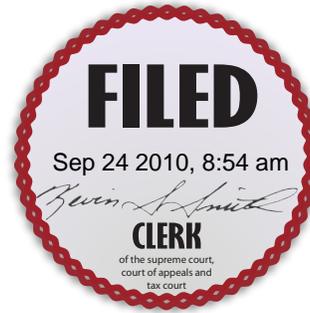


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RONALD R. LEWIS,

Appellant/Defendant,

vs.

STATE OF INDIANA,

Appellee/Plaintiff.

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No. 53A01-0910-CR-480

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Kenneth G. Todd, Judge
Cause No. 53C03-0712-MR-1202

September 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Ronald Lewis appeals following his guilty plea to Class B felony Voluntary Manslaughter,¹ contending that the trial court abused its discretion in refusing to allow him to withdraw his guilty plea and in sentencing him. We affirm.

FACTS

On or about December 6, 2007, Ronald Lewis knowingly killed Laura Lewis while acting under sudden heat. Laura died of a single gunshot wound to the back of her head. On December 11, 2007, the State charged Lewis with murder. On January 30, 2009, pursuant to a written plea agreement, Lewis pled guilty to Class B felony voluntary manslaughter. On June 8, 2009, Lewis filed a motion to withdraw his guilty plea, which the trial court denied two days later.

On August 31, 2009, the trial court sentenced Lewis to twenty years of incarceration for voluntary manslaughter. The trial court found, as aggravating circumstances, Lewis's criminal history, that other criminal charges were pending when he killed Laura, and that he failed to seek medical aid for Laura. The trial court found Lewis's advanced age and his poor health to be mitigating circumstances.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion in Denying Lewis's Motion to Withdraw Guilty Plea

Motions to withdraw guilty pleas are governed by Ind. Code § 35-35-1-4. After the plea of guilty but before sentencing, a court may grant the motion for "any fair or just reason." *Id.* However, the court is required to grant the motion to prevent "manifest injustice" and is required to deny the motion when the State would be "substantially prejudiced." *Id.* The trial court's decision is reviewed for abuse of discretion. *Id.*

¹ Ind. Code § 35-42-1-3 (2007).

Smallwood v. State, 773 N.E.2d 259, 264 (Ind. 2002).

“The trial court’s ruling on a motion to withdraw a guilty plea arrives in our Court with a presumption in favor of the ruling.” *Johnson v. State*, 734 N.E.2d 242, 245 (Ind. 2000). “One who appeals an adverse decision on a motion to withdraw must therefore prove the trial court abused its discretion by a preponderance of the evidence.” *Id.* “We will not disturb the court’s ruling where it was based on conflicting evidence.” *Id.*

Lewis contends that his alleged mental instability at the time of the plea hearing prevented him from knowingly and freely entering his guilty plea. Lewis, however, specifically denied at the guilty plea hearing that he suffered from any mental illness or emotional disorder that would impair his ability to understand the proceedings. Lewis indicated that he understood the charge against him and that he was not waiving his rights under duress. Lewis was fully apprised of those rights at the guilty plea hearing, and indicated unequivocally that he understood all of them. Finally, Lewis indicated that he understood his possible sentences and that he had been satisfied with his trial counsel’s representation.

Lewis points to several indications in the record of his alleged mental illness. The trial court, however, was under no obligation to credit any of this, and did not, specifically finding that Lewis “failed to prove by a preponderance of the evidence that there is a ‘fair and just reason’ to allow him to withdraw his plea of guilty to voluntary manslaughter.” Appellant’s App. p. 18. Moreover, none of the indications pointed out by Lewis suggest that Lewis was suffering from any mental illness at the guilty plea

hearing. Because there is ample evidence that Lewis pled guilty intelligently and voluntarily, we will not disturb the determination of the trial court on this question.

II. Whether the Trial Court Abused its Discretion in Sentencing Lewis

Lewis's offense was committed after the April 25, 2005, revisions to Indiana's sentencing scheme. Under the current sentencing scheme, "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *modified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 2008). We review the sentence 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." *Id.*

A trial court abuses its discretion if it (1) fails "to enter a sentencing statement at all[.]" (2) enters "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," (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration," or (4) considers reasons that "are improper as a matter of law." *Id.* at 490-91. If the trial court has abused its discretion, we will remand for resentencing "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. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found is not subject to review for abuse of discretion. *Id.* We may review both oral and written statements in order to

identify the findings of the trial court. *See McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007).

Lewis contends that the trial court failed to consider two allegedly mitigating circumstances advanced by him at sentencing, namely, his alleged remorse and alleged mental illness. Although the trial court has an obligation to consider all mitigating circumstances identified by a defendant, it is within the trial court's sound discretion whether to find mitigating circumstances. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied*. We will not remand for reconsideration of alleged mitigating factors that have debatable nature, weight, and significance. *Id.* However, if the record clearly supports a significant mitigating circumstance not found by the trial court, we are left with the reasonable belief that the trial court improperly overlooked the circumstance. *Mover v. State*, 796 N.E.2d 309, 313 (Ind. Ct. App. 2003).

The trial court did not abuse its discretion in failing to find the mitigating circumstances advanced by Lewis. Nowhere in the record is there any indication that Lewis feels any regret for shooting Laura, claiming only at sentencing that it was accidental. As for Lewis's alleged mental illness, the trial court noted that Lewis testified at sentencing that he was not then suffering from any mental illness nor ever had been. The trial court also stated on the record that it had observed Lewis and heard his testimony and had seen no signs of mental illness. Finally, Lewis contends that the trial court failed to assign his advanced age and poor physical health sufficient weight. As previously mentioned, however, the relative weight of mitigating circumstances found by the trial court is not reviewable on appeal. *See Anglemyer*, 868 N.E.2d at 491. The trial

court did not abuse its discretion in sentencing Lewis.

We affirm the judgment of the trial court.

DARDEN, J., and BROWN, J., concur.