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**IN THE
COURT OF APPEALS OF INDIANA**

CHRISTOPHER M. HIATT,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 03A01-0704-CR-149

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No. 03C01-0605-FB-1004

September 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Christopher Hiatt appeals his forty-year sentence for three counts of Class B felony burglary. We affirm.

Issue

The issue before us is whether Hiatt's forty-year sentence is proper.

Facts

In the early morning hours of May 14, 2006, Hiatt attempted to burglarize two homes in Columbus. He was not successful in those two attempts. He then burglarized another home and was discovered by the owner while inside the bedroom closet. Hiatt threatened the woman, throwing a blanket over her head and holding her down on the bed. He threatened to kill her if she moved. He left the residence with twenty dollars in cash, a wallet, and women's underwear. Shortly thereafter, he burglarized two more homes nearby, taking cash, wallets, cologne, watches, and glasses. Columbus police apprehended Hiatt later that morning after a foot chase and an altercation. He initially gave a false name to police.

On May 18, 2006, the State filed six counts against Hiatt, which included Class B felony burglary, Class D felony receiving stolen property, two counts of Class A misdemeanor resisting law enforcement, Class A misdemeanor battery, and Class B misdemeanor false informing. On May 25, 2006, the State filed two additional Class B felony burglary counts and one additional count of Class D felony criminal confinement against Hiatt.

Hiatt pled guilty to the three counts of Class B felony burglary. The remainder of the charges were dismissed. At the sentencing hearing, the trial court found that Hiatt had a lengthy criminal history and his criminal behavior was escalating. The trial court also found that the nature of the crimes was serious as it involved home invasion with threats to one victim. The trial court also considered Hiatt's motivations in committing the burglary as an aggravator. Hiatt stated to detectives and his probation office that he got an adrenaline high out of breaking into people's homes. He testified at the sentencing hearing that: "I was pretty high as it was, but I was usually coming down, so it was – it would – it seemed like the high that was – the rush, the adrenaline rush that I got counter acting on the high that I already had and it just – it was intensified." Tr. p. 12. He also stated he committed the crimes to get items to sell in order to have money to purchase drugs.

The trial court sentenced Hiatt to twenty years for Count I, the first burglary, ten years with five suspended for Count VII, the second burglary, and ten years, with five suspended for Count VIII, the third burglary, all to run consecutively. This appeal followed.

Analysis

Hiatt argues that the sentence was not appropriate given the nature of the offense and his character. Specifically, Hiatt contends the court did not take his substance abuse, remorse, and guilty plea into proper consideration as mitigating factors. 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 comporting with Anglemyer. First, Hiatt has a lengthy criminal history of offenses in both Florida and Indiana. Notably, the criminal acts were escalating from offenses like retail theft and loitering to grand theft auto, burglary, and stalking. Second, the trial court found that attempts at rehabilitation failed because Hiatt had repeatedly violated probation. Third, the trial court found the nature of the crimes especially troubling because Hyatt entered victims’ homes and bedrooms at times when it was likely they would be at home. The trial court also noted that it considered Hiatt’s statements of the adrenaline rush and

personal gratification from the crimes as an aggravator indicating the egregious nature of the crime. Fourth and finally, the trial court found that Hiatt's character was an aggravating circumstance because Hiatt had "not yet internalized and accepted what's going on in your life to help you determine what you need to do to stop committing crimes" and was likely to commit more crimes until he did. Tr. p. 55. Hiatt does not challenge these aggravating factors, and we find the trial court did not abuse its discretion in considering them.

The trial court did not find any mitigating factors. Hiatt contends this finding was erroneous. Hiatt first argues that the trial court should have found his guilty plea to be a mitigator. A guilty plea is not automatically a significant mitigating factor. Swain v. State, 870 N.E.2d 1058, 1060 (Ind. Ct. App. 2007). Where, as here, a defendant already received a substantial benefit from his guilty plea, a trial court's failure to properly acknowledge a guilty plea is harmless error. Banks v. State, 841 N.E.2d 654, 658-59 (Ind. Ct. App. 2006), trans. denied. Hiatt was facing eight counts ranging from Class A misdemeanors to Class B felonies. The State accepted his guilty plea to three counts of Class B felony burglary and dismissed the remaining charges. A defendant is entitled to receive a benefit for pleading guilty, and we find here that Hiatt has already received such a benefit. We find that it is unlikely the trial court would have imposed a lesser sentence even if it had properly acknowledged the guilty plea as a mitigator.

Hiatt argues next that the trial court should have considered his remorse as a second mitigating factor. The trial court did not give much weight to Hiatt's statements of remorse and instead found that Hiatt "used buzz words here today to try and say the

right things to the judge.” Tr. p. 52. The weight a trial court chooses to assign a mitigating circumstance cannot constitute an abuse of discretion. Anglemyer, 868 N.E.2d at 491. We find that the trial court was in the best position to assess and consider Hiatt’s statements and demeanor.

Hiatt also argues the trial court should have considered that he was under the influence of drugs and alcohol during the commission of these crimes as a third mitigating factor and should have ordered some specialized treatment. Substance abuse problems are not mandated mitigating factors. Iddings v. State, 772 N.E.2d 1006, 1018 (Ind. Ct. App. 2002), trans. denied. Hiatt admitted not only to a long history of drug and alcohol abuse, but also admitted to not completing previous substance abuse programs. The trial court accordingly ordered a substance abuse evaluation during incarceration with treatment to follow as recommended. We find it was not an abuse of discretion for the trial court to disregard this potential mitigator.

We also find that this sentence is not inappropriate under Indiana Appellate Rule 7(B) given the nature of the offense and the character of the defendant. Hiatt admitted breaking into homes not only to gather items to sell to purchase drugs, but also because the experience gave him an adrenaline rush. He became violent with one victim, threatening to kill her if she did not cooperate. He burglarized three homes early on a Sunday morning in May, on Mother’s Day — a time when homeowners were likely to be home. We find the nature of these offenses to be very grave.

Regarding Hiatt’s character, his lengthy criminal history shows disrespect for the law and escalating criminal behavior. Past juvenile offenses included retail theft,

loitering and prowling, petty theft, burglary, and petty larceny. As an adult, Hiatt has been convicted of criminal mischief, resisting law enforcement, burglary, stalking, grand theft auto, and possession of an altered driver's license. All prior attempts at rehabilitation had obviously failed. In fact, Hiatt had previously escaped from a rehabilitation facility in Florida and violated probation four times for past offenses. Hiatt committed the crimes at issue here to further his drug habit and for his own personal gratification. In light of the nature of these offenses and Hiatt's character, the sentence was appropriate. We will not revise Hiatt's sentence.

Conclusion

The trial court did not abuse its discretion in sentencing Hiatt, and his forty-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.