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IN THE
COURT OF APPEALS OF INDIANA

DIVEN WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-1006-CR-286
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
Cause No. 82C01-0911-FC-1366

December 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Diven Williams appeals the sentence imposed following his convictions for burglary, as a Class C felony, and theft, as a Class D felony, pursuant to his guilty plea. Williams presents a single issue for review, namely, whether the trial court abused its discretion when it sentenced him.

We affirm.

FACTS AND PROCEDURAL HISTORY

On November 20, 2009, the Evansville Police Department received a report that a man was throwing bricks through the window of a pawnshop in Evansville. Officer Wilson and K-9 Sergeant Hoover were dispatched to the scene. There they found several broken windows to the Southside Furniture and Pawn Shop, and Williams was still in the shop. Williams exited through the front of the shop, and the officers arrested him.

Williams had scuffmarks on his clothes "consistent with climbing through the front broken glass." Appellant's App. at 19. Two neighbors said they saw Williams throw a concrete block through the window and then enter the business. Officers found store merchandise—a Dell printer, a portable backup battery, a pellet rifle, and USB cable—"stacked by the front entrance area[.]" Id. After receiving his Miranda warnings, Williams admitted that he had been inside the store. At the jail, officers found that Williams had hidden in his clothing a necklace that had been taken from the shop.

The State charged Williams with burglary, as a Class C felony, and theft, as a Class B felony.[1] Williams initially entered a plea of not guilty but later changed his plea

[1] The probable cause affidavit prepared by Detective Brent A. Melton lists the crimes committed as Class B felony burglary and Class D felony theft. The parties have not included a copy of the charging

to guilty without the benefit of a plea agreement. On May 13, 2010, the court entered judgment of conviction[2] accordingly and sentenced Williams as follows:

> Court now accepts [Williams'] plea and finds [him] guilty of Count I, burglary, a Class C felony[,] and Count II, theft, a Class D felony. [The] Court finds no mitigating circumstances and finds the following aggravators: [Williams'] criminal history. [The] Court finds that [Williams] has been through all available Vanderburgh County programs and has failed them all. [The] Court accepts the State's sentence recommendation and in accordance with [the] same[] now sentences [Williams] in Count I [burglary] to the Department of Correction[] for a period of six years executed. In Count II, [Williams] is sentenced to [the] Indiana [Department]of Correction[] for two years executed. Counts I and II are to be served concurrently and consecutive to any parole violation.

Appellant's App. at 3. Williams now appeals.

DISCUSSION AND DECISION

Williams contends that the trial court abused its discretion when it sentenced him. Specifically, he argues that the court's failure to find "at least two valid mitigating circumstances, and the presence of what Williams believes to be an additional mitigating circumstance (addiction)" renders the sentence "unreasonable[.]" Appellant's Brief at 5. We cannot agree.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007).

> 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, "[i]n order to carry out our function of reviewing the trial court's exercise of discretion

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information in the record on appeal. All references to the burglary charge in the CCS and the parties' briefs are to the Class C felony.

[2] Appellant's brief does not contain a copy of the sentencing order as required by Appellate Rule 46(A)(10). We remind counsel to comply with this rule in the future.

> 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." Page v. State, 424 N.E.2d 1021, 1023 (Ind. 1981). 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." K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006) (quoting In re L.J.M., 473 N.E.2d 637, 640 (Ind. Ct. App. 1985)).
>
> 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.

Williams contends that the trial court abused its discretion in sentencing him because it failed to identify certain mitigating factors. On appeal, a mitigating circumstance must be significant and clearly supported by the record. Spears v. State, 735 N.E.2d 1161, 1167 (Ind. 2000). A trial court need not agree with defendant's assertion of a mitigating circumstance, and the finding of a mitigating circumstance is within the discretion of the trial court. Id. If a mitigating circumstance is not raised by the defendant at trial, it is not available on appeal. Id.

Here, Williams argues that the court should have identified as mitigators his addiction, his guilty plea, and his remorse. But Williams did not argue the existence of any mitigating factors at sentencing. Williams' sole argument to the trial court related to

the nature of the sentence to be imposed. Therefore, he has waived his claim of error based on the first three circumstances he identifies on appeal. See id.

Williams also briefly refers to this court's authority to review a sentence under Appellate Rule 7(B). That rule allows this court to review a sentence, after due consideration of the trial court's decision, to determine whether the sentence is inappropriate in light of the natures of the offenses and the character of the offender. Ind. Appellate Rule 7(B). Aside from mentioning that standard, Williams makes no argument, cogent or otherwise, under Appellate Rule 7(B). As such, any argument under that rule is waived. See Ind. App. R. 46(A)(8)(a).

Affirmed.

DARDEN, J., and BAILEY, J., concur.