ATTORNEY FOR APPELLANT:

TAFFANEE L. KEYS
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LARRY BOYCE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0704-CR-329
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPE RIOR COURT
The Honorable Amy Barbar, Magistrate
Cause No. 49G22-0701-FC-3753

December 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Larry Boyce appeals the sentence he received following his conviction of battery as a class C felony. Boyce claims the trial court erred in failing to find certain mitigating circumstances and failing to correctly balance the aggravating and mitigating circumstances.

We affirm.

The facts supporting the conviction are that on December 8, 2006, Boyce argued with his wife Sharon and eventually threw her down on a couch and kicked her in the chest while wearing steel-toed boots. He ceased the attack only when the couple's fourteen-year-old son interceded. Sharon was admitted to the hospital with a collapsed lung and fractured ribs. She developed pneumonia and an infection that resulted in a twenty-seven-day hospitalization.

Boyce was arrested and charged with two counts of battery, one as a class C felony and one as a class A misdemeanor, confinement as a class D felony, and two counts of domestic battery, one as a class D felony and one as a class A misdemeanor. While incarcerated awaiting trial, Boyce made several phone calls to his brother and his sons. He told his brother he wished he had beaten Sharon more and called her a "worthless cunt." *Transcript* at 31. In phone calls to his sons, he called Sharon a "fucking stupid cunt", a "worthless cunt", *id.*, and "that piece of shit." *Id*. at 30. He also told his brother he would walk out on probation. Ultimately, Boyce agreed to plead guilty to battery as a class C felony in exchange for the State's agreement to dismiss the other charges. The parties agreed that the executed sentence would be capped at four

years. The trial court accepted the agreement and, after hearing argument on sentencing, imposed a six-year sentence, with four years executed and two years suspended to probation.

Boyce contends the trial court erred in sentencing him. Specifically, he challenges the identification and balancing of aggravating and mitigating circumstances.

Our Supreme Court recently concluded that Indiana's new statutory sentencing scheme requires trial courts to enter sentencing statements whenever imposing sentences for felony convictions. *See Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. In *Anglemeyer's* wake, a defendant who receives a felony sentence may now challenge that sentence on two bases, one of which is procedural and the other concerns the appropriateness of the particular sentence imposed. Boyce's sentencing challenges are of the first type. We review claims of error of this type for an abuse of discretion. *Anglemyer v. State,* 868 N.E.2d at 490 ("[s]o long as the sentence is within the statutory range, it is subject to review only for abuse of discretion").

The Supreme Court clarified that for claims of process-oriented error, an abuse of discretion may occur in the following ways: The trial court (1) fails to enter a sentencing statement; (2) enters a sentencing statement that includes reasons not supported by the record; (3) enters a sentencing statement that omits reasons clearly supported by the record and advanced for consideration; or (4) enters a sentencing statement that includes reasons that are improper as a matter of law. *Anglemyer v. State*, 868 N.E.2d 482. Boyce's claims of error fall into category (3) above.

Boyce first claims the trial court erred in failing to find his guilty plea as a mitigating circumstance.

Our Supreme Court has held that a defendant who pleads guilty deserves "some" mitigating weight be given to the plea in return. *See Anglemyer v. State*, 875 N.E.2d at 220 (quoting *McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007)). An allegation that the trial court failed to find a mitigating factor requires not only that the defendant establish that the mitigating evidence is supported by the record, but also that the mitigating evidence is significant. *See Anglemyer v. State*, 868 N.E.2d 482. The significance of a guilty plea as a mitigator varies from case to case. *Anglemyer v. State*, 875 N.E.2d 218. A guilty plea may not have significant mitigating weight when it does not demonstrate the defendant's acceptance of responsibility, or when the defendant receives a substantial benefit in return for the plea. *Id*.

Boyce was exposed to a potential maximum executed sentence of eight years. In exchange for his plea, Boyce received a sentence only one-half that long. This alone was a substantial benefit. Moreover, several additional charges were dismissed in exchange for the guilty plea, which was a benefit as well. With respect to Boyce's claim that the guilty plea reflects his acceptance of responsibility, we conclude the plea agreement was "more likely the result of pragmatism than acceptance of responsibility and remorse." *See Anglemyer v. State*, 875 N.E.2d at 221 (quoting *Mull v. State*, 770 N.E.2d 308, 314 (Ind. 2002) (citations omitted)). This is so because the evidence against Boyce was overwhelming. Moreover, his claim of remorse at the hearing stands in stark contrast to

the statements he made from jail in phone conversations with his brother and sons. Boyce has not demonstrated that his guilty plea was a significant mitigating circumstance. We therefore conclude the trial court did not abuse its discretion by omitting reference to the plea when imposing sentence.

Boyce contends the trial court erred in failing to find as a mitigator that incarceration would cause under hardship on his family. As stated above, the finding of mitigating factors is generally committed to the trial court's discretion. *Anglemyer v. State*, 868 N.E.2d 482. Although a sentencing court must consider all evidence of mitigating factors presented by a defendant, it is not obligated to weigh or credit them in the manner a defendant suggests. *Id*. In this case, the trial court expressly considered and rejected Boyce's claim that incarceration would cause undue hardship to his family, stating, "And I'm not going to find hardship on dependents as a mitigator here. It's a worse hardship on these children to have him in their lives." *Transcript* at 35. In subsequent explanatory comments, the court alluded to Boyce's twenty previous arrests and seven previous misdemeanor convictions, including two for domestic battery with Sharon as the victim. We conclude the trial court did not overlook undue hardship as a mitigator, but instead rejected Boyce's claim in that regard, reasoning that the financial hardship of Boyce's incarceration was more than offset by the benefit of removing Boyce's daily influence from his children's lives. On the facts of this case, the trial court did not abuse its discretion in doing so.

We note that Boyce also claims the trial court "did not balance the aggravators against the mitigators in reaching its sentence[.]" *Appellant's Brief* at 9. Elsewhere in his brief, Boyce articulates this claim as, "the trial court did not engage in the evaluative process as required." *Id*. at 8. It appears this complaint might refer to the trial court's failure to credit the mitigators discussed in Issue 1 above. That is, Boyce seems to argue that the trial court abused its discretion in failing to find the guilty plea and undue hardship as mitigators in the weighing process. If this is the case, we have already rejected the argument that the trial court abused its discretion in failing to consider those as mitigators. If, on the other hand, this contention is meant as a claim that the trial court failed to perform the requisite balancing, it is clearly incorrect. The transcript reflects that the trial court thoughtfully identified and balanced the aggravators and mitigators. Finally, if it is meant as a claim that the trial court abused its discretion in the balancing of aggravators and mitigators, it is no longer available. *See Anglemyer v. State*, 868 N.E.2d at 491 ("[b]ecause 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").

Judgment affirmed.

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