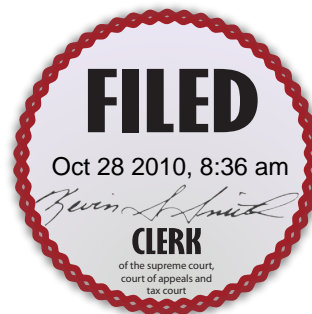


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**MARK OLIVERO**  
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana  
Indianapolis, Indiana

**ARTURO RODRIGUEZ II**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

MARTIN A. STANLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-1003-CR-209
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

---

APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Frances C. Gull, Judge  
Cause No. 02D04-0912-FB-214

---

**OCTOBER 28, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARTEAU, Senior Judge**

## STATEMENT OF THE CASE

Appellant Martin A. Stanley appeals the sentence imposed by the trial court following his plea of guilty to a charge of arson, a class B felony.<sup>1</sup> We affirm.

## ISSUE

Stanley raises one issue, which we restate as whether the trial court abused its discretion in the course of sentencing Stanley.

## FACTS

On November 26, 2009, Stanley argued with his girlfriend. Later that evening, while she was not at home, Stanley went to her residence and set it on fire.

The State charged Stanley with arson. Stanley pleaded guilty to the charge without a formal plea agreement. The trial court sentenced him to serve twenty years, which is the maximum sentence for a class B felony.<sup>2</sup>

## DISCUSSION AND DECISION

Sentencing decisions rest within the sound discretion of the trial court and, if the sentence is within the statutory range, are reviewed on appeal for an abuse of discretion. *See Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified 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). Our Supreme Court has explained:

---

<sup>1</sup> Ind. Code § 35-43-1-1 (2002).

<sup>2</sup> Ind. Code § 35-50-2-5 (2005).

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.

*Id.* at 490-491.

A trial court is not required to find mitigating factors or to accept as mitigating the circumstances proffered by the defendant. *Mead v. State*, 875 N.E.2d 304, 309 (Ind. Ct. App. 2007). Furthermore, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. *Plummer v. State*, 851 N.E.2d 387, 391 (Ind. Ct. App. 2006).

In this case, Stanley contends that the trial court overlooked mitigating factors that he believes are clearly supported by the record. We will address each claim in turn.

Stanley asserts that the trial court should have found as a mitigating factor that he was physically and mentally abused as a child by his father and stepfather. Evidence of a troubled childhood does not require a trial court to find it to be a mitigating circumstance. *Blanche v. State*, 690 N.E.2d 709, 715 (Ind. 1998). In this case, at sentencing, Stanley was forty-nine years old, and he did not establish any nexus between the abuse he experienced as a child and the current crime. The trial court did not abuse its discretion by declining to find that Stanley's childhood abuse was a mitigating factor.

Next, Stanley claims that the trial court should have identified his lengthy history of drug and alcohol abuse as a mitigating factor. A trial court is not required to consider

allegations of appellant's substance abuse or mental illness as mitigating circumstances. *James v. State*, 643 N.E.2d 321, 323 (Ind. 1994).

In this case, the trial court addressed Stanley's history of substance abuse as follows: "I decline to find your extensive drug and alcohol usage as a mitigating circumstance. At some point in time, Mr. Stanley, you've made the choice to continue to use despite the intervention of multiple agencies here and in Georgia." Sentencing Tr. at 18-19.<sup>3</sup> The trial court also discussed Stanley's extensive criminal history, including thirty-six misdemeanor convictions and nine felony convictions. The convictions include battery, aggravated assault, residential entry, and making terrorist threats. Stanley had stated earlier in the sentencing hearing that many of his convictions were related to drug and alcohol use. Next, the trial court listed Stanley's many unsuccessful attempts to address his substance abuse issues. After addressing Stanley's criminal history and failure to benefit from treatment, the trial court stated,

For whatever reason Mr. Stanley, you've chosen to not avail yourself of services, and not avail yourself of intervention, and not get anything from counseling, and not get anything from treatment. Instead you choose to continue drugging and drinking and causing harm, and there's an escalation in the pattern of violence in your criminal record with alcohol and drug offenses.

Sentencing Tr. at 20. The trial court did not omit or overlook Stanley's history of substance abuse, but rather discussed Stanley's substance abuse in the context of his lengthy criminal record and his history of failure to benefit from drug and alcohol

---

<sup>3</sup> We have been provided with transcripts of Stanley's guilty plea hearing and his sentencing hearing. All citations to the transcript in this opinion refer to the transcript of Stanley's sentencing hearing.

treatment. We conclude that the trial court did not abuse its discretion by declining to find that Stanley's history of substance abuse is a mitigating factor.

Finally, Stanley contends that the trial court overlooked witness statements requesting leniency for Stanley. Specifically, the victim, Stanley's girlfriend, submitted a written statement to the trial court and testified at the sentencing hearing, and she asked the trial court to give Stanley a reduced sentence. Furthermore, Jay Boyers, who lives near Stanley's girlfriend and reported the fire to the authorities, testified that he knows Stanley and that Stanley has good qualities. Recommendations from victims or their representatives are not mitigating or aggravating factors as those terms are used in the sentencing statute. *Haddock v. State*, 800 N.E.2d 242, 247 (Ind. Ct. App. 2003). Consequently, the trial court did not abuse its discretion by failing to identify the witnesses' requests for leniency as a mitigating circumstance.

#### CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.