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ATTORNEY FOR APPELLANT:

**MICHAEL W. REED**  
Reed & Earhart Attorneys at Law, P.C.  
Warsaw, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**MATTHEW D. FISHER**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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TANYA M. STEPHENS,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 43A05-0701-CR-56

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APPEAL FROM THE KOSCIUSKO CIRCUIT COURT  
The Honorable Rex L. Reed, Judge  
Cause No. 43C01-0508-FB-207

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**September 24, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Following a guilty plea, Tanya M. Stephens appeals her four-year executed sentence for aiding, inducing, or causing robbery as a class C felony. We affirm.

### **Issues**

We restate the issues as follows:

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

### **Facts and Procedural History<sup>1</sup>**

At Stephens's guilty plea hearing, the State established as a factual basis that on June 20, 2005, twenty-year-old Stephens was driving around North Webster with Michael Poe and Randall Stahl. Stahl saw someone standing near a car wash and said, "[Let's] go rob that guy." Tr. at 11. Poe and Stahl, who was armed with a handgun, exited the car and took money from the person using force or the threat of force. Stephens drove Poe and Stahl away from the scene.

On August 26, 2005, the State charged Stephens with aiding, inducing, or causing robbery as a class B felony. On January 26, 2006, Stephens pleaded guilty without a plea agreement to the lesser included offense of aiding, inducing, or causing robbery as a class C

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<sup>1</sup> We note that Stephens's counsel included Stephens's pre-sentence report in the appellant's appendix. Indiana Administrative Rule 9(G)(1) states that the information therein "is excluded from public access and is confidential." Indiana Trial Rule 5(G)(1) requires that such documents be separately identified and "tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"

felony.<sup>2</sup> On August 16, 2006, the trial court set a sentencing hearing for September 12, 2006, at which Stephens failed to appear. The trial court issued a warrant for her arrest. Stephens had fled the jurisdiction and was working at a retail store in Crown Point when she was arrested.

At the sentencing hearing on December 13, 2006, Stephens's counsel urged the trial court to consider Poe's statement that Stephens was "just following" him and Stahl when they committed the robbery. *Id.* at 19. Stephens's counsel also proposed several mitigating factors for the trial court's consideration: (1) that Stephens had no prior involvement with the criminal justice system; (2) that her involvement in the robbery was "really almost nothing"; (3) that she "cooperated with authorities"; (4) that she "cooperated with the Prosecutor and the Court by pleading guilty at an early stage of the proceedings"; and (5) that "this crime was the result of circumstances that are unlikely to recur[.]" in that Poe and Stahl had received lengthy sentences. *Id.* at 19-20. Finally, Stephens's counsel acknowledged that prior to the robbery Stephens told Poe and Stahl, "You've talked about [committing a robbery] before, why don't you just do it for once[.]" but counsel characterized the statement as merely "a dare." *Id.* at 19.

In imposing a four-year executed sentence, the trial court did not specifically find any aggravating or mitigating circumstances, but it did specifically discredit Poe's statement

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<sup>2</sup> See Ind. Code § 35-42-5-1 ("A person who knowingly or intentionally takes property from another person or from the presence of another person: (1) by using or threatening the use of force on any person; or (2) by putting any person in fear; commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon[.]"); Ind. Code § 35-41-2-4 ("A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense[.]").

regarding Stephens's involvement in the robbery. The trial court stated that Poe "couldn't tell the truth if [he] knew what it was.... I think [Stephens] was very much involved and certainly the name of the crime is Aiding, Inducing and that's the crime. She did Aid or Induce. There isn't any question about that[.]" *Id.* at 23-24. Stephens now appeals her sentence.

### **Discussion and Decision**

Stephens contends that the trial court improperly ignored numerous mitigating factors at sentencing and also asks us to revise her sentence pursuant to Indiana Appellate Rule 7(B), which provides that this 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."<sup>3</sup> At this point, we note that Stephens was sentenced pursuant to the post-*Blakely/Smylie*<sup>4</sup> statutory scheme enacted in April 2005, which provides for advisory rather than presumptive sentences and permits a court to "impose any sentence that is: (1) authorized by statute; and (2) permissible under the Constitution of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). Indiana Code Section 35-50-2-6

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<sup>3</sup> Referring to Appellate Rule 7(B), Stephens states, "A sentence that is authorized by statute will not be revised unless it is inappropriate in light of the nature of the offense and the character of the offender." Appellant's Br. at 8. This statement confuses the current version of Appellate Rule 7(B) with the previous version that was amended effective January 1, 2003, i.e., "The Court shall not revise a sentence authorized by statute unless the sentence is manifestly unreasonable in light of the nature of the offense and the character of the offender." In *Neale v. State*, 826 N.E.2d 635, 639 (Ind. 2005), our supreme court explained that the amendment of Appellate Rule 7(B) "changed its thrust from a prohibition on revising sentences unless certain narrow conditions were met to an authorization to revise sentences when certain broad conditions are satisfied."

<sup>4</sup> See *Blakely v. Washington*, 542 U.S. 296 (2004); *Smylie v. State*, 823 N.E.2d 679 (Ind. 2005), *cert. denied*.

states that a person who commits a class C felony “shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years.”

In *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), our supreme court explained that

under the new statutory regime Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense.<sup>[5]</sup> In order to facilitate its underlying goals, the statement must include a reasonably detailed recitation of the trial court’s reasons for imposing a particular sentence. 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.

But what of appellate review? It is true that the discretion trial courts are now afforded in imposing sentences is significantly broader than that existing under the prior statutes. But our standard of review is only modestly altered by the new sentencing regime. That is to say, subject to the review and revise power [of Indiana’s appellate courts, authorized by Article VII, Sections 4 and 6 of the Indiana Constitution and implemented by Appellate Rule 7(B)], sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Nothing in the amended statutory regime changes this standard. So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. As we have previously observed, “In order to carry out our function of reviewing the trial court’s exercise of discretion in sentencing, we must be told of [its] reasons for imposing the sentence.... This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions. Of course such facts must have support in the record.” 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.”

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including

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<sup>5</sup> See also Ind. Code § 35-38-1-1.3 (“After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court’s reasons for selecting the sentence it imposes.”) (effective July 1, 2007). Here, we can only presume that the trial court, which did not have the benefit of our supreme court’s ruling in *Anglemyer*, “adhered to long-standing precedent” that did not require a sentencing statement “when imposing the presumptive sentence” and “simply sentenced [Stephens] to the advisory term without explaining its reasons.” *Windhorst v. State*, 868 N.E.2d 504, 506 (Ind. 2007).

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. 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.

Because the trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to “properly weigh” such factors. And this is so because 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.” I.C. § 35-38-1-7.1(d).

*Id.* at 490-91 (some citations omitted) (second alteration in *Anglemyer*).

We construe Stephens’s argument, which she crafted before our supreme court decided *Anglemyer*, as a request both to review the trial court’s sentencing statement for an abuse of discretion and to review the appropriateness of her sentence pursuant to Appellate Rule 7(B). We address each in turn.

### ***I. Abuse of Discretion***

Stephens contends that the trial court abused its discretion in failing to find nine alleged mitigating circumstances: (1) her lack of a criminal record; (2) her “young age” at the time of the offense; (3) her “very minimal” participation in the crime; (4) her cooperation with the authorities “during the investigation and the prosecution of her crime”; (5) her pleading guilty “at an early stage in the proceedings[,]” which demonstrates an acceptance of responsibility for her actions; (6) the hardship her sentence will impose on her five-year-old son; (7) her use of methamphetamine at the time of the offense; (8) the likelihood that she

will “respond affirmatively to probation or a short term sentence”; and (9) that “the crime was the result of circumstances unlikely to recur[,]” in that Poe and Stahl had received lengthy sentences. Appellant’s Br. at 10-11.

The State notes that Stephens “failed to argue at sentencing many of the circumstances she now claims are mitigating, namely, her youth, that an executed sentence would work an undue hardship on her son, [and] that she was on methamphetamine at the time[.]” Appellee’s Br. at 4. As such, Stephens has waived review of these alleged mitigators. *See Anglemeyer*, 868 N.E.2d at 492 (“As our courts have determined in the past, the trial court does not abuse its discretion in failing to consider a mitigating factor that was not raised at sentencing.”); *see also Spears v. State*, 735 N.E.2d 1161, 1167 (Ind. 2000) (“If the defendant does not advance a factor to be mitigating at sentencing, this Court will presume that the factor is not significant and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal.”).

As for the remaining alleged mitigating factors, we note that the finding of such factors lies within the trial court’s discretion and that “[t]he trial court is not obligated to find a circumstance to be mitigating merely because it is advanced by the defendant. Rather, on appeal, a defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record.” *Id.* (citation omitted). Regarding Stephens’s lack of criminal history, we note that trial courts are not required to find such to be a significant mitigating factor. *Truax v. State*, 856 N.E.2d 116, 126 (Ind. Ct. App. 2006). The State observes that given Stephens’s young age, she has had “relatively little time to amass a criminal record.” Appellee’s Br. at 4. The trial court specifically rejected Stephens’s

contention that her participation in the robbery was minimal; given that she goaded Poe and Stahl into committing the crime and drove the getaway car, we cannot say that the court abused its discretion in doing so. There is no indication that Stephens's cooperation with the authorities was anything other than pragmatic, and we note that she gained a substantial benefit in pleading guilty to a class C felony rather than to the class B felony with which she was charged. We have stated that "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* (2006). Next, we note that Stephens fled the jurisdiction and failed to appear at the September 2006 sentencing hearing, which evinces contempt for the law and strongly suggests that she would not respond well to probation or a shorter sentence. Finally, the fact that Poe and Stahl are incarcerated is not determinative of whether Stephens would be likely to commit future crimes by herself or with someone else. In sum, we find no abuse of discretion here.

## ***II. Appropriateness of Sentence***

Stephens acknowledges that she bears the burden of persuading us that her sentence is inappropriate. *See Anglemeyer*, 868 N.E.2d at 494. Regarding the nature of the offense, Stephens goaded Poe and Stahl into robbing someone at gunpoint and then drove them away from the scene. Her participation in the crime does not reflect favorably on her character, nor does her subsequent failure to appear at her original sentencing hearing. Stephens has failed to persuade us that her four-year sentence is inappropriate. Therefore, we affirm.

Affirmed.

DARDEN, J., and MAY, J., concur.