Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

CHRIS P. FRAZIER
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

SCOTT L. BARNHART
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DIONTAE GREEN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0704-CR-321
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge and The Honorable William Robinette, Commissioner
Cause No. 49G03-0609-FB-171060

October 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Diontae Green pleaded guilty to carrying a handgun without a license, a class A misdemeanor, and conspiracy to commit robbery as a class B felony. Upon appeal, Green argues that the trial court abused its discretion in imposing an aggregate sentence of six years, with four years executed and the balance suspended.

We affirm.

The factual basis for Green's guilty plea provides that on September 10, 2006, at approximately 2:00 a.m., sixteen-year-old Green, who was armed with a pistol, and another teenager went to an apartment complex and robbed three individuals. In particular, they took one man's money, jacket, and cell phone.

On September 11, 2006, the State charged Green with three counts of robbery as class B felonies, three counts of criminal confinement as class B felonies, one count of carrying a handgun without a license, and one count of auto theft. On February 7, 2007, Green entered into a plea agreement in which he agreed to plead guilty to an amended charge of conspiring to commit robbery, a class B felony, and carrying a handgun without a license, a class A misdemeanor. In return, the State agreed to dismiss the remaining charges and to recommend a sentence with a cap of six years executed.

On March 8, 2007, the trial court held a joint guilty plea and sentencing hearing. During the sentencing portion, Green asked the trial court to consider as mitigating circumstances his age, the fact that he accepted responsibility by pleading guilty, and that the current offense was his first adult, felony conviction. Green also made a statement expressing remorse and asking for a second chance.

After listening to Green's statement and the testimony of two defense witnesses and entertaining arguments of counsel, the trial court sentenced Green to one year for the handgun conviction and to the minimum term of six years,[1] with four years executed, two years suspended, and one year of probation, on the conspiracy conviction. The sentences were ordered concurrent.

Upon appeal, Green argues that the trial court abused its discretion in imposing an aggregate six-year sentence and ordering that four years be executed. Specifically, Green argues that the trial court failed to give an adequate sentencing statement and also failed to give mitigating weight to his acceptance of responsibility by pleading guilty.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences to be drawn therefrom. *Id*.

We first consider whether the trial court gave an adequate sentencing statement. As our Supreme Court explained in *Anglemyer*, "under the new statutory regime Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense." *Id*. at 490. The trial court's sentencing statement must give a "reasonably detailed" explanation of the reasons or circumstances for imposing a particular sentence. *Id*. at 491. Sentencing statements serve two primary purposes: (1)

[1] *See* Ind. Code Ann. § 35-50-2-5 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007) (sentencing range for a class B felony is six to twenty years with the advisory sentence being ten years).

they guard against arbitrary and capricious sentencing, and (2) they provide an adequate basis for appellate review. *Anglemyer v. State*, 868 N.E.2d 482. Our Supreme Court further stated that a trial court may abuse its discretion under the new sentencing scheme by failing to enter a sentencing statement. *Id*.

We first note that at the time of sentencing, the trial court was acting without the benefit of the *Anglemyer* decision. Prior to *Anglemyer*, this court was divided as to whether and to what extent trial judges were required to make sentencing statements explaining the sentence imposed following the legislative revisions of our sentencing statutes. *See id.*

Moreover, here, although the trial court did not provide a lengthy explanation as to the sentence imposed, the trial court, prior to setting forth the sentence, acknowledged Green's age and the fact that he pleaded guilty. After pronouncing the sentence, the trial court acknowledged that there were multiple victims. These considerations clearly played a role in the trial court's decision of what sentence to impose. In light of the fact that the trial court did not have the benefit of the *Anglemyer* decision, and given the trial court's acknowledgment of factors affecting its sentencing decision, we find the trial court's sentencing statement is sufficient for this court to conduct meaningful appellate review. *See Anglemyer v. State*, 868 N.E.2d 482. We therefore cannot say that the trial court abused its discretion in failing to give a more detailed sentencing statement.

Green argues that the trial court abused its discretion by failing to afford mitigating weight to his acceptance of responsibility through his guilty plea. In stating that Green admitted what he did, the trial court was clearly acknowledging that Green

accepted responsibility by pleading guilty. To the extent Green is arguing that the trial court failed give his guilty plea sufficient mitigating weight, such a claim is no longer subject to appellate review. *See Anglemyer v, State*, 868 N.E.2d 482 (holding that claims that a trial court improperly weighed aggravating and mitigating circumstances when imposing a sentence is not subject to review for an abuse of discretion).

Green also appears to argue that the trial court overlooked as a mitigating circumstance character evidence that he is easily influenced by others and that he is only sixteen years of age. "An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record." *Anglemyer v. State*, 868 N.E.2d at 493.

As noted earlier, the trial court acknowledged Green's young age prior to sentencing. Thus, we find no error in this regard. As to his proffered mitigating circumstance relating to his character, we note that, in requesting leniency for Green, Green's mother and pastor testified that he is easily influenced by others. Green, however, has made no effort to explain why such character evidence warranted a lesser sentence. Based on the record before us, we cannot say that the trial court improperly overlooked Green's proffered character evidence. In summary, the trial court did not abuse its discretion in sentencing Green to an aggregate six-year sentence and ordering four years of that sentence executed.[2]

[2] In setting forth the standard of review in his appellant's brief, Green recites the language of Indiana Appellate Rule 7(B), which provides that the "[c]ourt may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Green, however, does not provide a separate analysis or citation to authority to support a claim that his sentence is inappropriate. *See* Ind. Appellate

Judgment affirmed.

SHARPNACK, J., and RILEY, J., concur.

Rule 46(A)(8). He has therefore waived the issue for review. *See Hollowell v. State*, 707 N.E.2d 1014 (Ind. Ct. App. 1999). Waiver notwithstanding, the trial court's imposition of the minimum six-year sentence with four years executed and two years suspended is not inappropriate.