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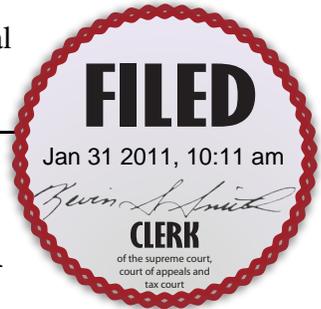
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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHARLES LAMPHIER,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 71A03-1006-CR-335

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable Roland Chamblee, Jr., Judge  
Cause No. 71D08-0910-FC-267

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**January 31, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Charles Lamphier pleaded guilty to operating a motor vehicle after his driving privileges had been forfeited for life,<sup>1</sup> a Class C felony, and he now appeals his sentence, raising the following two restated issues:

- I. Whether the trial court abused its discretion when it sentenced him; and
- II. Whether his eight-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On May 2, 2007, Lamphier was convicted under cause number 71D08-0611-FD-1226 (“Cause No. 1226”) of Class D felony operating a motor vehicle after being adjudged a habitual violator of traffic laws (“HTV”), and his driving privileges were suspended for life. For that conviction, the trial court sentenced Lamphier to three years at the Department of Correction (“DOC”), but suspended thirty months of the sentence to probation. On July 28, 2007, Lamphier was released from the DOC to probation.

Thereafter, on October 28, 2009, the State charged Lamphier with the present offense, Class C felony operating a motor vehicle after his driving privileges had been forfeited for life. *See* Ind. Code § 9-30-10-17. In January 2010, the parties submitted a guilty plea agreement to the trial court; however, at a February 2010 hearing on the matter, the trial court

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<sup>1</sup> *See* Ind. Code § 9-30-10-17.

rejected the plea agreement.<sup>2</sup> Thereafter, Lamphier pleaded guilty to the Class C felony charge without a plea agreement. On June 15, 2010, the court conducted a sentencing hearing, ultimately sentencing Lamphier to eight years, with four years executed in the DOC and the remaining four years suspended, to be served on probation after his release from custody. Because that conviction was a violation of Lamphier's probation in Cause No. 1226, the trial court ordered Lamphier to serve the previously-suspended thirty-month sentence at the DOC. The eight-year sentence and the thirty-month sentence were ordered to be served consecutively. Lamphier now appeals.

## **DISCUSSION AND DECISION**

### **I. Abuse of Discretion in Sentencing**

Sentencing decisions are within the trial court's discretion. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). So long as the sentence imposed is within the statutory range, the trial court's sentencing determination will be reversed only for an abuse of discretion. *Id.* at 490. An abuse of discretion occurs where the trial court's 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.*; *Brown v. State*, 907 N.E.2d 591, 593-94 (Ind. Ct. App. 2009).

When a trial court imposes a sentence, it "must enter a statement including reasonably

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<sup>2</sup> The proposed plea agreement included a five-year cap on the executed portion of Lamphier's sentence, such that he would serve the suspended thirty months of Cause No. 1226 and an additional thirty months for the new Class C felony conviction. As explained more below, the trial court was unwilling to impose a sentence that resulted in Lamphier serving less than the four-year advisory sentence for the current Class C felony, in light of Lamphier's criminal history and repeated HTV convictions. *Tr.* at 3-4 (February 23, 2010 hearing).

detailed reasons or circumstances for imposing that particular sentence.” *Anglemyer*, 868 N.E.2d at 491. The court on appeal reviews those reasons and the omission of any reasons arguably supported by the record for an abuse of discretion. *Id.*

At the hearing, the State and counsel for Lamphier suggested that Lamphier serve the suspended thirty-month sentence in Cause No. 1226 in the DOC and receive an additional three years for the current offense, with some portion of that served in the DOC. The trial court observed that Lamphier had received probation on a number of occasions before, and served portions of imposed sentences through work release community corrections; however, some months after being successfully discharged, Lamphier would be arrested, charged, and convicted of additional driving offenses. The trial court told Lamphier, “[Y]ou just keep doing what put you there[.]” *Tr.* at 7 (June 15, 2010 hearing). Noting that work release had not been effective, the court stated, “[E]ach of the times before . . . I tried to cut [you] some slack by doing community corrections[.]” but “You just keep goofing up and goofing up and goofing up.” *Id.* at 5.

In the sentencing statement and at the hearing, the trial court identified Lamphier’s significant criminal history, including three prior operating a motor vehicle as an HTV convictions, and determined that it justified a sentence “above the advisory.” *Id.* at 6; *Appellant’s App.* at 7. The trial court imposed a sentence of eight years, but “split the sentence” so that Lamphier would serve four years in the DOC and four years on probation, emphasizing the connection between the court’s imposition of four years and the fact that four years is the advisory sentence for a Class C felony.

Lamphier argues that the trial court abused its discretion in sentencing him, alleging in particular that it failed to give appropriate weight to the fact that he pleaded guilty. Lamphier maintains that the trial court “should have placed great weight” on his guilty plea. *Appellant’s Br.* at 9. However, a trial court no longer has any obligation to weigh aggravating and mitigating factors against each other and cannot be said to have abused its discretion in failing to properly weigh such factors. *Powell v. State*, 895 N.E.2d 1259, 1262 (Ind. Ct App. 2008), *trans. denied* (2009). Once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating or mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id.*

To the extent that Lamphier is arguing that the trial court did not consider his guilty plea as a mitigator, we reject that claim as well. A trial court is not obligated to explain why it does not find a proffered mitigator to be significant, and a guilty plea “is not automatically a significant mitigating factor.” *Brown*, 907 N.E.2d at 594 (citing *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999)). When the defendant has already received a substantial benefit from the plea agreement, a guilty plea may not be a significant mitigator. *Id.* Also, a guilty plea may not be significantly mitigating when it does not demonstrate the defendant’s acceptance of responsibility. *Anglemyer*, 875 N.E.2d at 221. As for the acceptance of responsibility, a guilty plea may not rise to the level of significant mitigation where the evidence against the defendant is such that the decision to plead guilty is merely a pragmatic one and not the acceptance of responsibility and remorse. *Id.*; *Brown*, 907 N.E.2d at 584.

Here, Lamphier has failed to show that his decision to plead guilty was not merely a pragmatic one. The evidence before the trial court was that a South Bend police officer observed Lamphier driving a vehicle over the posted speed limit and initiated a traffic stop, during which the officer checked Lamphier's record and learned that his license had been suspended for life. During the sentencing hearing, the trial court asked Lamphier if he had anything he wanted to say. In his response, Lamphier accepted some responsibility but did not particularly exhibit remorse, stating, "I just want to get stuff done and over with. I messed up and I have to pay my consequences, you know." *Tr.* at 6. Considering the evidence before the trial court, it was reasonable to conclude that Lamphier's decision to plead guilty was a pragmatic one. The trial court was not required to find that Lamphier's guilty plea was a significant mitigator. The trial court did not abuse its discretion when it sentenced Lamphier.

## **II. Appropriateness of Sentence**

Lamphier also argues that the eight-year sentence is inappropriate in light of the nature of the offense and his character, and asks this court to modify his sentence pursuant to Indiana Appellate Rule 7(B). "This court has authority to revise a sentence '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.'" *Spitler v. State*, 908 N.E.2d 694, 696 (Ind. Ct. App. 2009) (quoting Ind. Appellate Rule 7(B)), *trans. denied*. "Although Indiana Appellate Rule 7(B) does not require us to be 'extremely' deferential to a trial court's sentencing decision, we still must give due consideration to that decision."

*Patterson v. State*, 909 N.E.2d 1058, 1062-63 (Ind. Ct. App. 2009) (quoting *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007)). We understand and recognize the unique perspective a trial court brings to its sentencing decisions. *Id.* at 1063. The defendant bears the burden of persuading this court that his sentence is inappropriate. *Id.*

The sentencing range for a Class C felony is two to eight years, with an advisory sentence of four years. Ind. Code § 35-50-2-6. Here, the trial court imposed a sentence of eight years, with four years executed at the DOC and four years suspended to probation. The trial court remarked that the executed portion of the sentence was the same length as the statutory advisory sentence and was appropriate for someone with multiple prior habitual traffic violator convictions. Lamphier argues that his sentence does not accurately reflect the nature of the offense or the character of the offender.

Regarding the nature of the offense, Lamphier was stopped for speeding at around 8:00 a.m. on the morning of October 27, 2009, by a South Bend police officer; he was driving himself to work, although he was aware that doing so was against the law because his driving privileges had been suspended for life. The State concedes, and we agree, that “driving a car with suspended license privileges is not the statutorily worst kind of offense that one can commit[.]” *Appellee’s Br.* at 6. However, we also observe that this certainly was not Lamphier’s first offense of this nature.

As relevant to Lamphier’s character, he has a significant criminal history, with a juvenile record dating back to 1984. He has numerous convictions, including nine misdemeanors and five felonies. Lamphier’s criminal history includes three prior convictions

for operating a motor vehicle while suspended as an HTV, and in fact, was on probation for one of those convictions at the time of the current offense. We acknowledge that Lamphier was driving to work and was not intoxicated when arrested for the present offense; however, Lamphier has not been leading a law-abiding life for at least the last two decades.

Lamphier's eight-year sentence requires him to serve four years in the DOC, which is the equivalent of the advisory sentence for a Class C felony. He has not persuaded us that his sentence is inappropriate in light of his offense and his character.

Affirmed.

CRONE, J., and BRADFORD, J., concur.