ATTORNEY FOR APPELLANT:

LANDOLL SORRELL
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTHUR THADDEUS PERRY
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DUSTIN MAXWELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0701-CR-108
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0606-FB-258

September 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Dustin Maxwell appeals his fifteen-year sentence for Class B felony burglary and Class B felony aiding, inducing, or causing attempted robbery. We affirm.

Issue

The issue before this court is whether Maxwell's fifteen-year sentence is appropriate.

Facts

On May 2, 2006, Maxwell accompanied Cory Land and Jeff Adams to the home of Tomas Sanchez. Maxwell kicked the door open. All three men wore bandanas over their faces. Adams carried a twelve gauge pump shotgun and pointed the shotgun at the victim. The victim fled in fear and no property was taken. The perpetrators hid the gun and fled.

Maxwell confessed his involvement in a statement to police officers. At the sentencing hearing, however, he denied entering the residence and denied participating in hiding the shotgun. He did admit to involvement in the crime and pled guilty to burglary, a Class B felony, and aiding, inducing, or causing attempted robbery, a Class B felony. Maxwell explained the motivation for his involvement: "I owed my dealer money for some coke." App. p. 13.

After hearing argument from the prosecutor and defense attorney, the trial court imposed a sentence of fifteen years, ten executed and five suspended, for the burglary and fifteen years, ten executed and five suspended, for the aiding in the attempted robbery charge, to run concurrently. Maxwell now appeals.

Analysis

Maxwell argues that the sentence was not appropriate given the nature of the offense and his character. Specifically, Maxwell contends that he did not play a major role in the burglary and his age, eighteen years old, should serve to mitigate the sentence. As recently announced by our supreme court, "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). 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. (citing K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)).

Anglemyer mandated that the trial court must enter a statement identifying the detailed reasons and circumstances for imposing the sentence. Id. The weight or values assigned to those reasons are not subject to review. Id. at 491. The appellate court retains the right to review and revise a sentence under Indiana Appellate Rule 7(B) if it finds that "the sentence is inappropriate in light of the nature of the offense and the character of the offender." Id.; Ind. Appellate R. 7(B). Under this rule "a defendant must persuade the court that his or her sentence has met the inappropriateness standard of review." Anglemyer, 868 N.E.2d at 490 (citing Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

The trial court outlined the circumstances it considered as aggravators during the sentencing hearing and included the same in a sentencing statement which comports with

the direction of Anglemyer. First, Maxwell was on probation at the time of the offense. Second, Maxwell had a criminal history and prior attempts at rehabilitation had failed. In that regard, the trial court noted that his criminal activity was escalating. Finally, the trial court acknowledged that Maxwell's explanation for committing the current crime was that he needed money for illegal drug use.

At the time of this burglary, Maxwell had had contact with the criminal justice system as a juvenile and an adult. The majority of his criminal history was made up of juvenile offenses including running away, resisting law enforcement, and violating probation. As an adult, Maxwell was convicted of minor consumption and public intoxication. The significance of a prior criminal history will vary depending on the gravity, nature, and the number of prior offenses relating to the current offense. Prickett v. State, 856 N.E.2d 1203, 1209 (Ind. 2006). Although Maxwell's past offenses seem relatively minor and not related to the current offense, the offenses are close in time to this occurrence. In fact, Maxwell was on probation for a February 2006 offense when he participated in the burglary. In addition, this instance was not the first in which Maxwell violated probation. Attempts at rehabilitation were failing. As pointed out by the State, the misdemeanor conviction and the current offense stemmed from Maxwell's substance abuse. Taken together with the juvenile record, Maxwell's criminal behavior was escalating. Accordingly, it was not an abuse of discretion for the trial court to consider Maxwell's criminal history as an aggravating circumstance.

The trial court found that the fact that Maxwell pled guilty was a mitigating circumstance, but reasoned that because Maxwell had confessed this circumstance did not

deserve much weight. In addition, the court reasoned that the acceptance of responsibility was also not to be given much weight. In reaching these conclusions, the court explained that because two other defendants had already confessed and the evidence was strong there was not much else Maxwell could do. The trial court discounted the value of this mitigator, reasoning that the plea was likely a result of pragmatism. Our supreme court has recognized a plea is not necessarily a significant mitigating factor. Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2005). The weight a trial court chooses to assign a mitigating circumstance cannot constitute an abuse of discretion. Anglemyer, 868 N.E.2d at 491.

On appeal, Maxwell also argues his young age, eighteen, should mitigate his sentence. The record indicates the court was aware of Maxwell's age, but Maxwell did not argue that his age should mitigate the sentence. By not advancing such an argument at sentencing, Maxwell is prevented from advancing it on appeal. Anglemyer, 868 N.E.2d at 492 (citing Creekmore v. State, 853 N.E.2d 523, 530 (Ind. Ct. App. 2006)). Notwithstanding this waiver, our supreme court has acknowledged: "a defendant's youth, although not identified as a statutory mitigating circumstance, is a significant mitigating circumstance in some circumstances." Carter v. State, 711 N.E.2d 835, 842 (Ind. 1999). The defendant in the Carter case was merely fourteen years old and the court noted youth "is a more powerful factor for a fourteen year old defendant than it is for one who is sixteen or seventeen." Id. This approach lends us to conclude that youth, at eighteen years of age, loses some significance as a mitigating factor. Maxwell was eighteen and considered an adult under our state's laws. Failure to adopt Maxwell's age as a

mitigating factor was not an abuse of discretion. See Ellis v. State, 736 N.E.2d 731, 736 (Ind. 2000). Utilizing the approach outlined in Anglemyer, we find that the trial court did not abuse its discretion in considering the aggravating and mitigating circumstances before sentencing Maxwell to fifteen years.

Further, we find that this sentence is not inappropriate under 7(B) given the nature of the offense and the character of the defendant. Despite Maxwell's assertions regarding the alleged low level of his involvement, he still admitted to being involved in an attempted home invasion to steal money for drugs. In that attempt, he kicked down a door so that an accomplice, armed with a shotgun, could enter the victim's home. The shotgun was pointed at the victim and this crime could have resulted in death or serious injury. We find the nature of the offense to be egregious.

Regarding Maxwell's character, his lengthy, though minor, criminal history shows disrespect for the law and an escalating criminal behavior. A guilty plea can reflect positively on character; however, as explained by the trial court, the plea was quite pragmatic given the evidence available and the confessions of accomplices. In sum, the enhancement of the advisory sentence for a Class B felony was appropriate and we will not revise Maxwell's sentence.

Conclusion

The trial court did not abuse its discretion in sentencing Maxwell, and his fifteen-year sentence was not inappropriate in light of his character and the nature of the crime. We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.