



## Case Summary

Chad Lemons (“Lemons”) appeals his fifteen-year sentence for robbery as a Class B felony. He contends that the trial court abused its discretion in finding his criminal history to be an aggravating circumstance and in failing to find his guilty plea as a mitigating circumstance. Finding no abuse of discretion, we affirm.

## Facts and Procedural History

On November 15, 2002, Lemons pushed sixty-six-year-old Barb Greene (“Greene”) to the ground and took \$1911.00 from her. Greene reported having “a knot on her head and some injury and soreness for quite some period of time[.]” Tr. p. 12. The State charged Lemons with Robbery resulting in bodily injury, a Class B felony.<sup>1</sup> Pursuant to a plea agreement, Lemons pled guilty as charged and agreed to a sentencing range of twelve to fifteen years.<sup>2</sup> In sentencing Lemons, the trial court found two aggravating circumstances—Lemons’ criminal history and the age of his victim—and no mitigating circumstances. The trial court imposed the agreed upon maximum sentence of fifteen years. Lemons now brings this belated appeal.<sup>3</sup>

## Discussion and Decision

---

<sup>1</sup> Ind. Code § 35-42-5-1.

<sup>2</sup> The Class B felony sentencing statute in effect at the time of Lemons’ offense provided for a minimum sentence of six years, a presumptive sentence of ten years, and a maximum sentence of twenty years. Ind. Code § 35-50-2-5 (2002).

<sup>3</sup> On July 17, 2006, while incarcerated, Lemons filed a *pro se* Motion for Educational Credit Time pursuant to Indiana Code § 35-50-6-3.3, noting that he had completed several courses offered by the Indiana Department of Correction. The trial court found that it had subject matter jurisdiction over the motion but nonetheless denied it. Lemons asked his appellate counsel to raise this issue on appeal. To counsel’s credit, he concedes that the trial court did not have subject matter jurisdiction over this issue, as an initial application for education credit time must be made to the Department of Correction. *See Members v. State*, 851 N.E.2d 979, 982-83 (Ind. Ct. App. 2006). For the same reason, we do not have subject matter jurisdiction over this issue.

On appeal, Lemons contends that the trial court abused its discretion in sentencing him.<sup>4</sup> Sentencing decisions are generally within the discretion of the trial court and will only be reversed upon a showing of an abuse of discretion. *Marshall v. State*, 832 N.E.2d 615, 623 (Ind. Ct. App. 2005), *trans. denied*.

Lemons first argues that the trial court should not have found his criminal history to be an aggravating circumstance. We cannot agree. Lemons' presentence investigation report reveals juvenile adjudications for truancy, several counts of burglary, and dangerous possession of a firearm, along with adult misdemeanor convictions for intimidation, domestic violence, disorderly conduct, conversion, and criminal mischief. This history—particularly the burglary, intimidation, domestic violence, and conversion offenses—is closely related to this offense, which was a property crime involving violence against a woman. Furthermore, Lemons' adult offenses are not, as Lemons contends, "distant." Appellant's Br. p. 6. He committed all of them relatively recently, between 2001 and 2004.<sup>5</sup> The trial court did not abuse its discretion in finding or weighing Lemons' criminal history as an aggravating circumstance. *See Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006) ("[The weight of an individual's criminal history] is measured by the number of prior convictions and their gravity, by their proximity or

---

<sup>4</sup> Because Lemons committed his offense in 2002, we operate under the former presumptive sentencing scheme rather than the current advisory scheme, which did not take effect until April 25, 2005. *See Guteruth v. State*, 868 N.E.2d 427, 431 n.4 (Ind. 2007) (explaining that "the long-standing rule" is that "the sentencing statute in effect at the time a crime is committed governs the sentence for that crime").

We also note that even though Lemons cites Indiana Appellate Rule 7(B), he makes no separate argument that his sentence is inappropriate in light of the nature of his offense or his character. Therefore, we limit our review to whether the trial court abused its discretion in sentencing Lemon.

<sup>5</sup> As to the crimes that Lemons committed after he committed this robbery, our Supreme Court has noted that "[c]riminal activity that occurs subsequent to the offense for which one is being sentenced is a proper sentencing consideration." *Sauerheber v. State*, 698 N.E.2d 796, 806 (Ind. 1998).

distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability.”).

Lemons also asserts that the trial court abused its discretion by failing to consider his guilty plea as a mitigating circumstance. The trial court is not required to find the presence of mitigating circumstances. *Patterson v. State*, 846 N.E.2d 723, 727 (Ind. Ct. App. 2006). When a defendant offers evidence of mitigators, the trial court has the discretion to determine whether the factors are indeed mitigating, and the trial court is not required to explain why it does not find the proffered factors to be mitigating. *Id.* “However, when a trial court fails to find a mitigator that the record clearly supports, a reasonable belief arises that the mitigator was improperly overlooked.” *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005).

“A guilty plea demonstrates a defendant's acceptance of responsibility for the crime and extends a benefit to the State and to the victim or the victim's family by avoiding a full-blown trial.” *Francis v. State*, 817 N.E.2d 235, 237-38 (Ind. 2004). As such, “a defendant who willingly enters a plea of guilty has extended a substantial benefit to the state and deserves to have a substantial benefit extended to him in return.” *Williams v. State*, 430 N.E.2d 759, 764 (Ind. 1982), *reh'g denied*. Here, Lemons did receive a substantial benefit in return for his guilty plea: his sentence was capped at fifteen years instead of the statutory maximum of twenty years. “[A] guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea[.]” *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*.

Furthermore, even if a trial court fails to find a proper mitigator, we will affirm the sentence when we can say with confidence that the trial court would have imposed the same sentence if it had considered the proper aggravating and mitigating circumstances. *See Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002); *Comer v. State*, 839 N.E.2d 721, 725 (Ind. Ct. App. 2005), *trans. denied*. Here, in light of Lemons' extensive criminal history and the age of his victim, we can say with confidence that the trial court would have imposed the maximum sentence under the plea agreement—fifteen years—even if it had considered Lemons' guilty plea as a mitigating circumstance.

Affirmed.

ROBB, J., and BRADFORD, J., concur.