

David Brockman appeals his aggregate twelve-year sentence for two counts of Operating a Vehicle While Intoxicated Causing Serious Bodily Injury,¹ as class C felonies.

He presents the following issues for review:

1. Did the trial court abuse its discretion by not finding his guilty plea as a mitigating circumstance?
2. Is Brockman's sentence inappropriate in light of the nature of the offenses and his character?

We affirm.

On the evening of December 7, 2009, an unlicensed and "very drunk" Brockman drove southbound in the northbound lane of Old State Road 37 in Bloomington. *Appellant's Confidential Appendix* at 7. He drove head-on into a vehicle driven by Scott Brown, in which Scott's wife, Cheryl, was a passenger. According to Scott, Brockman appeared to be unconscious when he crossed into oncoming traffic. A consensual blood draw taken at the hospital revealed Brockman's blood alcohol level to be 0.16%, twice the legal limit. In addition to alcohol, Brockman had consumed two Klonopin pills (a controlled substance for which he did not have a prescription) prior to driving.

Scott and Cheryl had to be cut out of their crushed vehicle before they could be taken to the hospital. As a result of the crash, they sustained serious and debilitating physical injuries, certain of which are permanent, and suffered significant financial consequences as well. Although they are fortunate to be alive, their lives will never be the same as they face future surgeries and permanent nerve damage.

The State charged Brockman with operating a vehicle while intoxicated, a class D

¹ Ind. Code Ann § 9-30-5-4 (West, Westlaw through 2010 2nd Regular Sess.).

felony. On January 9, 2010, the State amended the charge to two counts of operating a vehicle while intoxicated causing serious bodily injury, both as class C felonies. Seven months later, on August 23, Brockman pleaded guilty as charged pursuant to a written plea agreement, which capped his potential sentence at twelve years in prison. The trial court accepted the agreement and, following a sentencing hearing, sentenced Brockman to two consecutive terms of six years in prison.² Brockman now appeals his sentence.

1.

Brockman argues initially that the trial court abused its discretion because it failed to consider his guilty plea as a mitigating circumstance. He asserts the plea demonstrates genuine remorse and acceptance of responsibility. Further, he notes that no charges were dismissed in exchange for his plea and argues, therefore, he did not receive a substantial benefit in return for his plea.

It is well settled that 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 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. The trial court must enter a sentencing statement that includes the court's reasons for the imposition of the particular sentence. *Id.* If the statement includes a finding of aggravating and/or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances. *Id.* To demonstrate an abuse of discretion, the defendant must show the court

² In its sentencing statement, the court discussed the aggravating nature of the offense and the physical and financial injuries to the victims, Brockman's significant criminal history, his past failed attempts at treatment, and the court's lack of confidence in Brockman's ability to reform and complete treatment. The court found no mitigating circumstances, aside from noting Brockman's "sad" background. *Transcript* at 65.

failed to find a mitigating circumstance that is both significant and clearly supported by the record. *Felder v. State*, 870 N.E.2d 554 (Ind. Ct. App. 2007).

Brockman contends the trial court failed to credit the fact that he pleaded guilty. The State responds that Brockman's plea does not amount to a significant mitigating circumstance because Brockman received a substantial benefit under the plea agreement in that the maximum sentence he faced was reduced from sixteen to twelve years. Brockman, on the other hand, claims that the four-year reduced sentencing exposure did not amount to a substantial benefit and, thus, his decision to plead guilty was not merely a pragmatic one.

As recognized by the parties, it has long been held that not every guilty plea amounts to a significant mitigating circumstance that must be credited by the trial court. *See Trueblood v. State*, 715 N.E.2d 1242 (Ind. 1999). The significance of a guilty plea as a mitigating factor varies from case to case. *Francis v. State*, 817 N.E.2d 235 (Ind. 2004). For example, a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one. *Wells v. State*, 836 N.E.2d 475 (Ind. Ct. App. 2005).

While the better practice certainly would have been for the trial court to acknowledge the guilty plea and discuss its significance under the circumstances, the trial court did not abuse its discretion by failing to find this mitigating circumstance. We initially observe that the record in this case reveals seemingly inescapable evidence of guilt. Further, although he expressed remorse at the sentencing hearing, it is apparent that Brockman waited a number of months to change his plea until the State offered a satisfactory plea agreement. Said

agreement resulted in a 25% reduction in his maximum sentence exposure. This was a significant benefit in light of the severity of his offenses and his criminal history. Under the circumstances, we find that Brockman's decision to plead guilty was primarily, if not entirely, a pragmatic one that did not rise to the level of significant mitigation. Moreover, to the extent the trial court erred in failing to address the guilty plea, we find the error harmless under the circumstances presented.

2.

Brockman also challenges his sentence as inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). On appeal, Brockman bears the burden of persuading us that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

Brockman does not dispute the particularly aggravating nature of his offense. He acknowledges that the offense was serious, especially in light of his number of past alcohol-related offenses, and that the offense's "consequences to the victims [were] undeniably severe." *Appellant's Brief* at 6. Here, Brockman drank excessively and then ingested a controlled substance just prior to getting into his vehicle to go to the store. While driving, Brockman blacked out, crossed the center line, and drove head-on into another vehicle,

resulting in devastating, life-long injuries to the Browns. The nature of the offense warrants a severe sentence.

Brockman, however, argues that the nature of the offense can be offset to some degree by his good character, specifically his remorse, guilty plea, and employment history. We cannot agree. As explained by the trial court, Brockman, age fifty-one, has had numerous treatment opportunities over the past twenty years and has been granted leniency by the courts time and again to no avail. Brockman's criminal history includes, inter alia, two prior OWI convictions (1989, also involving a vehicle wreck, and 2005) and a conviction and several other arrests for public intoxication. In fact, he was on probation for public intoxication when he committed the 2005 OWI offense. Further, an assessment performed by the probation department placed Brockman in the maximum range for risk of reoffending. We do not doubt that Brockman is remorseful, but that does not change the fact that given another opportunity, his past shows that he is likely to drive while intoxicated again and, next time, possibly kill someone. The twelve-year aggregate sentence imposed by the trial court is not inappropriate in light of the nature of the offense and character of the offender.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.