

Jeff Burns (“Burns”) pleaded guilty in Madison Superior Court to several felony and misdemeanor offenses and was ordered to serve an aggregate sentence of fifteen years with ten years executed and five years suspended to probation. Burns appeals and raises two issues, which we restate as:

I. Whether the trial court abused its discretion in its consideration of the mitigating circumstances; and,

II. Whether Burns’s aggregate fifteen-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

Concluding that Burns’s fifteen-year sentence is not inappropriate, we affirm

Facts and Procedural History

On March 18, 2005, Burns was charged with Class D felony possession of a controlled substance under cause number 48D03-0503-FD-144. On that same day, Burns was also charged with two counts of Class B felony burglary, two counts of Class D felony theft, Class D felony possession of a controlled substance, Class D felony unlawful possession of a legend drug, and Class A misdemeanor possession of marijuana under cause number 48D03-0503-FB-145. On April 8, 2005, Burns was charged with two counts of Class B felony burglary and two counts of Class D felony theft under cause number 48D03-0504-FB-177.

On April 3, 2006, Burns pleaded guilty to all counts in cause numbers 48D03-0503-FD-144 and 48D03-0503-FB-145. In cause number 48D03-0504-FB-177, the State dismissed one burglary count, and Burns pleaded guilty to one count of Class B felony burglary, one count of Class D felony theft, and one count of Class D felony receiving

stolen property. Burns's plea agreement provided that he would receive no more than ten years of executed time.

The trial court consolidated all three causes for sentencing purposes and a sentencing hearing was held on June 5, 2006. The trial court found the following mitigating circumstances: Burns's guilty plea and his expression of remorse. The trial court considered Burns's juvenile adjudications for possession of marijuana and his continued use of illegal substances as aggravating circumstances. The court then imposed the following sentence:

Cause No. 48D03-0503-FB-144: Burns was ordered to serve two years for his Class D felony possession of a controlled substance conviction.

Cause No. 48D03-0503-FB-145: Burns was ordered to serve fifteen years for each Class B felony burglary conviction, two years for each Class D felony theft conviction, two years for his Class D felony possession of a controlled substance conviction, two years for his Class D felony possession of a legend drug conviction, and one year for his Class A misdemeanor possession of marijuana conviction.

Cause No. 48D03-0504-FB-177: Burns was ordered to serve fifteen years for his Class B felony burglary conviction, two years for his Class D felony theft conviction and two years for his Class D felony receiving stolen property conviction.

The court ordered that all sentences in all cause numbers would be served concurrently and that five years of each fifteen-year burglary sentence would be suspended, for an aggregate sentence of ten years executed and five years suspended to probation.

Burns filed notices of appeal in all three causes and filed a motion to consolidate. Our court granted the motion stating, "[b]ecause the three cases were consolidated for disposition and sentencing purposes in the trial court, they shall remain consolidated on appeal." Appellant's App. p. 83.

I. Mitigating Circumstances

Burns argues that the trial court abused its discretion when it failed to assign sufficient mitigating weight to his guilty plea and failed to consider his drug addiction as a mitigating circumstance. Sentencing determinations lie within the sound discretion of the trial court, and we will reverse a trial court's determination only upon an abuse of discretion. Henderson v. State, 848 N.E.2d 341, 344 (Ind. Ct. App. 2006). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Id. Where, as here, a trial court imposes an enhanced sentence, it must identify all significant aggravating and mitigating factors, explain why such factors were found, and balance the factors in arriving at the sentence. Id.

A. *Burns's Guilty Plea*

“A guilty plea demonstrates a defendant's acceptance of responsibility for the crime and extends a benefit to the State and to the victim and the victim's family by avoiding a full-blown trial.” Francis v. State, 817 N.E.2d 235, 237 (Ind. 2004). Therefore, “a defendant who pleads guilty deserves to have mitigating weight extended to the guilty plea in return.” Id. However, the extent to which a guilty plea is mitigating will vary from case to case. Id. at 238, n.3. A guilty plea is not necessarily a significant mitigating circumstance. Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). Moreover, a trial court need not give a mitigating circumstance the weight urged by the defendant. Scott v. State, 840 N.E.2d 376, 382 (Ind. Ct. App. 2006), trans. denied.

The trial court considered Burns's guilty plea as a mitigating circumstance, yet Burns argues that his plea is a significant mitigating factor “that was not given sufficient

consideration by the court.” Br. of Appellant at 16. Specifically, Burns asserts that his plea saved the State and the court the time and expense of trial, and “was accompanied by an expression[] of remorse and evidence that [he] cooperated with the police, which bolsters the mitigating weight of his plea. Id. at 18.

The trial court considered Burns’s expression of remorse as a mitigating circumstance, but noted that it was “obviated by the fact that” Burns did not divulge his “knowledge of the whereabouts of the booty that he took from Mr. Auxler” until he was questioned on cross-examination at the sentencing hearing. Tr. pp. 78-79. We agree with Burns’s assertion that his plea saved the State the time and expense of trial. However, in exchange for his plea, the State agreed to a cap of ten years of executed time for Burns’s three Class B felony and seven Class D felony convictions. Also, a Class B felony burglary charge was dismissed. Consequently, we cannot conclude that the trial court abused its discretion in failing to assign significant mitigating weight to Burns’s guilty plea.

B. Burns’s Drug Addiction

Burns also asserts that the trial court should have considered his drug addiction as a mitigating circumstance. The trial court considered the “[f]act that [Burns has] continued to [] violate the laws of the State of Indiana by using illegal substances” as an aggravating circumstance. Tr. p. 79. Burns had controlled substances in his system at the guilty plea hearing and continued to use illegal substances until the sentencing hearing. In addition, Burns has never followed through with treatment for his drug addiction. Id. Despite his acknowledged continued use of illegal substances, Burns has

stated that he does not consider himself to be a drug addict. Appellant's App. p. 39. For these reasons, we conclude that the trial court did not abuse its discretion when it considered Burns's history of substance abuse to be an aggravating circumstance.

II. Inappropriate Sentence

Finally, Burns contends that his aggregate fifteen-year sentence is inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007), Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied.

Concerning the nature of the offenses, Burns committed three burglaries and several thefts in a period of approximately three weeks. Even after pleading guilty to these offenses, Burns retained possession of stolen items and only admitted to their whereabouts at the sentencing hearing during questioning by the State.

Burns's character also supports the imposition of an enhanced sentence. His criminal history, which consists of two juvenile adjudications for possession of marijuana, is minor, yet Burns's continued substance abuse up to the date of his sentencing hearing demonstrates his inability to lead a law-abiding life.

For all of these reasons, we conclude that Burns's aggregate fifteen-year sentence with ten years executed and five year suspended to probation is not inappropriate in light of the nature of the offense and the character of the offender.¹

¹ Burns also asserts that because his sentence was entirely suspendable, the trial court abused its discretion when it failed to consider alternatives to incarceration. Burns made this argument to the trial court at

Conclusion

The trial court did not abuse its discretion in its consideration and weighing of the mitigating circumstances. Burns's sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.

sentencing, and we cannot conclude that the trial court failed to consider alternative placement. See Wolf v. State, 793 N.E.2d 328, 330 (Ind. Ct. App. 2003) (“[C]onsideration and imposition of alternatives to incarceration [are] a ‘matter of grace’ left to the discretion of the trial court.”).