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IN THE
COURT OF APPEALS OF INDIANA

TERRY D. RUTHLEDGE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A02-0612-CR-1124
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Wayne J. Lennington, Judge
Cause No. 18C05-0604-FB-08

OCTOBER 15, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant-Defendant Terry D. Ruthledge appeals his sentence following his guilty plea to burglary, a Class C felony. We affirm.

ISSUE

The sole issue is whether the trial court abused its discretion when sentencing Ruthledge to an eight-year sentence.

FACTS AND PROCEDURAL HISTORY

In November 2005, seventeen-year-old Ruthledge broke into Rhonda Addington's residence and took some of Addington's personal property. After Ruthledge was waived from juvenile court, the State charged Ruthledge with burglary as a Class B felony and theft, a Class D felony, under cause number 18C05-0604-FB-0008 ("Cause FB-0008").

In September 2006, Ruthledge entered into a written plea agreement, wherein he agreed to plead guilty to burglary reduced to a Class C felony in exchange for the State's dismissal of the theft charge as well as the dismissal of "all charges under Cause No. 18C05-0512-CM-0001 [("Cause CM-0001")]."[1] Appellant's Appendix at 27. The plea agreement left sentencing to the discretion of the trial court.

In November 2006, the trial court held a guilty plea hearing. After Ruthledge pleaded guilty to the reduced burglary charge, the trial court accepted the plea agreement and held a sentencing hearing. During the sentencing hearing, Ruthledge, who was then

[1] The presentence investigation report ("PSI") indicates that in December 2005, Ruthledge was charged under Cause CM-0001 with the following five misdemeanors: (1) domestic battery; (2) criminal trespass; (3) false informing; (4) disorderly conduct; and (5) dangerous possession of a firearm.

eighteen years old, admitted that he had been in the juvenile system since the age of ten, that he had been placed in both the Youth Opportunity Center ("Y.O.C.") and the Indiana Boys School, and that he spent two and one-half years at the Boys School.[2] Ruthledge also acknowledged that he had been written up numerous times for misconduct while at Y.O.C., Boys School, and while in the Delaware County Jail on his pending charges.[3]

When sentencing Ruthledge, the trial court discussed Ruthledge's criminal history and incidents of jail misconduct:

> You can't comply with anything evidently. Why? That list at jail is absolutely horrendous. And your past history and your criminal record just leaves me nothing to say good about you. What am I supposed to say good about you, you know? The things you did in jail you probably should have been charged [with] a sexual offense with [e]verything that happened up there. You threatened people, you beat up on people, you did everything . . . This list is just horrendous. [The prosecutor] read to you your things charged with as a juvenile, and you're an adult now, you know? Why didn't you become – listen at this. "Taking a tray without permission. Eleven times refusing to obey with harm. Three, providing false statements." These are a number of offenses. "Three, provocative language. One refusing to obey reasonable order. Five habitual rule violator. Three making loud and boisterous noises. Two assaulting individuals. One theft. Two non-consensual sex acts. Four times receiving multiple food. One out of cell without permission. Three threats and harassment." You're a bully. "Destruction, defacing jail property. Intentionally flooding." How do expect me to find any reason to justify not giving you the maximum sentence? Tell me one reason, just one that's half way valid. I find no mitigating circumstances, and neither could the report here. Did you just enjoy doing that?
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> * * * * *

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[2] The PSI indicates that, as a juvenile, Ruthledge admitted to and faced sanctions for three allegations of battery, criminal recklessness, conversion, resisting law enforcement, disorderly conduct, and escape and that he was placed in Boys School in January 2001 and again in June 2004.

[3] The PSI reveals that Ruthledge had "forty-five (45) misconduct write-ups (15 minor and 30 major)" while in the Delaware County Jail and that "[a]s a result of [Ruthledge's] behavior in the jail he [was] classified as a super-max inmate." Appellant's Appendix at 39.

> Well, you've been doing it since you were ten, haven't you? Just time after time. And you've had a lot of breaks. You've been in Boys' School. That didn't do you any good. It didn't evidently help you a bit. And now you've turned to an adult and your crimes are just worse. Burglary, carrying a gun. What were you carrying a gun for?
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> * * * * *
>
> I'm sorry for you because you cannot seem to get along with anybody or comply with what we consider to be reasonable conduct . . . God knows, I would like to give you a break. You have never, in all this time, shown any remorse, you know? I know how the things go up in that jail and you have been right in the middle of it. You've fought every step of the way.

Transcript at 21-23. The trial court then sentenced Ruthledge to eight years in the Indiana Department of Correction. The trial court also ordered that Ruthledge pay a $10,000 fine plus $159 in court costs. Ruthledge now appeals.

DISCUSSION AND DECISION

Ruthledge argues that the trial court abused its discretion when sentencing him to the maximum eight-year sentence for his Class C felony conviction. We note that Ruthledge's offense was committed after the April 25, 2005, revisions of the sentencing scheme. In clarifying these revisions, the Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). We review the sentence 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." *Id.*

A trial court can abuse its sentencing discretion in several ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that explains reasons for imposing a sentence where the record does not support the reasons; (3) entering a sentencing statement that omits reasons that are clearly supported by the

record and advanced for consideration; and (4) entering a sentencing statement in which the reasons given are improper as a matter of law. *Id*. at 490-91. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Id.* at 491.

Ruthledge appears to argue that the trial court improperly considered certain aggravators. Ruthledge contends that the trial court "seemed overwhelmed by the misbehavior of [Ruthledge] in jail and the number of allegations in his juvenile record" and "seemed to consider crimes which [he] should have been charged and convicted – but wasn't." Appellant's Brief at 9-10. To the extent that Ruthledge suggests that the trial court improperly considered dismissed juvenile allegations and his misconduct in jail as aggravating circumstances, we conclude that he has waived such argument by failing to make a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a); *Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005) (holding that a party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority), *reh'g denied*, *trans. denied*.

Waiver notwithstanding, when considering a defendant's criminal history, a trial court can look to convictions and "other prior criminal activity which has not been reduced to a conviction but which does indicate a prior criminal history[,]" *see Moyer v. State*, 796 N.E.2d 309, 313 (Ind. Ct. App. 2003), and as evidence that a defendant's antisocial behavior had not been deterred even after the defendant had been subjected to police authority, *see Monegan v. State*, 756 N.E.2d 499, 502 (Ind. 2001). It is clear from

the trial court's statement during the sentencing hearing that it considered Ruthledge's juvenile allegations and misconduct in jail as part of Ruthledge's criminal history and failure to be deterred from anti-social behavior. Accordingly, the trial court did not err in its consideration of aggravating circumstances.

Ruthledge also suggests that the trial court erred by failing to "acknowledge that [he] had two (2) children, his lack of education and no employable skills." Appellant's Brief at 10. To the extent that Ruthledge is arguing that the trial court abused its discretion by failing to find these as mitigating circumstances, he has waived appellate review of this issue because he failed to specifically raise these as mitigators to the trial court, *see Pennington v. State*, 821 N.E .2d 899, 905 (Ind. Ct. App. 2005) (holding that defendant who fails to raise proposed mitigators at the trial court level is precluded from advancing them for the first time on appeal), and because he fails to make any cogent argument or cite any authority in support of such a proposition, *see* Ind. Appellate Rule 46(A)(8)(a); *Lyles*, 834 N.E.2d at 1050. Thus, we reject Ruthledge's suggestion that the trial court abused its discretion by failing to find mitigating circumstances.[4]

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[4] Ruthledge also appears to contend that the trial court abused its discretion by imposing a $10,000 fine. Ruthledge, however, has waived this argument on appeal because he makes no cogent argument and cites absolutely no authority in support of his contention of error. *See* Appellate Rule 46(A)(8)(a); *Lyles*, 834 N.E.2d at 1050.

Finally, we also reject Ruthledge's suggestion that the trial court erred in weighing the aggravating and mitigating circumstances. The *Anglemyer* Court explained that, under the new statutory scheme, the relative weight or value assignable to aggravators and mitigators is not subject to review for an abuse of discretion. *Anglemyer*, 868 N.E.2d at 491 ("Because the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors.")

CONCLUSION

For the foregoing reasons, we affirm Ruthledge's sentence.

Affirmed.

BAKER, C.J., and SHARPNACK, J., concur.