



## **STATEMENT OF THE CASE**

Zachary Taylor appeals his sentence following his convictions for battery and criminal confinement, each as a Class C felony, pursuant to a plea agreement. Taylor raises a single issue for our review, which we restate as the following two issues:

1. Whether Taylor's crimes constituted a single episode of criminal conduct.
2. Whether the trial court abused its discretion when it did not consider Taylor's proffered mitigating circumstances.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

Around 10:00 p.m. on September 11, 2008, Taylor and Leah Mitchell, his live-in girlfriend, had an argument. In the course of that argument, Taylor grabbed Mitchell's arm, twisted it behind her back, and broke her wrist. Taylor later passed out, and Mitchell drove herself to Wishard Hospital.

Around 11:00 the next morning, Mitchell returned home to an awake and angry Taylor. Taylor demanded to know where Mitchell had been and "who [she had] been with." Appellant's App. at 21. Taylor then grabbed Mitchell by the neck and pushed her onto the couch in the living room. He then began choking her and, while doing so with his left hand, struck her in the face with his right fist, causing her nose to bleed. Taylor then dragged Mitchell into the bedroom and threw her onto the bed. Mitchell curled up into a fetal position and Taylor went into another room, where he again passed out.

At some point later in that day, local police were notified of the domestic disturbances, and they arrested Taylor. The State charged Taylor with eight offenses. On

July 9, 2009, he pleaded guilty to the State's charge of battery, as a Class C felony, which related to the September 11 conduct. Taylor also pleaded guilty to criminal confinement, as a Class C felony, due to his September 12 conduct. In exchange for his guilty plea, the State dismissed the remaining charges, which included two Class A felony charges of criminal deviate conduct and a Class A felony charge of rape. Pursuant to the plea agreement, Taylor entered an open plea, which left his sentencing open to the trial court's discretion.

On July 24, the court held a sentencing hearing. After hearing argument, the court stated as follows:

You've been sober since you've been sitting in jail . . . . But, boy, that's one heck of a risk if you don't remain sober—a risk to our community, a risk to you, a risk to everyone. And when I look at these sentences, that . . . factors into the way I approach them. I also approach in the bigger picture a punitive aspect and a rehabilitative aspect. . . . I don't think your criminal history is necessarily an aggravator, but perhaps not a mitigator. It maybe runs right down the middle. I don't know that the true facts of the case—you're pleading to C felonies, which are reduced charges, and I don't know if that's because of the facts or that's just the negotiations your attorneys engaged in. I can say this, that this was obviously a violent episode over time. . . . But that violence over time and the charges, I believe, allow me to aggravate your sentence, and I will aggravate your sentence and I will run them consecutive . . . . [S]o the overall . . . sentence, sir, will be a twelve[-]year sentence. I believe the punitive aspect of this requires time at the Department of Correction[], and you will be going there. Your overall executed time will be an eight-year executed sentence. Six years of those will be at the Department of Correction, followed by two years at a work release. The remaining four years will be suspended. You'll have one year of probation after you are released from work release.

Transcript at 43-44. This appeal ensued.

## DISCUSSION AND DECISION

### Issue One: Single Episode of Criminal Conduct

Taylor first argues on appeal that the trial court abused its discretion when it ordered him to serve consecutive sentences because his two convictions arose out of a single episode of criminal conduct.<sup>1</sup> As we have stated:

In determining whether multiple offenses constitute an episode of criminal conduct, the focus is on the timing of the offenses and the simultaneous and contemporaneous nature, if any, of the crimes.[] Reed v. State, 856 N.E.2d 1189, 1200 (Ind. 2006). “[A]dditional guidance on the question” can be obtained by considering “whether ‘the alleged conduct was so closely related in time, place, and circumstance that a complete account of one charge cannot be related without referring to the details of the other charge.’” Id. (quoting O’Connell v. State, 742 N.E.2d 943, 950-51 (Ind. 2001)).

Williams v. State, 891 N.E.2d 621, 631 (Ind. Ct. App. 2008) (second alteration original).

Here, there is nothing “simultaneous and contemporaneous” about the nature of Taylor’s September 11 battery and his September 12 confinement. After the commission of the September 11 battery, Taylor passed out for several hours and Mitchell went to the hospital to have her broken arm placed in a cast. More than twelve hours later, Mitchell returned, and Taylor then committed the criminal confinement. Further, as just demonstrated, a complete account of the September 11 battery needs no reference to the details of the September 12 confinement, and vice versa. See id. As such, the two crimes to which Taylor pleaded guilty were not a single episode of criminal conduct.

---

<sup>1</sup> Taylor also suggests that the trial court abused its discretion by entering an inadequate sentencing statement. Taylor then spends two full pages in his brief demonstrating the thoroughness of the court’s statements. See Appellant’s Brief at 8-10. The court’s statements are more than adequate to facilitate appellate review, and there is no error in the adequacy of the court’s statements. See Anglemeyer v. State, 868 N.E.2d 482, 490-91 (Ind. 2007), clarified on reh’g, 875 N.E.2d 218 (Ind. 2007).

## **Issue Two: Proffered Mitigating Circumstances**

Taylor next asserts that the trial court abused its discretion when it did not consider his guilty plea and expression of remorse as mitigators. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007) (“Anglemyer I”), clarified on reh’g, 875 N.E.2d 218 (Ind. 2007) (“Anglemyer II”). 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. (quotation omitted). In order for the court to abuse its discretion here, Taylor must demonstrate that “the sentencing statement omits reasons that are clearly supported by the record.” See id. at 491. We may not reconsider the weight, if any, a trial court gives to a proffered mitigator. Id.

The trial court did not abuse its discretion when it refused to find Taylor’s guilty plea a significant mitigator. It is well established that a defendant who pleads guilty deserves “some” mitigating weight in return. Anglemyer II, 875 N.E.2d at 220-21. But “the significance of a guilty plea as a mitigating factor varies from case to case. For example, a guilty plea may not be significantly mitigating . . . when the defendant receives a substantial benefit in return for the plea.” Id. at 221. Here, in exchange for his guilty plea, Taylor received the dismissal of six charges, including three Class A felony allegations. Had he been convicted of each of the original charges, Taylor would have faced a possible maximum sentence of 169 years. The dismissal of six of those charges, then, “was a substantial benefit.” Id. Accordingly, the trial court did not abuse its

discretion when it refused to give Taylor a second benefit by finding his guilty plea to be a mitigating factor.

Neither did the court abuse its discretion when it refused to credit mitigating weight to Taylor's expression of remorse. As our supreme court has held, "[w]e find the [sentencing] court's determination [concerning an expression of remorse] to be similar to a determination of credibility. Without evidence of some impermissible consideration by the court, we accept its determination of credibility." Pickens v. State, 767 N.E.2d 530, 535 (Ind. 2002). That is, remorse can be readily disregarded as a proffered mitigator, and we will not reverse that decision absent evidence of an impermissible consideration by the sentencing court. Here, Taylor presents no evidence that the court's rejection of his expression of remorse was based on an impermissible consideration. Rather, Taylor's argument amounts to a request for this court to reconsider the weight that should be afforded to his remorse, which we will not do. Hence, the court did not abuse its discretion when it rejected Taylor's proffered mitigators.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.