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ATTORNEY FOR APPELLANT:

LEANNA WEISSMANN
Lawrenceburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER CARTER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A01-1011-CR-674
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-1007-FC-23

October 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Pursuant to Indiana Post-Conviction Rule 2, Christopher Carter ("Carter") belatedly appeals his eight-year sentence for Intimidation, as a Class C felony,[1] presenting the sole issue of whether his sentence is inappropriate. We affirm.

Facts and Procedural History

On May 30, 2010, Carter attacked his live-in girlfriend, S.B. In order to dissuade S.B. from contacting the police, Carter held a knife to her throat and threatened to kill her. Carter was arrested and charged with five offenses, one involving a neighbor who came to S.B.'s rescue.[2] On August 10, 2010, Carter pled guilty to Intimidation and the remaining charges were dismissed.

The trial court conducted a sentencing hearing on October 14, 2010. The trial court found as a mitigating circumstance that Carter had pled guilty, but went on to observe that Carter had already received a substantial benefit for his plea in that the remaining four charges had been dismissed. The trial court found Carter's juvenile and criminal history to be aggravating. Carter was sentenced to eight years imprisonment. He now appeals.

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[1] Ind. Code § 35-45-2-1(b)(2).

[2] Carter was charged with Intimidation with a Deadly Weapon, Ind. Code § 35-45-2-1(b)(2), Domestic Battery on S.B., as a Class A misdemeanor, Ind. Code § 35-42-2-1.3, Domestic Battery with a prior offense, as a Class D felony, Ind. Code § 35-42-2-1.3(b), Strangulation, a Class D felony, Ind. Code § 35-42-2-9, and Battery on the neighbor, M.W., as a Class A misdemeanor, Ind. Code § 35-42-2-1(a)(1)(A).

Discussion and Decision

Upon conviction of a Class C felony, Carter faced a sentencing range of two years to eight years, with the advisory sentence being four years. See Ind. Code § 35-50-2-6. Carter received a maximum sentence.

Carter claims that he should have received an eight-year sentence with four years suspended to probation so that he could receive much-needed counseling. His arguments direct our attention to the testimony of his witnesses at the sentencing hearing and the significance of his proffered mitigating circumstance, specifically, his need for psychological counseling. "So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007). This includes the finding of an aggravating circumstance and the omission to find a proffered mitigating circumstance. Id. at 490-91. When imposing a sentence for a felony, the trial court must enter "a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence." Id. at 491.

The trial court's reasons must be supported by the record and must not be improper as a matter of law. Id. However, a trial court's sentencing order may no longer be challenged as reflecting an improper weighing of sentencing factors. Id. A trial court abuses its discretion if its reasons and circumstances for imposing a particular sentence are 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. Hollin v. State, 877 N.E.2d 462, 464

(Ind. 2007). Here, the trial court recognized Carter's guilty plea as a mitigating circumstance and specifically considered "testimony of defendant's witnesses and the victim regarding a need for counseling." (Tr. 43.) However, the trial court concluded that Carter was not a good candidate for probation and counseling because of numerous prior probation violations. To the extent that Carter urges reweighing of the mitigating circumstances, the argument is unavailable to him. Anglemyer, 868 N.E.2d at 491.

Under Indiana Appellate Rule 7(B), 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." In performing our review, we assess "the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008). A defendant '"must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review."' Anglemyer, 868 N.E.2d at 494 (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offense, Carter held a knife to his girlfriend's throat and threatened to kill her. A neighbor who heard S.B.'s screams came to her aid, allowing S.B. to escape from the apartment. Carter's intimidation of S.B. was motivated by a desire to keep her from summoning police and reporting his latest battery upon her.

As to the character of the offender, Carter pled guilty, which reflects favorably on his character. See Scheckel v. State, 655 N.E.2d 506, 511 (Ind. 1995) ("[T]he fact that [the

defendant] pled guilty demonstrates his acceptance of responsibility for the crime and at least partially confirms the mitigating evidence regarding his character"). However, Carter received a benefit in that the State moved to dismiss several charges, including one involving a second victim. See Anglemyer v. State, 875 N.E.2d 218, 221 (Ind. 2007) (opinion on rehearing) (recognizing that a plea may not be significant "when the defendant receives a substantial benefit in return for the plea").

Carter has a substantial history of juvenile contacts and adult crimes. After being placed on juvenile probation for theft, alcohol consumption, and marijuana use, he had five probation violations. As an adult, he has had seven criminal convictions since 2003, three probation violations, a pending probation violation and three pending charges in the State of Ohio. His criminal history includes a prior conviction of Intimidation with a Deadly Weapon. It also includes three convictions for battery against two women other than S.B. This history indicates a continued willingness to batter his domestic partners. Moreover, one probation violation arose from Carter's refusal to attend court-ordered counseling sessions.

In sum, there is nothing in the nature of the offense or the character of the offender to persuade us that the eight-year sentence is inappropriate.

Affirmed.

MATHIAS, J., and CRONE, J., concur.