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IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER C. CRAFT,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 84A01-1010-CR-530
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0901-FA-231

July 5, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Christopher C. Craft ("Craft") pleaded guilty in Vigo Superior Court to Class A felony burglary. He was ordered to serve a thirty-year sentence, with twenty-five years executed in the Department of Correction and five years suspended to probation. Craft appeals and argues that the trial court abused its discretion when it failed to consider his guilty plea as a mitigating circumstance, and that his thirty-year sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On or about January 14, 2009, at approximately 4:00 a.m., Cheryl Walls observed two individuals on her porch. One individual was wearing a ski mask and the other individual, a white male, was armed with a handgun. Walls struggled with the men when they entered her home. Walls was struck in the face with the gun, and she fell to the floor. She was struck at least one other time and a towel was thrown over her head. As Walls lay on the floor, she heard one of the perpetrators call a third individual to the front door. The three men then removed two flat screen televisions, a Sony Playstation, and a half gallon of chocolate milk from Walls's home. One of the men threatened Walls and told her that they would kill her if she called the police. As a result of the attack, Walls suffered cuts to her head and face, a broken nose, and a permanent scar.

Prior to burglarizing Walls's home, the three men also burglarized a home in neighboring Clay County. The resident of that home was also physically attacked, and a female resident and child were held at gunpoint. The perpetrators stole several electronic items and the female's purse.

Investigation of the similar Vigo County and Clay County burglaries eventually led to nineteen-year-old Craft's arrest. Craft gave a statement to the police implicating himself and Josh and Levi Orman. Craft, who had been a guest in Walls's home prior to the burglary, told the police that he entered Walls's home to remove the stolen items while she lay on the floor.

Craft was charged with Class A felony burglary and Class B felony robbery. One day before his scheduled jury trial, Craft pleaded guilty to Class A felony burglary. The State agreed to dismiss the remaining robbery charge in exchange for Craft's plea. The agreement also provided that sentencing was left to the trial court's discretion up to a thirty-year cap on the sentence and that the sentence would be ordered to be served concurrent to the twenty-year sentence Craft received for his Class B felony aggravated battery conviction arising from the Clay County offense.

On September 27, 2010, the trial court held a sentencing hearing and found the following aggravating circumstances: Craft's criminal history and Walls's injuries which "were significant and greater than the elements necessary to provide the commission of the offense[.]" Appellant's App. p. 81. The court determined that Craft's age, difficult childhood, and substance abuse were mitigating circumstances. Craft was then ordered to serve a thirty-year sentence, with twenty-five years executed in the Department of Correction and five years suspended to probation. Craft now appeals. Additional facts will be provided as necessary.

I. Craft's Guilty Plea as a Mitigating Circumstance

First, Craft argues that the trial court abused its discretion when it failed to consider his guilty plea as a mitigating circumstance. Sentencing decisions "rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified 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. (quotations and citation omitted). A trial court may abuse its discretion by failing to enter a sentencing statement, entering findings of aggravating and mitigating factors unsupported by the record, omitting factors clearly supported by the record and advanced for consideration, or giving reasons that are improper as a matter of law. Id. at 490–91. "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 491.

A defendant who pleads guilty generally deserves "some" mitigating weight to be afforded to the plea. Anglemyer, 875 N.E.2d at 220 (citing McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007)). But a trial court does not necessarily abuse its discretion by failing to recognize a defendant's guilty plea as a significant mitigating circumstance. Id. at 221.

First, we observe that Craft's guilty plea did not spare the State the expense of preparing for trial because Craft agreed to plead guilty only the day before his scheduled jury trial. Also, Craft's decision to plead guilty was likely a pragmatic one, because Craft implicated himself in the crime. Moreover, under the terms of the plea agreement,

Craft's sentence was capped at thirty years, the advisory sentence for a Class A felony, and equally important, provided that his sentence would be ordered to be served concurrently to the sentence he received for the Clay County offense. This was a significant benefit in light of the severity of this offense, the Clay County offense, and his criminal history. Craft's decision to plead guilty was therefore primarily, if not entirely, a pragmatic one that does not rise to the level of significant mitigation. While the better practice certainly would have been for the trial court to acknowledge the guilty plea and discuss its significance under the circumstances, the trial court did not abuse its discretion by failing to find that Craft's guilty plea was a mitigating circumstance. Furthermore, any error was harmless in light of the fact that Craft received a thirty-year advisory sentence.[1]

II. Inappropriate Sentence

Craft also argues that his thirty-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence

[1] Craft also argues that the trial court should have considered his remorse as a mitigating circumstance, but Craft failed to argue this circumstance at sentencing, and therefore, the argument may not be advanced on appeal. See Anglemyer, 868 N.E.2d at 492; Spears v. State, 735 N.E.2d 1161, 1167 (Ind. 2000). Waiver notwithstanding, it was within the trial court's discretion to weigh the credibility of Craft's expression of remorse. Craft also argues that his history of substance abuse should have been afforded more mitigating weight at sentencing, but the weight given to aggravating and mitigating circumstances is not subject to appellate review. See Anglemyer, 868 N.E.2d at 491. Finally, Craft argues that the trial court should have provided for his rehabilitation, but has not cited any statute or case law that would support his argument that the trial court was required to do so. The trial court did recommend the defendant for the CLIFF program to receive alcohol and drug addiction services while he is serving his sentence in the Department of Correction.

imposed by the trial court. Alvies v. State, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing Anglemyer, 868 N.E.2d at 491.

This appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that a court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Anglemyer, 868 N.E.2d at 491. However, "we must and should exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007). See also Childress v. State, 848 N.E.2d 1073, 1081 (Ind. 2006) (Dickson, J., concurring) ("A defendant's conscious choice to enter a plea agreement that limits the trial court's discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of sentence reasonableness and appropriateness.")

Craft was ordered to serve thirty years in the Department of Correction, with five years suspended to probation. Thirty years is the advisory sentence for a Class A felony. See Ind. Code § 35-50-2-4 (2004 & Supp. 2011) (providing that a person convicted of a Class A felony may be sentenced in a range from twenty to fifty years, with thirty years being the advisory sentence). Even though he did not receive the maximum possible statutory sentence, apparently because he received the maximum sentence bargained for

under the plea agreement, Craft argues that "he is not the worst offender, nor did he commit the very worst offense, and therefore a 30-year sentence is inappropriate." Appellant's Br. at 5.

Although the maximum sentence is generally reserved for the worst offenders and offenses, this oft-cited principle is "not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario." Harris v. State, 897 N.E.2d 927, 929-30 (Ind. 2008). Therefore, we will not engage in the useless exercise of imagining a more contemptible set of circumstances, and instead focus our review on what the record reveals about the nature of Craft's offenses and his character.

Nineteen-year-old Craft and his co-defendants broke into Walls's home while armed with a gun. Walls was struck at least twice with the gun and forced to lie in her own blood and shattered glass. They then threatened to kill her if she called the police. Walls has a permanent scar as a result of the attack. But the greater injury to Walls resulting from Craft's offense is her inability to trust people and her fear that Craft and his co-defendants might retaliate against her or her family when they are eventually released from prison. See Sentencing Tr. pp. 10-12.

The night that Craft committed the instant offense, he committed a similar offense in an adjoining county. Craft agreed to plead guilty to Class B felony aggravated battery and received a twenty year sentence, with fifteen years executed and five years of formal probation.

As a juvenile, Craft was adjudicated a delinquent child for committing criminal mischief and burglary. He was committed to the Indiana Boys School, and after he was released, he violated his formal probation. He also committed invasion of privacy, battery, and battery resulting in bodily injury as a juvenile, but was waived into adult court. As a result of those charges, Craft pleaded guilty to invasion of privacy.

In December 2007, in separate causes, Craft was convicted of Class A misdemeanor battery resulting in bodily injury, and Class A misdemeanor invasion of privacy. He was sentenced to one year for each misdemeanor conviction to be served consecutive to each other, but the sentences in both causes were suspended to probation. His probation was revoked in both causes in July 2008. Six months later he committed the Clay County offense and the burglary at issue in this appeal. Craft's criminal history leads to the conclusion that he is unable to lead a law-abiding life.

For all of these reasons, we conclude that Craft's thirty-year sentence, with twenty-five years executed and five years suspended to probation, is not inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

The trial court did not abuse its discretion when it failed to consider Craft's guilty plea as a mitigating circumstance, and Craft's thirty-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.