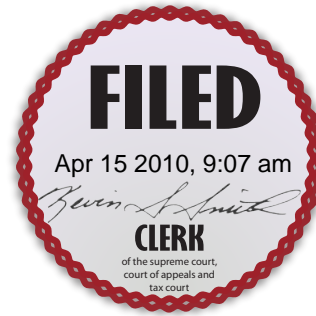


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

SUSAN SCHULTZ

Corydon, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

BRANDON INGRAM,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 13A04-1001-CR-31
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE CRAWFORD CIRCUIT COURT
The Honorable K. Lynn Lopp, Judge
Cause No. 13C01-0902-FB-001

April 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Brandon Ingram appeals his sentence following his conviction for Burglary, as a Class B felony, pursuant to a plea agreement. He presents two issues for our review:

1. Whether the trial court abused its discretion when it did not identify proffered mitigators.
2. Whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 2, 2009, Ingram broke and entered the residence of Kelly and John Birkla and stole several items of their personal property, including a computer, tools, guns, a camera, jewelry, cash, and their puppy. The State charged Ingram with burglary, as a Class B felony, and theft, as a Class D felony. Ingram pleaded guilty to burglary, as a Class B felony. In exchange, the State dismissed the theft charge. The plea agreement left sentencing to the trial court's discretion, but capped Ingram's sentence at fourteen years.

At sentencing, the trial court identified two aggravators and no mitigators. And the court sentenced Ingram to fourteen years executed, to run concurrent with his sentence in Cause No. 13C01-0902-FB-003. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Abuse of Discretion

Ingram first contends that the trial court abused its discretion in sentencing him. 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. Further, “the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence.” Id. at 491.

Ingram maintains that the trial court abused its discretion when it did not identify three proffered mitigators, namely, his remorse, his guilty plea, and his assistance to police in solving other crimes. But the trial court was free to disregard mitigating factors it did not find to be significant. See Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999). And Ingram carries the burden on appeal of showing that a disregarded mitigator is significant. See id.

At sentencing, the trial court expressly acknowledged both Ingram’s show of remorse and his assistance to police, but declined to identify either as a mitigator. The trial court stated that it did not know “if [Ingram’s] remorse is real or not,” and we accept

the court's determination of credibility on this issue. See Pickens v. State, 767 N.E.2d 530, 535 (Ind. 2002). Further, the State explained that it had agreed to a capped sentence based upon Ingram's assistance in solving the other crimes, so he received a benefit for that. And Ingram received a substantial benefit in exchange for his guilty plea, namely, the dismissal of two charges and a capped sentence. See Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999) (no abuse of discretion in declining to give mitigating weight to guilty plea where defendant received benefits for her plea). Ingram has not met his burden to show that the proffered mitigators were significant. The trial court did not abuse its discretion in sentencing Ingram.

Issue Two: Inappropriateness of Sentence

Ingram next contends that his sentence is inappropriate under Indiana Appellate Rule 7(B). Revision of a sentence under Appellate Rule 7(B) requires the defendant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). In reviewing a defendant's sentence under Appellate Rule 7(B), we give due consideration to the trial court's decision. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade this court that his sentence is inappropriate. Id.

Ingram's sentence is not inappropriate in light of the nature of his offense. Ingram stole several items of the Birkas' personal property, including their puppy, and the trial court ordered Ingram to pay restitution to them in the amount of \$5,204.75. We cannot say that his fourteen-year sentence is inappropriate on these facts.

Nor is Ingram's sentence inappropriate in light of his character. In support of his position on this issue, Ingram maintains that he has been "forthright in acknowledging his responsibility for his own conduct" and that he has been "open and honest about his criminal history." Brief of Appellant at 12. He urges us to reduce his sentence to ten years executed with four years suspended to probation. But Ingram's criminal history consists of one felony, namely, armed robbery, and he pleaded guilty to two other felony burglary charges when he entered the plea agreement in this case. And he was on parole at the time of the instant offense. Ingram has not demonstrated that his fourteen-year executed sentence is inappropriate in light of his character.

Affirmed.

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