

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Marlon Reese appeals his sentence following his conviction for Criminal Confinement, as a Class B felony, pursuant to a guilty plea. He presents a single issue for our review, namely, whether the trial court abused its discretion when it sentenced him.<sup>1</sup>

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On January 22, 2009, Reese and Christopher McGhee broke into Jason Smith's ("Smith") residence in Muncie, while Storm Smith ("Storm"), Smith's cousin, waited outside in a car. Reese and McGhee, who had a gun, held Smith on the ground and repeatedly hit him and kicked him in the head. Reese and McGhee then left with a lockbox containing money. Smith sustained serious injuries, including a fracture in his spine. And Smith continues to suffer from migraines, insomnia, and nightmares.

The State charged Reese with burglary, as a Class A felony; robbery, as a Class B felony; criminal confinement, as a Class B felony; and battery, as a Class C felony. Reese pleaded guilty to criminal confinement, as a Class B felony, and, in exchange for that plea, the State dismissed the other charges. The plea agreement left sentencing open to the trial court's discretion. The trial court identified five mitigators and seven aggravators and imposed the maximum sentence of twenty years, with eighteen years executed and two years suspended to probation. This appeal ensued.

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<sup>1</sup> Reese cites Indiana Appellate Rule 7(B) in his Statement of the Issue and refers to "the nature of the offense and the character of the offender" in his Summary of the Argument, but he does not cite that rule or make cogent argument under that rule in his Argument section. Accordingly, we address only the issue of whether the trial court abused its discretion in imposing sentence.

## DISCUSSION AND DECISION

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds on reh’g, 875 N.E.2d 218 (Ind. 2007). “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).

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy 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 490-91.

Indiana Code Section 35-50-2-5 provides that a person who commits a Class B felony shall be imprisoned for a fixed term of between six and twenty years, with the advisory sentence being ten years. Here, Reese contends that the record does not support the trial court’s stated reasons for imposing a twenty-year sentence. In particular, Reese asserts that the trial court “did not either give (1) a reasonably detailed recitation of the trial court’s reasons for the sentence imposed, or (2) explain why each circumstance has been determined to be mitigating or aggravating.” Brief of Appellant at 10. We cannot agree.

In its sentencing statement, the trial court found the following mitigators and aggravators:

Mitigating Circumstances:

1. Defendant has pled guilty in this case, thus allowing the Court to forego the expense and resources necessary to take this case to trial.
2. Defendant has some family support that is likely to aid him in his rehabilitation.
3. Defendant is only twenty-one years old.
4. Defendant is remorseful for his actions in this case and he regrets those actions.
5. Defendant has a dependent child and imprisonment of Defendant may cause undue hardship to his child.

Aggravating Circumstances:

1. The Defendant has a history of juvenile and adult criminal activity that includes two adjudications of juvenile delinquency involving battery, six misdemeanor convictions, and one felony conviction, some involving convictions for battery, trespass, and possession of cocaine.
2. Prior attempts at correctional treatment and rehabilitation through probation have not been successful. The Defendant is in need of correctional or rehabilitative treatment that can best be provided by commitment to a penal facility.
3. Defendant has recently violated the conditions of probation granted to him in 18H01-0712-CM-3468 and 18C02-0803-FA-0002.
4. Defendant's role in this crime included substantial care and planning and he was the principal in the commission of this crime.
5. The facts of this case are particularly heinous and disturbing in that the offense did occur in the victim's own home and the Defendant repeatedly kicked the victim in the head. As a result, the victim needs physical rehabilitation and psychiatric treatment.

6. Victim was already suffering from a condition for which he had been previously determined to be disabled before sustaining more injuries during this burglary and subsequent physical attack.

7. The nature of this crime is devastating to the victim and his family members.

In imposing sentence, the Court does consider these facts and circumstances and the nature of the crime. The Court finds that the aggravating circumstances outweigh the mitigating circumstances.

Appellant's App. at 68-69.

Reese first contends that the trial court did not adequately explain why he is in need of correctional or rehabilitative treatment that can best be provided by commitment to a penal facility. But the sentencing statement shows that the trial court supported that aggravator with its observation that prior attempts at rehabilitation through probation or incarceration had been unsuccessful. We hold that this aggravator is sufficiently supported by the record and adequately explained by the trial court.

Next, Reese maintains that there was no evidence to support the aggravator that his role included substantial care and planning and that he was the principal in the commission of the crime. Indeed, there was no direct evidence of "care and planning" in the commission of this crime. But the evidence shows that Storm, Reese's accomplice, is related to Smith, and the three men drove to Smith's house with a gun and an intent to rob Smith. That evidence supports a reasonable inference that Reese and his accomplices planned the crime. Further, Smith testified that Reese instructed McGhee to knock him unconscious, which supports a reasonable inference that Reese was the principal. We hold that this aggravator is also sufficiently supported by the record.

Finally, Reese contends that because none of Smith's family members testified regarding how the crime and Smith's injuries have impacted their lives, the record does not support the trial court's finding that the nature of the crime "is devastating to the victim and his family members." Appellant's App. at 69. Smith testified that his fiancée and three nephews live with him. And Smith testified that as a result of the injuries he sustained on January 22, 2009, he suffers insomnia, daily migraines, and severe nightmares. Smith testified that he is "in the middle of both mental and physical rehabilitation." Transcript at 27. That evidence supports a reasonable inference that his family members, with whom he lives, have suffered emotional anguish, too. We hold that this aggravator is sufficiently supported by the record.

In sum, Reese has not demonstrated that the trial court's sentencing statement is not reasonably detailed or is otherwise deficient. The trial court identified several aggravators and several mitigators before imposing the twenty-year sentence. And we will not review the trial court's weighing of aggravators and mitigators on appeal. See Anglemeyer, 868 N.E.2d at 491. The trial court did not abuse its discretion when it sentenced Reese.

Affirmed.

VAIDIK, J., and BROWN, J., concur.