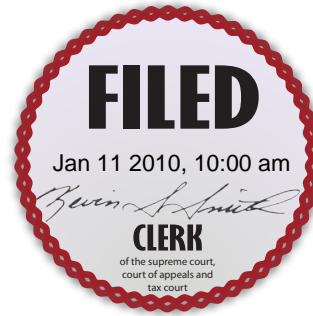


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ERIC HULL,)
)
 Appellant-Defendant,)
)
 vs.) No. 84A01-0905-CR-258
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0710-FB-3352

January 11, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Pursuant to a plea agreement, Eric Hull was convicted of eighteen counts of burglary,¹ each as a Class B felony, one count of attempted burglary² as a Class B felony, two counts of burglary,³ each as a Class C felony, twenty counts of theft,⁴ each as a Class D felony, and one count of auto theft⁵ as a Class D felony. The trial court imposed an aggregate sentence of thirty years, twenty-three of which were ordered executed and seven of which were suspended. Hull appeals his sentence raising one issue, which we restate as two:

- I. Whether the trial court abused its discretion when it failed to recognize certain mitigating circumstances; and
- II. Whether Hull's sentence was inappropriate in light of the nature of the offense and character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

In April or May of 2007, Hull moved from Illinois to Terre Haute, Indiana to live with his father and half-sister. During the three-month time period from May 29, 2007 through September 3, 2007, Hull committed forty-two felonies, the majority of which were thefts and burglaries. Hull was arrested in October 2007, just prior to his eighteenth birthday, and charged as an adult with forty-two felony counts.

¹ See Ind. Code § 35-43-2-1.

² See Ind. Code §§ 35-43-2-1, 35-41-5-1.

³ See Ind. Code § 35-43-2-1.

⁴ See Ind. Code § 35-43-4-2(a).

⁵ See Ind. Code § 35-43-4-2.5(b)(1).

On May 1, 2009, Hull appeared before the trial court and entered a plea of guilty as to each count. The trial court, having considered the written pre-sentence investigation report and having heard and considered the evidence, found several pertinent sentencing factors. The trial court found the following aggravating circumstances: (1) Hull's extensive criminal history; (2) many of Hull's victims were over sixty-five years of age; (3) Hull was on parole at the time the offenses were committed; and (4) some of Hull's victims were mentally or physically infirm. *Tr.* at 108-09. As mitigating factors, the trial court noted: (1) Hull's young age; (2) Hull was cooperative in the investigation of the crimes and helped solve some of them; and (3) Hull pled guilty. *Id.* at 111-13. The trial court found that the aggravating factors outweighed the mitigating factors. Noting that Hull's plea agreement capped Hull's sentence to an executed term of imprisonment of not more than thirty years, the trial court sentenced Hull to thirty years, of which twenty-three years were ordered executed. *Id.* at 114-18. Hull now appeals.

DISCUSSION AND DECISION

Although Hull frames his argument as whether his sentence was inappropriate in light of the nature of the offense and the character of the offender, he also appears to argue that the trial court abused its discretion by failing to recognize certain mitigating circumstances supported by the record. As our appellate courts have made clear, "inappropriate sentence and abuse of discretion claims are to be analyzed separately." *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). We therefore address each of these arguments in turn.

I. Abuse of Discretion

Trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. *Anglemyer*, 868 N.E.2d at 490. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.* Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only 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 before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.*

Hull argues that the trial court abused its discretion when it failed to identify as mitigating circumstances Hull's young age, his lack of adult criminal history, his level of cooperation with the police, and the fact that no physical harm came to his victims. *Appellant's Br.* at 7, 14. Hull further contends that the trial court did not give appropriate mitigating weight to his guilty plea, which should have been weighed in the "medium to high range. *Id.* at 14 (citing *Frey v. State*, 841 N.E.2d 231, 235 (Ind. Ct. App. 2006)).

In its sentencing statement, the trial court stated:

I am finding as mitigating circumstances um, Mr. Hull's age; he was seventeen (17) at the time. I guess one (1) of the questions that the Court confronts, do you throw away the key now and just give up on him and say, that's it, your life's over at seventeen (17), or not. That's one (1) of the things that the Court has to wrestle with. I do think that um, and my

recollection, although I didn't hear it today, but I recall somewhere in the pre-sentence is that Mr. Hull was cooperative, which in large part resulted in this number of charges being filed. That if he hadn't gone around with the police and said this is a house, this is a house, this is a house, I broke into, these cases most likely would not have been—they may have been filed but they'd have, the State would have a very difficult time proving these cases So I find that to be . . . a mitigating circumstance that he cooperated and he facilitated the solving of some of these crimes so that folks knew that, who was responsible, and he was in jail, and at least in that sense they could have some peace of mind. Um, and I further find to be a mitigating circumstance, that he did plead guilty.

Tr. at 111-13.

The trial court's own words reveal that Hull's young age, his cooperation, and his guilty plea were factors the trial court deemed to be mitigating. Hull's contention, therefore, can only be a claim that the trial court failed to assign proper weight to these factors. "Because the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence, . . . a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors."

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

Hull is disingenuous in claiming that the trial court abused its discretion in failing to give mitigating weight to his lack of an adult criminal record. Hull was only seventeen when he was arrested and prior to the instant offenses had never been waived into adult court. Likewise, it is spurious for Hull to claim that it is a mitigating factor that none of his victims were harmed. Had a victim been harmed, that injury would have been reflected in the charges; a burglary resulting in bodily injury to any person other than a defendant is a Class A felony. Ind. Code § 35-43-2-1(2). The trial court did not abuse its discretion in determining Hull's mitigating circumstances.

II. Inappropriate Sentence

Finally, Hull contends that his sentence is inappropriate. Even if a defendant's sentence is otherwise proper, Article VII, sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. *Alvies v. State*, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing *Anglemyer*, 868 N.E.2d at 491). This appellate authority is implemented through Indiana Appellate Rule 7(B), which permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id.* The burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)). Hull has not met this burden.

Under the terms of the plea agreement, the trial court had the discretion to sentence Hull up to a cap of thirty years executed. Hull received twenty-three years executed for eighteen Class B felonies, two Class C felonies, and twenty-one Class D felonies. As to the nature of the offenses, within a period of three months, Hull committed forty-two crimes against twenty victims. *Appellant's Br.* at 4. By his own admission, Hull targeted the homes of the elderly and infirm, and broke into their homes at night, while his victims slept, "because they were hard of hearing." *Id.* at 5. Hull would "sometimes hide [in] the victims' residences waiting for them to fall asleep." *Id.* One victim, who was eighty-eight at the time of the crime, testified that she awoke to find Hull standing at the foot of her bed. The reason given for targeting the elderly was Hull's

belief that “the elderly had a lot of money they saved or money saved in the form of coins.” *Id.*

Hull next contends that his character did not support his enhanced sentence because his criminal history consisted of mostly non-violent acts, the gravity of which did not warrant an executed sentence of twenty-three years. *Appellant’s Br.* at 15. Hull, however, fails to note that he had violated the terms of his Illinois parole both by moving to Terre Haute and by committing these crimes in Indiana. Hull had an extensive juvenile history; he had been arrested eighteen times in Illinois for crimes including theft, burglary, auto theft, possession of marijuana, and residential burglary, and had been previously placed in a juvenile facility for over a year. *Tr.* at 67.

Hull has utterly failed to demonstrate that his sentence was inappropriate in light of the nature of the offense and the character of the offender. While Hull’s young age, cooperation in the investigation of the crimes, and his guilty plea merited the trial court’s consideration, the sheer volume of the crimes committed coupled with the nature of the crimes and his criminal history demonstrate that the sentence was not inappropriate.

Affirmed.

DARDEN, J., and MAY, J., concur.