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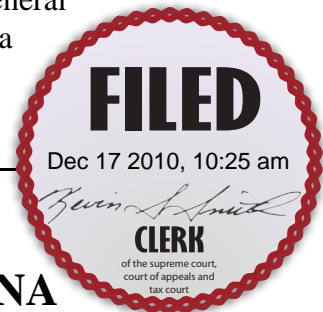
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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN ERIC WARREN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 03A01-1005-CR-265

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0907-FB-958

December 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

John Eric Warren appeals his aggregate sentence of thirty-nine years with four years suspended imposed following his guilty plea to two counts of class B felony armed robbery and one count of class C felony robbery. He contends that the trial court abused its discretion in sentencing him by failing to recognize that his guilty plea and minimal criminal history are significant mitigating factors. Finding no error, we affirm.

Facts and Procedural History¹

On May 15, 2009, Warren entered a Columbus Walgreen's Pharmacy and presented the pharmacist with a note informing the pharmacist that Warren had a gun and demanding a list of medications. The pharmacist gave Warren two or three bags of medications, and Warren left.

On June 19, 2009, Warren returned to the same Walgreen's accompanied by Bruce Fivecoat. Each man carried a handgun. Fivecoat stayed in the greeting card aisle, and Warren proceeded to the pharmacy. He gave the pharmacist a note demanding OxyContin and lifted his shirt to show his gun. The pharmacist gave him the OxyContin, and Warren and Fivecoat left.

On July 22, 2009, Warren and Fivecoat went to the same Walgreen's. Warren sent Fivecoat's girlfriend into the store to count the number of employees present. After she left the store, and Warren and Fivecoat went in, armed with handguns. Warren went to the pharmacy and gave the pharmacist a list of medications he wanted. Fivecoat found the store

¹ Warren has not included the guilty plea hearing transcript in the record before us. In his recitation of the facts, he provides no citation to the record, but as the State points out, he appears to rely on the probable cause affidavit for the factual basis of his guilty plea. We do the same.

manager and cashier and brought them at gunpoint to the pharmacy. Warren and Fivecoat ordered the Walgreen's employees to the floor and bound their hands with zip ties. The pharmacist thought that he was going to be shot.

On July 29, 2009, the State charged Warren with three counts of class B felony armed robbery and three counts of class B felony criminal confinement. On April 19, 2010, pursuant to a plea agreement, Warren pled guilty to two counts of class B felony armed robbery and one count of class C felony robbery. The State dismissed the remaining charges and sentencing was left to the trial court's discretion.

On May 18, 2010, a sentencing hearing was held. The trial court found that Warren's guilty plea was not a mitigating factor because he received a substantial benefit in pleading guilty; specifically, dismissal of all three criminal confinement charges and the reduction of one robbery charge from a B felony to a C felony. The trial court also rejected remorse and drug problems as mitigating factors, finding that Warren did not exhibit genuine remorse for his actions and that his drug problem was the driving force behind the commission of his offenses. As aggravating factors, the trial court identified the escalating dangerousness of the offenses; Warren's leadership role in their execution; the calculation and planning of the offenses; the impact on the victims; Warren's medium to high risk of recidivism as revealed by the assessment of risk test (LSIR); and Warren's prior felony conviction and juvenile criminal history. The trial court concluded that the aggravating factors significantly outweighed the mitigating factors and sentenced Warren to consecutive terms of six years with one year suspended on the class C felony robbery, fifteen years with one year suspended

on one of the class B felony robberies, and eighteen years with two years suspended on the other class B felony robbery, for an aggregate sentence of thirty-nine years. Warren appeals.

Discussion and Decision

We review the trial court's sentencing decision for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. An abuse of discretion occurs if the trial court fails to issue an adequate sentencing statement. *Id.* If the sentencing statement includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.* An abuse of discretion occurs if the record does not support the reasons given for imposing sentence, 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 490-91. However, whether the trial court properly weighed aggravating and mitigating factors is not subject to appellate review. *Id.* at 491. On appeal, we may consider both the trial court's written statement and its comments at the sentencing hearing. *Gibson v. State*, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). "An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record." *Espinoza v. State*, 859 N.E.2d 375, 387 (Ind. Ct. App. 2006).

Specifically, Warren asserts that the trial court abused its discretion in declining to find that his guilty plea and his minimal criminal history were significant mitigating factors.² We disagree. As the trial court indicated, Warren received a substantial benefit in pleading guilty in that three criminal confinement charges were dismissed and one robbery count was reduced to a class C felony. *See Anglemeyer*, 875 N.E.2d at 221 (“[A] guilty plea may not be significantly mitigating when it does not demonstrate the defendant’s acceptance of responsibility, or when the defendant receives a substantial benefit in return for the plea.”) (citation omitted). The trial court also found that Warren did not exhibit genuine remorse. *See Pickens v. State*, 767 N.E.2d 530, 535 (Ind. Ct. App. 2002) (noting that trial court’s evaluation of sincerity of defendant’s expression of remorse is akin to a determination of credibility, which we accept absent impermissible considerations). Further, given the overwhelming evidence against him, Warren’s decision to plead guilty was likely a pragmatic one. *See Powell v. State*, 895 N.E.2d 1259, 1262-63 (Ind. Ct. App. 2008) (noting that guilty plea not entitled to significant mitigating weight where plea is pragmatic due to evidence against defendant), *trans. denied* (2009). Accordingly, we conclude that Warren has failed to carry his burden to show that his guilty plea is a significant mitigating factor and clearly supported by the record.

² Warren presents two other issues for our review: (1) whether the sentencing order violates the Indiana Constitution by failing to consider and allow for his reformation; and (2) whether his sentence is inappropriate based on the nature of the offenses and his character. However, he fails to support either assertion with cogent argument, and therefore he waives these issues for appellate review. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that appellant’s argument be supported by cogent reasoning and citations to authority and record); *Barrett v. State*, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005) (“Failure to put forth a cogent argument acts as a waiver of the issue on appeal.”), *trans. denied* (2006).

As to his criminal history, Warren's prior felony conviction was for class C felony burglary. In that case, he broke into a closed pharmacy to steal prescription medications. That offense is strikingly similar to the current offenses, so even though Warren has only one prior felony conviction, it is significant. *See Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002) (acknowledging that significance of criminal history rests on the gravity, nature, and number of prior offenses *as they relate to the current offense*). In fact, at the sentencing hearing, Warren lied that this prior conviction was for breaking into a construction site to steal scrap metal. In addition, Warren was adjudicated a delinquent for four misdemeanor offenses and violated probation three times. At the time of sentencing, Warren had charges pending for class D felony possession of a narcotic, class D felony operating a vehicle while intoxicated, and class B misdemeanor public intoxication. Warren has failed to carry his burden to show that his criminal history is entitled to significant mitigating weight and clearly supported by the record. We conclude that the trial court did not abuse its discretion in sentencing Warren and affirm his thirty-nine year aggregate sentence.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.