

James E. Sims (“Sims”) appeals after pleading guilty to one count of attempted theft¹ as a Class D felony and one count of criminal mischief² as a Class A misdemeanor. Sims raises the following restated issue for our review: whether Sims’ three-year aggregate, executed sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 20, 2010, Sims broke into the property of Frontier Communications in Allen County through a hole in a chain-link fence surrounding the property. Frontier Communications had posted on its property several “No Trespassing” signs, and access to the property could only be had through a controlled gate. Sims entered the property twice with Anthony Harris (“Harris”).

Surveillance equipment on the property recorded Sims placing scrap communication wire in a pile after Harris handed it to Sims from a dumpster located on the property. When Fort Wayne police officers arrived at the property, they found Sims and Harris attempting to steal the wire. Sims admitted that he did not have permission to be on the property, and that he and Harris intended to profit from stealing the wire by selling it at a scrap yard.

The State charged Sims with attempted theft and criminal mischief, and Sims pleaded guilty as charged. At the conclusion of Sims’ sentencing hearing, the trial court imposed a three-year executed sentence for the attempted theft conviction and a one-year executed

¹ See Ind. Code § 35-43-4-2(a); Ind. Code § 35-41-5-1.

² See Ind. Code § 35-43-2-2.

sentence for the criminal mischief conviction, each sentence to be served concurrently. Sims now appeals.

DISCUSSION AND DECISION

Sims appeals, arguing that the trial court failed to recognize proffered mitigating circumstances, and that his sentence is inappropriate in light of the nature of the offense and the character of the offender.

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 (Ind. 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.* Another example includes a sentencing statement that explains reasons for imposing a sentence, including mitigating and aggravating circumstances, which are not supported by the record. *Id.* at 490-91. A court may also abuse its discretion by citing reasons that are contrary to law. *Id.* at 491. Finally, a trial court may

abuse its discretion by entering a sentencing statement that omits mitigating factors that are clearly supported by the record and advanced for consideration. *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).

Sims argues that the trial court failed to recognize mitigating factors, which he contends are substantial. In particular, Sims argues that the trial court abused its discretion by ignoring the proffered mitigating factors. However, the record reflects that the trial court acknowledged that Sims cooperated with authorities by making a full confession, that no restitution was due to Frontier Communications, and that Sims had dependent children. *Tr.* at 8. The trial court noted, however, that Sims had an extensive criminal history, consisting of twenty-three criminal convictions accumulated over a period of thirty-five years. *Id.* at 12. The trial court found that Sims’ criminal history was an aggravating factor that outweighed any mitigating circumstances and justified the imposition of an enhanced sentence.

A defendant who pleads guilty generally deserves “some” mitigating weight afforded to the plea. *McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007) (citing *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005)). However, a trial court does not necessarily abuse its discretion by failing to recognize a defendant’s guilty plea as a significant mitigating circumstance. *Id.* A guilty plea is not automatically a significant mitigating factor. *Mull v. State*, 770 N.E.2d

308, 314 (Ind. 2002). A guilty plea does not rise to the level of significant mitigation where the decision to plead guilty is merely a pragmatic one. *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005). Such is the case here. Sims was caught on the property of Frontier Communications stealing from the business. We agree with the trial court's assessment of the aggravating and proffered mitigating circumstances and find no abuse of discretion here.

Sims also asserts that his sentence is inappropriate in light of the nature of the offense and the character of the offender. This court has the authority to revise a sentence "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." Ind. Appellate Rule 7(B). Assuming without deciding that the nature of Sims' offenses are not remarkable, we conclude that the sentence imposed here is appropriate given Sims' character. During a thirty-five year period of time, Sims has amassed ten misdemeanor convictions and thirteen felony convictions, and has twice had his probation and parole revoked. Those convictions include five theft convictions, one armed robbery conviction and one criminal trespass conviction. Sims's five-year unemployment history, history of substance abuse, and failure to support his dependents poorly reflect on his character. Thus, we conclude that Sims' sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BAKER, J., and BROWN, J., concur.