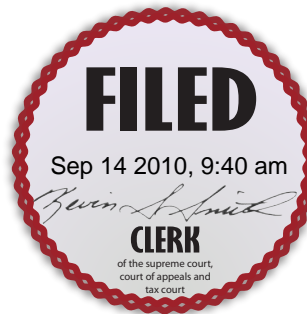


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANTHONY FULTON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 43A05-1003-CR-267
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE KOSCIUSKO SUPERIOR COURT
The Honorable James C. Jarrette, Judge
Cause No. 43D02-0912-CM-1788

September 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Anthony Fulton challenges his 365-day sentence following his conviction, pursuant to a guilty plea, for Class A misdemeanor Conversion.¹ Concluding that the trial court was not required to articulate and balance aggravating and mitigating factors in support of Fulton’s sentence and that Fulton’s criminal history justifies his sentence, we affirm.

FACTS

On December 11, 2009, while at the Kmart store in Warsaw, Fulton attempted to remove a Wii Remote from the store without paying for it by concealing it in his coat as he took it from the store and walked to his car. Fulton did not have permission from Kmart to leave the store without paying for the item.

On December 11, 2009, the State charged Fulton with Class A misdemeanor conversion. On February 5, 2010, Fulton pled guilty to the charge. On March 5, 2010, the trial court entered judgment of conviction and sentenced Fulton to 365 days in the Kosciusko County Jail. This appeal follows.

DECISION

Upon appeal, Fulton challenges the trial court’s imposition of a maximum 365-day sentence by claiming that the court did not give due consideration to his guilty plea, which he entered without the benefit of a plea agreement. Sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (2007). “An abuse of discretion occurs if the decision is ‘clearly

¹ Ind. Code § 35-43-4-3 (2009).

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). Fulton was convicted of a Class A misdemeanor. Under Indiana Code section 35-50-3-2 (2009), a person who commits a Class A misdemeanor shall be imprisoned for a “fixed term of not more than one (1) year[.]”

Fulton takes issue with the trial court’s failure to articulate his guilty plea as a mitigating factor. A trial court is not required to articulate and balance aggravating and mitigating circumstances before imposing sentence on a misdemeanor conviction. *Cuyler v. State*, 798 N.E.2d 243, 246 (Ind. Ct. App. 2003), *trans. denied*; *see Anglemyer*, 868 N.E.2d at 490 (applying sentencing statement requirements to felony convictions only). Here, Fulton received 365 days, which was an authorized sentence under the statute for his misdemeanor conviction. Fulton’s criminal history, which includes a felony conviction for burglary and misdemeanor convictions for conversion and resisting law enforcement, more than justifies the sentence imposed by the trial court. We find no abuse of discretion.

The judgment of the trial court is affirmed.

DARDEN, J., and BROWN, J., concur.