *Id.* (quoting *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993)). Moreover, the trial court is not obligated to weigh or credit facts proffered as mitigating by the defendant in the way that the defendant suggests they should be weighed or credited. *Abel v. State*, 773 N.E.2d 276, 280 (Ind. 2002). Furthermore, “[t]he approach employed by Indiana appellate courts in reviewing sentences in non-capital cases is to examine both the written and oral sentencing statements to discern the findings of the trial court.” *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007) (citing *Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002)).

In the present case, the transcript includes the following exchange between Allen and the trial court at sentencing:

But secondly, I’d just like to say that I was having an allergic reaction and I thought I was going to die is the reason -- and the vehicle was sitting there and nobody was driving and I tried to get help and I didn’t get help.

So that’s -- I’m asking, your Honor, just to give me a chance here because I had a guilty conscience and the next day and I was bringing that vehicle back when I was pulled over.

* * *

Okay. Well, I don’t -- you know, I’m sympathetic to his brace and his medical condition and his need for treatment. I don’t know how I can facilitate that, because at this particular point in time, he’s violated his probation, he’s got to do that term, he’s got to do something on this particular case.

Tr. at 30, 33.

From the above it is apparent that the trial court did consider Allen's guilty conscience and attempt to return the vehicle to Mack, but instead characterized that as part of his remorsefulness, a mitigating circumstance that was found. Furthermore, the trial court expressed sympathy about Allen's medical condition that involved use of the back brace, but did not find that to be a mitigating circumstance. The trial court considered the proffered mitigating circumstance and did not abuse its discretion by failing to find Allen's medical condition involving the use of a back brace of such significance to constitute a mitigating circumstance.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.