

Anthony J. Loveday pleaded guilty to possession of methamphetamine¹ as a Class B felony, possession of a firearm by a serious violent felon² as a Class B felony, and possession of child pornography³ as a Class D felony. He was sentenced to eighteen years on each Class B felony and three years on the Class D felony, all to run consecutively for a total of thirty-nine years executed. He appeals, raising the following restated issue: whether the trial court properly sentenced Loveday.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 31, 2007, Loveday and a friend were sharing a hotel room in Tippecanoe County, Indiana. The police were called to the hotel on suspicion of drug activity, and when they entered Loveday's room, they discovered him to be in possession of two baggies of methamphetamine, a pipe containing methamphetamine residue, a firearm, and a computer containing pictures of young men under the age of sixteen engaged in sexual activity. The hotel was located within one thousand feet of a family housing complex. Loveday had been previously convicted of child molesting, which is a serious violent felony pursuant to Indiana Code section 35-47-4-5(b).

On November 2, 2007, the State charged Loveday with possession of methamphetamine as a Class B felony, possession of paraphernalia as a Class A misdemeanor, possession of a firearm by a serious violent felon as a Class B felony, and

¹ See Ind. Code § 35-48-4-6(b).

² See Ind. Code § 35-47-4-5(c).

³ See Ind. Code § 35-42-4-4(c).

maintaining a common nuisance as a Class D felony. He was later charged with a count of possession of child pornography as a Class D felony. On September 29, 2008, Loveday pleaded guilty to possession of methamphetamine, possession of a firearm by a serious violent felon, and possession of child pornography pursuant to a written plea agreement. The plea agreement left sentencing to the discretion of the trial court and provided that the remaining counts be dismissed by the State.

At the sentencing hearing, the trial court found the following aggravating circumstances: Loveday's criminal history, alcohol abuse problems, illegal drug problems, prior attempts at rehabilitation had failed, and high LSI-R⁴ score.⁵ The trial court found as mitigating circumstances that Loveday took credit for his actions by pleading guilty, his employment record, and his military service. Finding that the aggravating circumstances outweighed the mitigating circumstances, the trial court sentenced Loveday to eighteen years for possession of methamphetamine as a Class B felony, eighteen years for possession of a firearm by a serious violent felon as a Class B felony, and three years for possession of child pornography as a Class D felony, with the sentences to run consecutively to each other for a total of thirty-nine years executed.

Loveday now appeals.

⁴ An LSI-R score is the Level of Service Inventory, which was administered to Loveday and covered the areas of criminal history, education and employment, financial, family, accommodations, leisure and recreation, companions, alcohol and drugs, emotional and personal issues, and attitudes and orientation. The LSI-R score indicates the chance of a defendant re-offending if services are not offered.

⁵ We note that Loveday included in his appendix a copy of the presentence investigation report on white paper. We remind Loveday that Indiana Appellate Rule 9(J) requires that documents and information excluded from public access pursuant to Indiana Administrative Rule 9(G)(1), which includes presentence investigation reports, must be filed in accordance with Indiana Trial Rule 5(G). This rule provides that such documents must be tendered on light green paper or have a light green cover sheet and be marked "Not for Public Access" or "Confidential." Ind. Trial Rule 5(G)(1).

DISCUSSION AND DECISION

I. Abuse of Discretion

Trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.* Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Id.* 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.*

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. *Id.* 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. *Id.* at 490-91. Because the trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion in failing to “properly weigh” such factors. *Id.* at

491. Once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then “impose any sentence that is . . . authorized by statute; and . . . permissible under the Constitution of the State of Indiana.” Ind. Code § 35-38-1-7.1(d).

Although Loveday in his issue statement states his issue as whether his sentence was inappropriate in light of the nature of the case and the character of the offender, his argument section addresses the finding of aggravating and mitigating circumstances. Loveday specifically argues that his prior criminal convictions and his LSI-R score should not have been considered as aggravating factors, and that he was not given a substantial benefit for his guilty plea.

As to Loveday’s criminal history, he contends that his previous criminal convictions were too remote in time to the present offenses to be considered. When looking at a defendant’s criminal history as an aggravating factor, the chronological remoteness of a defendant’s prior criminal history should be taken into account. *Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002). Remoteness in time, to whatever degree, does not render a prior conviction irrelevant. *Id.* “The remoteness of prior criminal history does not preclude the trial court from considering it as an aggravating circumstance.” *Id.* Therefore, the mere fact that Loveday’s criminal history was remote in time from the present offenses did not make it an improper aggravating circumstance. Further, to the extent that Loveday is challenging the amount of weight that the trial court afforded his criminal history, this is no longer a proper consideration for our review. “The relative weight or value assignable to reasons properly found or those which should have been

found is not subject to review for abuse.” *Anglemyer*, 868 N.E.2d at 491.

Loveday next argues that the trial court abused its discretion by finding his LSI-R score to be an aggravating circumstance. We agree that this was an abuse of discretion. The use of an LSI-R score as an aggravating circumstance has previously been determined improper as a matter of law. *See Rhodes v. State*, 896 N.E.2d 1193, 1195 (Ind. Ct. App. 2008) (concluding that use of LSI-R score as aggravating factor was improper as matter of law because the use of standardized scoring models undercuts trial court’s responsibility to craft appropriate individualized sentence). Although the trial court improperly considered Loveday’s LSI-R score as an aggravating circumstance, the trial court found four other aggravating circumstances. A single aggravating circumstance is adequate to justify an enhanced sentence. *Storey v. State*, 875 N.E.2d 243, 251 (Ind. Ct. App. 2007), *trans. denied* (2008). As we have previously concluded that Loveday’s criminal history was a proper aggravating circumstance, and he does not challenge the other remaining aggravators found by the trial court, we conclude that these aggravating circumstances were sufficient to support Loveday’s enhanced sentence.

Finally, it also appears that Loveday claims that the trial court abused its discretion because it did not give sufficient mitigating weight to his guilty plea. It is true that a defendant’s guilty plea is generally entitled to some mitigating weight because it demonstrates a defendant’s acceptance of responsibility for the crime and extends a benefit to the State. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008). However, as stated, a trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing a sentence and cannot now be said to

have abused its discretion in failing to “properly weigh” such factors. *Anglemyer*, 868 N.E.2d at 491. Therefore, we do not review the weight given to Loveday’s guilty plea as a mitigating circumstance. The trial court did not abuse its discretion in sentencing Loveday.

II. Inappropriate Sentence

Appellate courts may revise a sentence after careful review of the trial court’s decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

Loveday does not address why he believes that his sentence is inappropriate in light of the nature of the offense and his character. He merely states that his “near maximum executed sentence was improper given the nature of the offense and the character of the offender.” *Appellant’s Br.* at 7. Nonetheless, we do not find that Loveday’s sentence was inappropriate.

As to the nature of the offense, the evidence showed that when the police entered Loveday’s hotel room, they found him to be in possession of two small baggies of methamphetamine, a pipe containing burnt methamphetamine residue, a firearm, and a computer containing over 170 images of underage boys engaged in sexual activity. The hotel was located within one thousand feet of a family housing complex, and Loveday had previously been convicted of child molesting, which classified him as a serious

violent felon under Indiana Code section 35-47-4-5(b).

As to Loveday's character, he had a criminal history, which consisted of three felony convictions and one misdemeanor conviction. He was previously convicted of child molesting as a Class D felony, sexual battery as a Class D felony, operating a vehicle while intoxicated as a Class A misdemeanor, and child molesting as a Class C felony. A considerable portion of his sentences for these convictions was suspended; however, these prior attempts at rehabilitation were not successful as he has continued to commit further offenses. Additionally, Loveday has a history of alcohol and substance abuse problems that began when he was a juvenile. Although the nature of the offenses in the present case was not particularly egregious, we conclude that Loveday's sentence was not inappropriate when looking at both the nature of the offense and the character of the offender.

Affirmed.

RILEY, J., and MATHIAS, J., concur.