

STATEMENT OF THE CASE

Ronald McGary appeals his sentence following his conviction for Operating a Motor Vehicle as an Habitual Traffic Offender, a Class D felony, pursuant to a guilty plea. He presents a single issue for our review, namely, whether the trial court abused its discretion when it sentenced him.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 5, 2009, McGary, an habitual traffic violator (“HTV”) whose license was suspended at the time, drove a vehicle to get food and supplies for heat after his trailer lost power during an ice storm. As McGary was pulling into the driveway of a friend’s house in Chandler,¹ a police officer stopped him and asked to see his driver’s license. McGary admitted that he was an HTV and that his license was suspended, and the officer arrested him. McGary also admitted to having altered the expiration date on the license plate of the vehicle he was driving.

The State charged McGary with operating a motor vehicle as an HTV, a Class D felony. On January 25, 2010, McGary entered an open guilty plea. At sentencing, the trial court imposed the advisory sentence of eighteen months executed. This appeal ensued.

DISCUSSION AND DECISION

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d

¹ McGary admitted that he had stopped at the library and the friend’s house, in addition to buying food and supplies.

482, 490 (Ind. 2007), clarified on other grounds 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. (quotation omitted).

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 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.

Id. at 490-91. The trial court may impose any sentence within the statutory range without regard to the existence of aggravating or mitigating factors. Id. at 489.

Indiana Code Section 35-50-2-7 provides that a person who commits a Class D felony shall be imprisoned for a fixed term of between six months and three years, with the advisory sentence being eighteen months. Here, McGary contends that the trial court abused its discretion when it did not identify his guilty plea as a mitigating factor and imposed the advisory sentence. McGary also contends that the trial court should have considered the emergency that existed at the time that he committed his offense as a mitigator.² We cannot agree.

At sentencing, the trial court did not explicitly identify aggravators or mitigators. However, the trial court observed that McGary has an extensive criminal history dating

² McGary cites Indiana Appellate Rule 7(B) in the Standard of Review section of his brief, but he does not otherwise cite that rule or make cogent argument regarding his character or the nature of the offense. Accordingly, we address only his contentions that the trial court abused its discretion when it failed to consider his guilty plea and his alleged emergency as mitigators.

back to 1977. The trial court noted that all but one of his previous convictions were misdemeanors, and the court acknowledged that this was McGary's first conviction for driving without a license. Accordingly, the trial court concluded that an enhanced sentence was not appropriate.

On appeal, McGary first contends that the trial court should have identified his guilty plea as a mitigator and imposed a more lenient sentence. "An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record." Id. at 493. A guilty plea is not automatically a significant mitigating factor. Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999). Where the State has received a significant benefit from the guilty plea, the defendant is likewise entitled to a significant benefit in return such that the guilty plea will be given significant weight. Anglemyer, 875 N.E.2d at 221. However, if the defendant has received a substantial benefit or where the evidence is such that the decision is a pragmatic one, the fact of a guilty plea does not rise to the level of significant mitigation. Id.

Here, the evidence against McGary was overwhelming. Indeed, McGary admitted that he was driving as an HTV when the police officer stopped him. And given his lengthy criminal history, McGary's decision to plead guilty was pragmatic. In addition, McGary did not plead guilty until approximately two weeks prior to his scheduled jury trial. Under these circumstances, McGary cannot show that the State received a significant benefit from his guilty plea. The trial court did not abuse its discretion when it did not identify McGary's guilty plea as a mitigating factor.

McGary also maintains that the trial court should have considered the circumstances of the offense as mitigating. In particular, McGary claims that he was only driving because of the emergency presented when an ice storm caused a power outage in his trailer. However, McGary admitted that in addition to buying food and supplies to heat his trailer, he also drove to the library and to a friend's house. And McGary does not suggest that either of those stops was related to the emergency situation. McGary cannot show that this proffered mitigator is both significant and clearly supported by the record. The trial court did not abuse its discretion in rejecting this mitigator.³

Affirmed.

BAKER, C.J., and MATHIAS, J., concur.

³ The record is not clear whether McGary proffered this mitigator to the trial court. For the purposes of this appeal, we assume that he did.