

STATEMENT OF CASE

Paul S. Freeman (“Freeman”), after pleading guilty to theft, as a class D felony, appeals his sentence.

We affirm.

ISSUES

1. Whether the trial court abused its discretion in sentencing Freeman.
2. Whether Freeman’s sentence is appropriate in light of the nature of the offense and his character.

FACTS

On August 24, 2009, Freeman, who was on parole, walked out of Phil’s Hobby Lobby Shop with merchandise that he had not purchased. The store owner and an employee followed him out of the store and confronted him in the parking lot. The two men wrestled Freeman down to the ground; however, Freeman was able to free himself. Afterwards, Freeman told the two men that he had a knife. The store manager snatched Freeman’s car keys and ran around to the passenger side of Freeman’s vehicle. At that moment, Freeman paused, threw down a knife, and ran into a wooded area. Shortly after, officers apprehended him.

The State charged Freeman with theft as a class D felony. Approximately a month before his scheduled jury trial, Freeman pled guilty to the charge without the benefit of a plea agreement with the State. At sentencing, he admitted to having a long-term addiction to cocaine and testified that his addiction was the cause of all his criminal acts.

He also stated that he was ready to turn his life around. He requested that the trial court place him on probation or in a rehabilitative program.

The trial court found Freeman's drug addiction to be a mitigating circumstance and his extensive criminal history to be an aggravating circumstance. It then found that the aggravating factor far outweighed the mitigating factor. The court sentenced Freeman to the Indiana Department of Correction for three years executed.

DECISION

1. Abuse of Discretion

Freeman contends that the trial court abused its discretion because it failed to "give credit" for mitigating circumstances that are supported by the record. Freeman's Br. at 7. He asserts that, prior to his scheduled jury trial, he pled guilty without the benefit of a plea agreement. Therefore, he maintains that he provided the State with a "substantial benefit" by choosing to forgo his right to a trial by jury and by pleading guilty. *Id.* at 10. He further argues the trial court failed to consider his admission to a lengthy drug addiction and the fact that he "expressed a desire to turn his life around." *Id.* He suggests that by overlooking these mitigators, the trial court abused its discretion. We do not agree.

"Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse for discretion." *Brown v. State*, 907 N.E.2d 591, 593 (Ind. Ct. App. 2009) (quoting *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.* at 594 (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)).

Our Supreme Court held that the imposition of a sentence and the review of sentences on appeal should proceed as follows:

1. The trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.
2. The reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion.
3. The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse.
4. Appellate review of the merits of a sentence may be sought on the grounds outlined in Appellate Rule 7(B).

Anglemyer, 868 N.E.2d at 491.

In the instant case, the transcript of the sentencing hearing reveals that the trial court did make reference to Freeman’s “substance abuse.” (Tr. 8). The trial court no longer has an obligation to state a detailed weighing and balancing of aggravating and mitigating factors. *Gervasio v. State*, 874 N.E.2d 1003, 1005 (Ind. Ct. App. 2007). Hence, the weight or value assigned to any mitigating or aggravating factors that the trial court may properly find is not subject to review for abuse of the trial court’s discretion. *Id.* (quoting *Anglemyer*, 868 N.E.2d at 491). Thus, Freeman’s argument regarding his mitigating factor does not require further attention.

As to the other factors, neither Freeman nor the trial court identified Freeman’s guilty plea and his desire to turn his life around as mitigators. A sentencing court is

under no obligation to find mitigation factors. *Banks v. State*, 841 N.E.2d 654, 659 (Ind. Ct. App. 2006) (citing *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003)). At sentencing the following discussion took place:

THE COURT: Good Morning. Mr. Freeman, did you get a look at your Pre-Sentence Report?

[FREEMAN]: Yes, sir.

THE COURT: Anything you or your lawyer want to say?

MR. ZENT: Judge, [Freeman] has a substance abuse problem. He's got a criminal record that sometimes goes with it He'd like a chance to do rehabilitation or substance abuse. . .

[FREEMAN]: I've been in and out of trouble for the past ten years over drug addictions . . . I really haven't [done] any kind of rehabilitation, but I'm ready to fight and turn my life around . . . I want . . . a chance for some kind of rehabilitation program, some long term substance abuse. I need to learn to be a father to my child.

. . .

MR. ZENT: Nothing further, sir.

(Tr. 5-6). Freeman nor his attorney requested or presented evidence in support of his guilty plea being considered a mitigating factor. Even if Freeman had requested his guilty plea to be considered, this court has previously found that trial courts are not required to include, within the record, a statement that it considered all proffered mitigating circumstances, only those that it considered significant. *Mata v. State*, 866 N.E.2d 346, 349 (Ind. Ct. App. 2007). Moreover, the trial court is not obligated to explain why it does not find a particular mitigator to be significant; and standing alone, a

guilty plea “is not automatically a significant mitigating factor.” *Brown*, 907 N.E.2d at 594 (quoting *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999)).

As to Freeman’s contention that he did not receive any benefit from his pleading guilty, it is clear from the record that Freeman made a pragmatic decision to plead guilty based on the strong evidence against him. Thus, the trial court clearly identified on the record the mitigating and aggravating factors that it found significant and worth mentioning. Based on the foregoing, we do not find that the trial court abused its discretion.

2. Nature of Crime and Character of Offender

Freeman argues that his sentence is inappropriate in light of the nature of the offense and his character. According to Indiana Appellate Rule 7(B), this court will not revise a sentence imposed unless it is inappropriate in light of the nature of the offense and the character of the offender. “It is this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record” *Anglemyer*, 868 N.E.2d at 491.

Indiana Code section 35-50-2-7(a) provides that a person who commits a class D felony shall be imprisoned for a fixed term between (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. The trial court sentenced Freeman to the maximum sentence of three years executed.

As to the nature of the offense, Freeman acknowledges that the State has discretion as to the filing of charges. However, he suggest that the “underlying facts of the case could have been charged as either a misdemeanor criminal conversion or the felony theft charge.” Freeman’s Br. at 13. He further argues that the State elected to file this cause as a felony, for purposes of enhancing the possible penalties.

Notwithstanding the foregoing, Freeman refers to the Indiana Supreme Court’s ruling that maximum sentences should generally be reserved for the worst offenses and offenders. He maintains that though his multiple criminal convictions appear to be significant, his most recent convictions have been non-violent and related to substance abuse. He, therefore, suggest that “even when considering [his] criminal history, he cannot be classified as the worst offender.” *Id.* at 14.

Indeed, theft is not considered one of the most heinous crimes; however, it is a crime of dishonesty and must be punished. Freeman pled guilty to theft as a class D felony. During the commission of the crime, he wrestled with the store manager and store employee. Additionally, he had a knife, which could have led to serious injury.

In reference to his character, Freeman admits to having an extensive criminal history but argues that though he has an extensive criminal background, his “more recent convictions have been for non-violent [crimes], substance abuse and substance abuse related crimes.” *Id.* at 13. He maintains that he wants to “turn his life around, to be a better person, father and respectable citizen.” *Id.*

Nevertheless, we cannot ignore Freeman's extensive criminal history. This court has found that when considering the "character of the offender," the defendant's criminal history is relevant. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Such a record is a poor reflection of the defendant's character and may reveal that he has not been deterred even after having been previously subjected to the court process and/or incarceration. *Id.* (citing *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005)).

Over the last fifteen (15) years, Freeman has been convicted of thirteen (13) misdemeanors and six (6) felony convictions. This includes convictions of battery, escape, operating a vehicle while intoxicated, and theft. In the past, he has had three suspended sentences, his probation has been revoked twice, and his parole has been revoked twice. Furthermore, Freeman had been released to parole, for three months, at the time he committed the current offense. We find that the trial courts have been extremely lenient with Freeman. It is clear that he has not been deterred by his previous experiences with the criminal justice system. Thus, given the extensive criminal history, and the failed attempts at parole and probation, the sentence was proper.

Based on the foregoing, we find that the trial court did not abuse its discretion. Further, after considering the nature of the crime and Freeman's character, we find that Freeman's three year sentence not inappropriate.

Affirmed.

BRADFORD, J., and BROWN, J., concur.