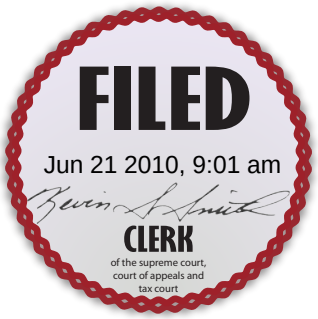

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IN THE
COURT OF APPEALS OF INDIANA

LEO D. YOUNGBLOOD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0911-CR-1114
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0705-FA-114

June 21, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Leo D. Youngblood appeals the sentence imposed by the trial court after he pleaded guilty to one count of dealing in cocaine, as a class B felony.

We affirm.

ISSUE

Whether the trial court abused its discretion in sentencing Youngblood.

FACTS

On May 8, 2007, a confidential informant for the Madison County Drug Task Force told a woman that she wanted to buy $300.00 worth of cocaine. She met the woman, the woman called someone about obtaining the cocaine, and Youngblood came. Youngblood then drove away to obtain the cocaine. When he returned, Youngblood handed cocaine in "a piece of blue plastic" to the informant. (Tr. 26). Two officers emerged from behind a curtain, and observed "a piece of a white plastic that contained a rock type substance" in Youngblood's left hand in addition to the "piece of blue plastic" containing "pieces of a rock type substance." *Id.* Both substances in the plastic were tested and "found to be cocaine." *Id.*

On May 14, 2007, the State charged Youngblood with one count of dealing in cocaine, as a class A felony, and one count of possession of cocaine, as a class B felony.[1] On May 12, 2009, in Youngblood's presence and upon his counsel's statement of

[1] The charging information alleges that each offense was committed "within one thousand (1000) feet of . . . Walnut Street Park." (App. 10).

"agreement," the trial court set his trial for September 1, 2009. (Tr. 29). On August 28, 2009, witnesses' subpoenas were issued for the September 1st jury trial.

On September 1, 2009, however, Youngblood sought to plead guilty to dealing cocaine, as a class B felony. After Youngblood affirmed the foregoing facts, the trial court accepted his plea[2] and ordered a Pre-Sentence Investigation report ("PSI").

On September 15, 2009, the trial court held the sentencing hearing. Youngblood affirmed that he had read the PSI and that no corrections or additions were needed.[3] Youngblood admitted that he had already "been to prison" four times. (Tr. 40). He admitted that his initial involvement with the criminal justice system was in 1985, as a juvenile; that in 1990 at age 15, he had a substance related offense; in 1991, a public intoxication adjudication as a juvenile; then a marijuana related offense; and then was sent to the Boys' School for a violation for public intoxication. He admitted that as a juvenile he "had problems on parole" and a September 1992 offense. (Tr. 42). He further admitted theft and marijuana possession convictions, as an adult, in 1997; and thereafter theft and false informing convictions and two check deception convictions; a 2002 felony conviction, and another theft and a forgery charge. He admitted that in 2006 he was convicted of driving while suspended; and committed the instant offense in May of 2007. He admitted that subsequent to the instant offence, he was convicted in January

[2] No written plea agreement is included in the record or referenced in any transcript. Nor does the record reflect that the State or Youngblood's counsel recited any terms in that regard at the change-of-plea hearing on September 1st. The CCS states that Youngblood "plead[ed] guilty to the lesser included offense in Count I, dealing in cocaine, a class B felony" and that the second count, possession of cocaine, as a class B felony, was "to be dismissed at the time of sentencing." (App. 17).

[3] The PSI is not included in the record submitted by Youngblood.

of 2008 of driving while suspended; was put on probation for a criminal conversion conviction; and was arrested for attempted battery, resisting arrest, and false informing; further, while on bond for the latter three charges, he was charged with possession of marijuana.

The trial court found as aggravating circumstances Youngblood's "prior criminal history" and his additional criminal conduct subsequent to "being charged with this case." (Tr. 59). It found "the only mitigating circumstance would be by pleading guilty which there was some reward to that because" the charge had been a class A felony and Youngblood pleaded "guilty to a class B felony." (Tr. 59, 60). It found the "aggravating circumstances outweigh[ed]" the mitigating, (tr. 60), and ordered Youngblood to serve an executed term of twenty years at the Department of Correction.

DECISION

Our Supreme Court has provided the considerations to be applied in appellate review of the sentence imposed by the trial court pursuant to Indiana statutes. *See Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g. on other grounds*, 875 N.E.2d 218 (Ind. 2007). The trial court must issue a sentencing statement that includes the "reasons or circumstances for imposing a particular sentence." *Id.* The reasons or omission of reasons given for choosing a sentence are reviewable for an abuse of discretion. *Id.* However, the weight given to those reasons, *i.e.*, to particular aggravators or mitigators, is not subject to appellate review. *Id.* The lack of a sentencing statement, or a defect as to the trial court's findings or non-findings of aggravators, is an abuse of discretion. *Id.*

Here, the trial court clearly identified as aggravating circumstances Youngblood's prior criminal history and his criminal conduct subsequent to being charged with the dealing cocaine offense. As for mitigating circumstances, the trial court's statement from the bench indicated that it considered Youngblood's guilty plea as a mitigating circumstance, as reflected in its conclusion that "the aggravating circumstances outweigh the mitigating circumstances." (Tr. 60, emphasis added). The weight given to a particular mitigating circumstance is not subject to appellate review. *Id.*

Alternatively, if the trial court did not expressly find Youngblood's guilty to be a mitigating circumstance, after considering the possibility thereof, it necessarily found it not to be "a significant mitigating circumstance." *Trueblood v. State*, 715 N.E.2d 1242, 1257 (Ind. 1999) ("not every plea of guilty is a significant mitigating circumstance that must be credited by the court"), *cert. denied*. A guilty plea may not be a significant mitigating circumstance when it does not save the State time and expense in preparing for trial, *i.e.*, when it does not "occur[] before a trial is scheduled to begin," so that "virtually no preparation time for the State" is saved. *Id.* Also, we have found a guilty plea entered on the on the day trial is to begin is "more likely the result of pragmatism than acceptance of responsibility and remorse." *Davies v. Sate*, 758 N.E.2d 981, 987 (Ind. Ct. App. 2001), *trans. denied*. Similarly, a guilty plea in the face of substantial evidence is a pragmatic decision and may not warrant mitigation. *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (citing *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999)), *trans. denied*. The State's evidence included the confidential informant, a recording, and the officers who had been behind the curtain who observed the cocaine; and Youngblood's

guilty plea came on the day of trial, more than two years after he was charged. Hence, there would be no abuse of discretion in the trial court's not finding Youngblood's guilty plea to be a significant mitigating circumstance.

Youngblood's argument focuses solely on his contention that the trial erred in its belief that he "received a benefit from the State when he was allowed to plead guilty to the lesser included charge of B Felony Dealing cocaine." Youngblood's Br. at 5. He asserts that this is not true because the State lacked the evidence to establish certain elements of the class A felony offense, to wit: that the offense took place "within 1000 feet of a public park, that Youngblood was there for more than a brief time, or that there were children present in the park." *Id.* (citing Ind. Code § 35-48-4-16(b)).

Youngblood offers no authority, and we find none, for the proposition that even if he received no benefit by not being tried for the class A felony, based upon the evidence and the facts here, he was entitled to be sentenced in a manner other than that which would follow his conviction for the class B felony offense. He makes no argument that his sentence is inappropriate. *See* Ind. Appellate Rule 7(B) (appellate court revision of sentence authorized by statute upon finding sentence inappropriate in light of nature of office and character of offender). We find no error here.

Affirmed.

BAKER, C.J., and CRONE, J., concur.